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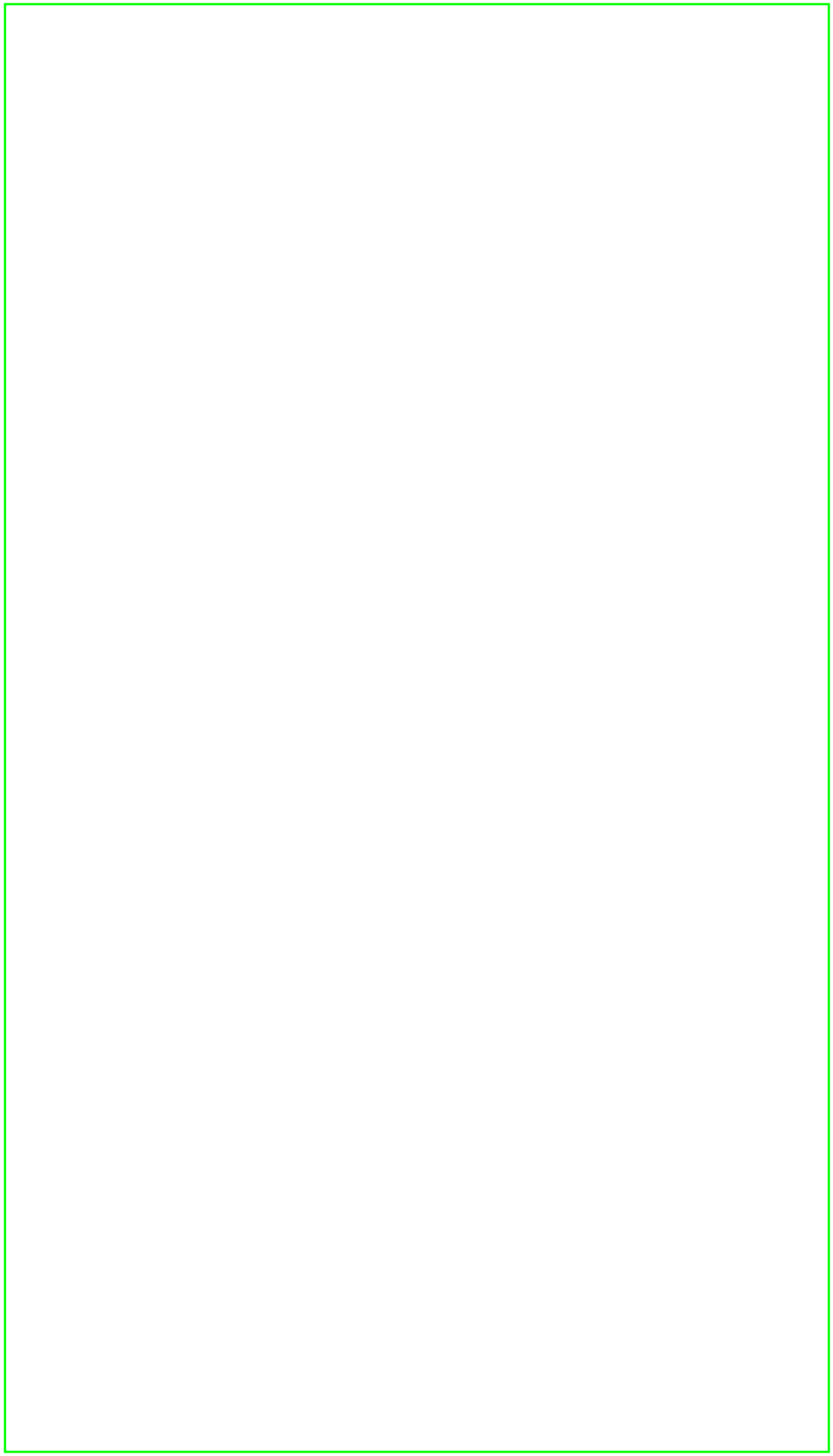

REVISED STATUTES
OF
NEBRASKA

2022 CUMULATIVE SUPPLEMENT

EDITED, ANNOTATED, AND PUBLISHED
BY THE
REVISOR OF STATUTES

VOLUME 1
CHAPTERS 1 - 42, INCLUSIVE

CITE AS FOLLOWS

R.S.SUPP.,2022

Errata:

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

Reissue of Volumes 1 to 6

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

Volumes 1, 1A, and 1B	2022
Volumes 2 and 2A	2016
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Volumes 3A, 3B, and 3C	2021
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CERTIFICATE OF AUTHENTICATION

I, Marcia M. McClurg, Revisor of Statutes, do hereby certify that the laws included in the 2022 Cumulative Supplement to the Revised Statutes of Nebraska are true and correct copies of the original acts enacted by the One Hundred Fourth Legislature, First Session, 2015, through the One Hundred Seventh Legislature, Second Session, 2022, of the Nebraska State Legislature as shown by the enrolled bills on file in the office of the Secretary of State, save and except such compilation changes and omissions as are specifically authorized by sections 49-705 and 49-769.

Marcia M. McClurg
Revisor of Statutes

Lincoln, Nebraska
October 1, 2022

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ANNOTATIONS

CONSTITUTION OF THE STATE OF NEBRASKA

Article I, sec. 3.

Under this provision, in a criminal prosecution, the State must prove every ingredient of an offense beyond a reasonable doubt and may not shift the burden of proof to the defendant by presuming an ingredient upon proof of the other elements of the offense. Because the burden of proof always remains with the State, it cannot comment on a defendant's failure to produce evidence to refute an element of the crime, because doing so could erroneously lead the jury to believe that the defendant carried the burden of introducing evidence. The exception to this rule is when the defendant voluntarily assumes some burden of proof by asserting the defenses of alibi, of self-defense, and of others, relying on facts that could be elicited only from a witness who is not equally available to the State. While a defendant may invite the State to explain why it chose not to submit certain items for testing, a defendant in a criminal case can never open the door to shift the burden of proof. A defendant is entitled to inquire about weaknesses in the State's case, but this does not open the door for the State to point out that the defendant has not proved his or her innocence. State v. Rocha, 295 Neb. 716, 890 N.W.2d 178 (2017).

A look-back provision of a natural resources district's rules governing land irrigation, which allowed acres that had been actually irrigated any year during a particular 10-year period to be certified, did not violate the substantive due process rights of a farmer who began irrigation after the 10-year period, because the provision had a substantial relation to the general welfare, in that it ensured an adequate supply of ground water and the window of time was reasonable due to the existence of limitations on "New Groundwater Irrigated Acres" in the district after that time. Lingenfelter v. Lower Elkhorn NRD, 294 Neb. 46, 881 N.W.2d 892 (2016).

A look-back provision of a natural resources district's rules governing land irrigation, which allowed acres that had been actually irrigated any year during a particular 10-year period to be certified, did not, under a rational basis test, violate the equal protection rights of a farmer who began irrigation after the 10-year period, because the provision was rationally related to the goal of ground water conservation. Lingenfelter v. Lower Elkhorn NRD, 294 Neb. 46, 881 N.W.2d 892 (2016).

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

Article I, sec. 6.

Hurst v. Florida, 577 U.S. 92, 136 S. Ct. 616, 193 L. Ed. 2d 504 (2016), did not hold that a jury must find beyond a reasonable doubt that the aggravating circumstances outweighed the mitigating circumstances. State v. Jenkins, 303 Neb. 676, 931 N.W.2d 851 (2019).

Article I, sec. 7.

Misstatements within a search warrant and application may still produce a valid warrant issued with the requisite probable cause if the rest of the warrant and attached application cures any defect resulting from the scrivener's error when read together. A search warrant and application's indicating incorrect dates of the drafting and signing is not per se fatal to the validity of a warrant. State v. Benson, 305 Neb. 949, 943 N.W.2d 426 (2020).

A warrant must be sufficiently particular to prevent an officer from having unlimited or unreasonably broad discretion in determining what items to seize. State v. Jennings, 305 Neb. 809, 942 N.W.2d 753 (2020).

In determining whether a warrant is sufficiently particular, several factors are to be considered: (1) Whether the warrant communicates objective standards for an officer to identify which items may be seized, (2) whether there is probable cause to support the seizure of the items listed, (3) whether the items in the warrant could be more particularly described based on the information available at the time the warrant was issued, and (4) the nature of the activity under investigation. State v. Jennings, 305 Neb. 809, 942 N.W.2d 753 (2020).

In reviewing the strength of an affidavit submitted as a basis for finding probable cause to issue a search warrant, the question is whether, under the totality of the circumstances illustrated by the affidavit, the issuing magistrate

had a substantial basis for finding that the affidavit established probable cause. State v. Jennings, 305 Neb. 809, 942 N.W.2d 753 (2020).

Although the accuracy of radar equipment must be demonstrated to support a conviction for speeding based on radar readings, reasonable proof of the accuracy of the radar equipment is not necessary to support the minimal level of objective justification for the belief that speeding occurred for purposes of an investigatory stop. State v. Montoya, 305 Neb. 581, 941 N.W.2d 474 (2020).

An officer has reasonable suspicion to stop a defendant's vehicle for speeding following radar detection of speeding, even if the police report lacked a memorialization of the officer's visual estimation of the traveling speed, where the officer checked the police cruiser's radar device at the beginning of the officer's shift to ensure it was working properly, the officer waited until the best moment to take the radar reading, there was good Doppler tone, and the radar read that the defendant was driving 50 miles per hour in a 35-mile-per-hour zone. State v. Montoya, 305 Neb. 581, 941 N.W.2d 474 (2020).

A seizure that is lawful at its inception can violate the Fourth Amendment's and the Nebraska Constitution's guarantees against unreasonable searches and seizures by its manner of execution. State v. Ferguson, 301 Neb. 697, 919 N.W.2d 863 (2018).

Judicial probable cause determinations must be made promptly after a warrantless arrest, and unreasonable delays in such judicial determinations of probable cause include delays for the purpose of gathering additional evidence to justify the arrest. However, the arrested individual bears the burden of proving the delay was unreasonable when the probable cause determination occurs within 48 hours. State v. Ferguson, 301 Neb. 697, 919 N.W.2d 863 (2018).

The fact that a dog sniff is conducted after the time reasonably required to complete the initial mission of a traffic stop is not, in and of itself, a Fourth Amendment violation; a Fourth Amendment violation arises only when the dog sniff is conducted after the initial mission of the stop is completed and the officer lacks probable cause or reasonable suspicion to investigate further. State v. Ferguson, 301 Neb. 697, 919 N.W.2d 863 (2018).

A search warrant authorizing the search of a murder suspect's residence for "any and all firearms" sufficiently described the things to be seized with particularity; even though the particular caliber of the firearm was not specified, the warrant still told police with reasonable clarity which items to search for and seize and did not give police open-ended discretion. State v. Baker, 298 Neb. 216, 903 N.W.2d 469 (2017).

The particularity requirement of this provision demands that a warrant describe with particularity (1) the place to be searched and (2) the persons or things to be seized. State v. Baker, 298 Neb. 216, 903 N.W.2d 469 (2017).

The particularity requirement of this provision is distinct from, but closely related to, the requirement that a warrant be supported by probable cause. A warrant may be sufficiently particular even though it describes the items to be seized in broad or generic terms if the description is as particular as the supporting evidence will allow; but the broader the scope of a warrant, the stronger the evidentiary showing must be to establish probable cause. State v. Baker, 298 Neb. 216, 903 N.W.2d 469 (2017).

Section 60-6,197.04 is constitutionally valid and does not conflict with the 4th, 5th, and 14th Amendments to the U.S. Constitution, and this provision or Neb. Const. Art. I, sec. 12, as section 60-6,197.04 mandates a preliminary breath test, rather than a search incident to lawful arrest addressed in Birchfield v. North Dakota, 579 U.S. 438, 136 S. Ct. 2160, 195 L. Ed. 2d 560 (2016), and where the arresting officer cited specific articulable facts to support administering the preliminary breath test. State v. McCumber, 295 Neb. 941, 893 N.W.2d 411 (2017).

The Nebraska Supreme Court typically construes the enumerated rights in the Nebraska Constitution consistently with their counterparts in the U.S. Constitution as construed by the U.S. Supreme Court. State v. Rocha, 295 Neb. 716, 890 N.W.2d 178 (2017).

The requirement of ready mobility for the automobile exception to the warrant requirement of this provision is met whenever a vehicle that is not located on private property is capable or apparently capable of being driven on the roads or highways. This inquiry does not focus on the likelihood of the vehicle's being moved under the particular circumstances and is generally satisfied by the inherent mobility of all operational vehicles. It does not depend on whether the defendant has access to the vehicle at the time of the search or is in custody, nor on whether the vehicle has been impounded. State v. Rocha, 295 Neb. 716, 890 N.W.2d 178 (2017).

The ultimate determination of probable cause to perform a warrantless search is reviewed de novo, and findings of fact are reviewed for clear error, giving due weight to the inferences drawn from those facts by the trial judge. State v. Rocha, 295 Neb. 716, 890 N.W.2d 178 (2017).

The ultimate touchstone of this provision is reasonableness. Searches and seizures must not be unreasonable. Searches without a valid warrant are per se unreasonable, subject only to a few specifically established and well-delineated exceptions. State v. Rocha, 295 Neb. 716, 890 N.W.2d 178 (2017).

An officer's request that an individual step out of a parked vehicle does not amount to a seizure when the totality of the circumstances surrounding the officer's request would not have made a reasonable person believe that he or she was not free to leave. State v. Milos, 294 Neb. 375, 882 N.W.2d 696 (2016).

When an individual places his or her hand in the same pocket that an officer is trying to search, thereby interfering with the officer's ability to search, the individual sufficiently demonstrates a withdrawal of consent to search. State v. Milos, 294 Neb. 375, 882 N.W.2d 696 (2016).

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

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

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

Article I, sec. 9.

The death penalty is cruel and unusual punishment when imposed on a prisoner whose mental illness makes him or her unable to reach a rational understanding of the reason for his or her execution. State v. Jenkins, 303 Neb. 676, 931 N.W.2d 851 (2019).

A juvenile offender's sentence did not constitute cruel and unusual punishment where it allowed for release 17 years before his life expectancy. State v. Smith, 295 Neb. 957, 892 N.W.2d 52 (2017).

It is unconstitutional for a state to impose a sentence of life imprisonment without parole on a juvenile convicted of a nonhomicide offense. State v. Smith, 295 Neb. 957, 892 N.W.2d 52 (2017).

Nebraska's sentence of life imprisonment is effectively life imprisonment without parole under the rationale of Miller v. Alabama, 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012), because it provides no meaningful opportunity to obtain release. State v. Thieszen, 295 Neb. 293, 887 N.W.2d 871 (2016).

The mere existence of a remote possibility of parole does not keep Nebraska's sentencing scheme from falling within the dictates of Miller v. Alabama, 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012). State v. Thieszen, 295 Neb. 293, 887 N.W.2d 871 (2016).

In determining whether a criminal fine is so excessive as to violate this provision prohibiting excessive fines, the test is whether the penalty is grossly disproportional to the gravity of the defendant's offense. State v. Newcomer, 23 Neb. App. 761, 875 N.W.2d 914 (2016).

In order to determine whether a fine challenged under this provision is grossly disproportional, the claimant must first make a prima facie showing of gross disproportionality, and if the claimant does so, the court then considers whether the disproportionality reaches such a level of excessiveness that the punishment is more criminal than the crime. State v. Newcomer, 23 Neb. App. 761, 875 N.W.2d 914 (2016).

Article I, sec. 11.

A waiver of the right to be present at trial is the voluntary and intentional relinquishment of a known right, privilege, or claim, and may be demonstrated by or inferred from a person's conduct. State v. Warlick, 308 Neb. 656, 956 N.W.2d 269 (2021).

An appellate court applies to a defendant, who was out on bail and has failed without explanation to be present at trial, the fundamental proposition that the burden to produce evidence will rest upon the party who possesses positive and complete knowledge concerning the existence of facts which the other party would otherwise be called upon to negative, or if the evidence to prove a fact is chiefly within the party's control. State v. Warlick, 308 Neb. 656, 956 N.W.2d 269 (2021).

In determining on direct appeal whether a defendant has waived the right to be present, an appellate court does not merely look to the evidence available at the moment the court pronounced the defendant's absence to be voluntary, but at the entirety of the evidence in the record. State v. Warlick, 308 Neb. 656, 956 N.W.2d 269 (2021).

It is the duty of a defendant out on bail to continue to be present after a trial recess, and the defendant's failure to do so constitutes voluntary absence on the defendant's part and a waiver of the defendant's right to be present. State v. Warlick, 308 Neb. 656, 956 N.W.2d 269 (2021).

The right to self-representation plainly encompasses certain specific rights of the defendant to have his or her voice heard, including that the pro se defendant must be allowed to control the organization and content of his or her own defense. This control may include a waiver of the right to present mitigating evidence during sentencing in a death penalty case. State v. Schroeder, 305 Neb. 527, 941 N.W.2d 445 (2020).

The competence that is required of a defendant seeking to waive his or her right to counsel is the competence to waive the right, not the competence to represent himself or herself. State v. Jenkins, 303 Neb. 676, 931 N.W.2d 851 (2019).

Article I, sec. 12.

The protection granted by the Nebraska Constitution against double jeopardy is coextensive to the protection granted by the U.S. Constitution. State v. Sierra, 305 Neb. 249, 939 N.W.2d 808 (2020).

When a court sua sponte suggests a mistrial, it is not too onerous to require defense counsel to clearly and timely state whether he or she objects to the court's consideration of a mistrial when given an opportunity to do so. State v. Leon-Simaj, 300 Neb. 317, 913 N.W.2d 722 (2018).

Section 60-6,197.04 is constitutionally valid and does not conflict with the 4th, 5th, and 14th Amendments to the U.S. Constitution, and this provision or Neb. Const. Art. I, sec. 7, as section 60-6,197.04 mandates a preliminary breath test, rather than a search incident to lawful arrest addressed in Birchfield v. North Dakota, 579 U.S. 438, 136 S. Ct. 2160, 195 L. Ed. 2d 560 (2016), and where the arresting officer cited specific articulable facts to support administering the preliminary breath test. State v. McCumber, 295 Neb. 941, 893 N.W.2d 411 (2017).

Article I, sec. 16.

Where the death penalty was in effect at the time of the crimes and was also in effect at the time of sentencing, the repeal of the death penalty did not inflict a greater punishment than that available when the crimes were committed. State v. Jenkins, 303 Neb. 676, 931 N.W.2d 851 (2019).

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

Article I, sec. 20.

"Debt," as stated in state constitutional prohibitions of imprisonment for debt, is generally viewed as an obligation to pay money from the debtor's own resources, which arose out of a consensual transaction between the creditor and the debtor. Sickler v. Sickler, 293 Neb. 521, 878 N.W.2d 549 (2016).

Imprisonment for contempt for the failure to comply with the order of property division in a dissolution decree does not violate this provision. Sickler v. Sickler, 293 Neb. 521, 878 N.W.2d 549 (2016).

Whether an obligation is a "debt" depends on the origin and nature of the obligation and not on the manner of its enforcement. Sickler v. Sickler, 293 Neb. 521, 878 N.W.2d 549 (2016).

Article II, sec. 1.

The constitutional principle of separation of powers demands that in the course of any overlapping exercise of the three branches' powers, no branch may significantly impair the ability of any other in its performance of its essential functions. State ex rel. Veskrna v. Steel, 296 Neb. 581, 894 N.W.2d 788 (2017).

Article III, sec. 1.

Statutory provisions authorizing initiative petitions should be construed in such a manner that the legislative power reserved in the people is effectual and should not be circumscribed by restrictive legislation or narrow and

strict interpretation of the statutes pertaining to its exercise. Christensen v. Gale, 301 Neb. 19, 917 N.W.2d 145 (2018).

Article III, sec. 2.

A pre-election mandamus action claiming that a voter ballot initiative violates the single subject rule is a claim based on the initiative's procedural, not substantive, requirements and is thus ripe for resolution before the election. State ex rel. Wagner v. Evnen, 307 Neb. 142, 948 N.W.2d 244 (2020).

A voter ballot initiative violates the single subject rule when the initiative's first two subsections would enshrine a constitutional right of certain persons to produce and medicinally use cannabis, while later subsections would enshrine a constitutional right and immunity for entities to grow and sell cannabis and would regulate the role of cannabis in at least six areas of public life. State ex rel. Wagner v. Evnen, 307 Neb. 142, 948 N.W.2d 244 (2020).

Because the voter ballot initiative power is precious to the people, the Nebraska Supreme Court construes statutory and constitutional provisions dealing with voters' power of initiative liberally to promote the democratic process. State ex rel. Wagner v. Evnen, 307 Neb. 142, 948 N.W.2d 244 (2020).

Logrolling is the practice of combining dissimilar propositions into one voter ballot initiative so that voters must vote for or against the whole package, even though they only support certain of the initiative's propositions. State ex rel. Wagner v. Evnen, 307 Neb. 142, 948 N.W.2d 244 (2020).

The people's reserved power of the initiative and their self-imposed requirements of procedure in exercising that power are of equal constitutional significance. State ex rel. Wagner v. Evnen, 307 Neb. 142, 948 N.W.2d 244 (2020).

The single subject requirement may not be circumvented by selecting a general subject so broad that the rule is evaded as a meaningful constitutional check on the initiative process. State ex rel. Wagner v. Evnen, 307 Neb. 142, 948 N.W.2d 244 (2020).

The single subject requirement was adopted by voters to protect against voter ballot initiatives that failed to give voters an option to clearly express their policy preference. State ex rel. Wagner v. Evnen, 307 Neb. 142, 948 N.W.2d 244 (2020).

To meet the single subject requirement, a voter ballot initiative must satisfy the natural and necessary connection test, which examines the initiative's singleness of purpose and the relationship of other details to its general subject. An initiative's general subject is defined by its primary purpose. State ex rel. Wagner v. Evnen, 307 Neb. 142, 948 N.W.2d 244 (2020).

For purposes of the single subject requirement for voter initiatives under the Nebraska Constitution, the general subject is defined by its primary purpose. Christensen v. Gale, 301 Neb. 19, 917 N.W.2d 145 (2018).

Statutory provisions authorizing initiative petitions should be construed in such a manner that the legislative power reserved in the people is effectual and should not be circumscribed by restrictive legislation or narrow and strict interpretation of the statutes pertaining to its exercise. Christensen v. Gale, 301 Neb. 19, 917 N.W.2d 145 (2018).

The controlling consideration in determining the singleness of a subject, for purposes of the single subject requirement for voter initiatives under this provision of the Nebraska Constitution, is its singleness of purpose and relationship of the details to the general subject, not the strict necessity of any given detail to carry out the general subject. Christensen v. Gale, 301 Neb. 19, 917 N.W.2d 145 (2018).

Where the limits of a proposed law, having natural and necessary connection with each other, and, together, are a part of one general subject, the proposal is a single and not a dual proposition, and thus does not violate the single subject requirement for voter initiatives under the Nebraska Constitution. Christensen v. Gale, 301 Neb. 19, 917 N.W.2d 145 (2018).

Whether the elements of complex statutory amendments can be characterized as presenting different policy issues for purposes of the single subject requirement for voter initiatives under this provision of the Nebraska Constitution, the crux of the question is the extent of the differences and how the elements relate to the primary purpose. Christensen v. Gale, 301 Neb. 19, 917 N.W.2d 145 (2018).

Article III, sec. 3.

Upon the filing of a referendum petition appearing to have a sufficient number of signatures, operation of the legislative act is suspended so long as the verification and certification process ultimately determines that the petition had the required number of valid signatures. State v. Mata, 304 Neb. 326, 934 N.W.2d 475 (2019).

Upon the filing of a referendum petition appearing to have a sufficient number of signatures, operation of the legislative act is suspended so long as the verification and certification process ultimately determines that the petition had the required number of valid signatures. State v. Jenkins, 303 Neb. 676, 931 N.W.2d 851 (2019).

Article III, sec. 18.

The prohibition in this provision against the Legislature's granting divorces is not implicated by a statutory scheme of general application to all persons seeking dissolution decrees. Dycus v. Dycus, 307 Neb. 426, 949 N.W.2d 357 (2020).

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

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

Article IV, sec. 13.

The "conditions clause" permits the Legislature to enact laws placing conditions on when a committed offender is eligible for parole. Adams v. State, 293 Neb. 612, 879 N.W.2d 18 (2016).

Article IV, sec. 20.

The constitutional provision creating the Public Service Commission must be liberally construed to effectuate the purpose for which the commission was created, which is to serve the public interest. In re Application No. OP-0003, 303 Neb. 872, 932 N.W.2d 653 (2019).

The Public Service Commission is an independent regulatory body created by the Nebraska Constitution under this provision. In re Application No. OP-0003, 303 Neb. 872, 932 N.W.2d 653 (2019).

Article V, sec. 1.

By creating and regulating Judicial Branch Education, the Nebraska Supreme Court is exercising a power constitutionally committed to it. State ex rel. Veskrna v. Steel, 296 Neb. 581, 894 N.W.2d 788 (2017).

Article V, sec. 2.

Under this provision, the Nebraska Supreme Court has only such appellate jurisdiction as may be provided by law, meaning that in order for it to have jurisdiction over an appeal, appellate jurisdiction must be specifically provided by the Legislature. Boyd v. Cook, 298 Neb. 819, 906 N.W.2d 31 (2018).

The Nebraska Constitution allocates the regulation of appellate jurisdiction to the Legislature, not to the Nebraska Supreme Court. Heckman v. Marchio, 296 Neb. 458, 894 N.W.2d 296 (2017).

STATUTES OF THE STATE OF NEBRASKA

24-205.01.

Under subsection (1) of section 84-712.01, the Judicial Branch Education advisory committee's unwritten policy of keeping its records confidential did not, in light of this section, governing the committee's power to develop standards and policies for review by the Nebraska Supreme Court, render such records confidential under the statutory exception to the public records laws for records not to be made public according to section 84-712.01, although subdivision (2)(a) of this section contemplated promulgation of rules regarding the confidentiality of Judicial Branch Education records, where no such rules had been adopted by the Nebraska Supreme Court. State ex rel. Veskrna v. Steel, 296 Neb. 581, 894 N.W.2d 788 (2017).

24-302.

A district court's jurisdiction over a 42 U.S.C. 1983 claim flows from the Legislature's grant of general jurisdiction to that court, over and above the district court's jurisdiction conferred by the Nebraska Constitution. Webb v. Nebraska Dept. of Health & Human Servs., 301 Neb. 810, 920 N.W.2d 268 (2018).

In a court of general jurisdiction, jurisdiction may be presumed absent a record showing the contrary. Webb v. Nebraska Dept. of Health & Human Servs., 301 Neb. 810, 920 N.W.2d 268 (2018).

Section 30-810 provides special procedures for settling wrongful death claims, but it is silent on wrongful death actions and subrogation. Accordingly, under section 48-118.01, wrongful death actions and, under section 48-118.04, proceedings for the fair and equitable distribution of wrongful death action proceeds subject to subrogation in workers' compensation cases must be brought in the district court. In re Estate of Evertson, 295 Neb. 301, 889 N.W.2d 73 (2016).

24-303.

A district court possesses jurisdiction only so long as it is holding court in conformity with the law; and when, without excuse, it disregards the law and attempts to hold court in any other place than that prescribed by statute, its acts become coram non judice. Burns v. Burns, 296 Neb. 184, 892 N.W.2d 135 (2017).

All nonjury trials and hearings, except those conducted pursuant to subsection (2) of this section, must take place in the county in which the cause is pending. Burns v. Burns, 296 Neb. 184, 892 N.W.2d 135 (2017).

24-517.

The purpose of subdivision (11) of this section is to vest jurisdiction over adoption proceedings—including paternity determinations—with the county court or the separate juvenile court. Peterson v. Jacobitz, 309 Neb. 486, 961 N.W.2d 258 (2021).

A county court has jurisdiction to construe a power of attorney or review an agent's conduct and grant appropriate relief. In re Estate of Adelung, 306 Neb. 646, 947 N.W.2d 269 (2020).

County courts have not been given authority to decide motions to transfer to juvenile court in cases in which they lack jurisdiction to try the case. State v. A.D., 305 Neb. 154, 939 N.W.2d 484 (2020).

The county courts have the power to construe wills. Brinkman v. Brinkman, 302 Neb. 315, 923 N.W.2d 380 (2019).

A parent can challenge the legality of an adoption by objecting to the proceeding in county court. But seeking a writ of habeas corpus is an equally available remedy for a parent's claim that his or her child is being illegally detained for an adoption. Jesse B. v. Tylee H., 293 Neb. 973, 883 N.W.2d 1 (2016).

Despite the Legislature's grant of exclusive jurisdiction over adoption matters to county or juvenile courts under subsection (11) of this section, the privilege of the writ of habeas corpus is part of Nebraska's organic law. Thus, district courts have general, overlapping jurisdiction over an adoption challenge when a parent claims his or her child is being illegally detained for an adoption in a habeas proceeding. Jesse B. v. Tylee H., 293 Neb. 973, 883 N.W.2d 1 (2016).

The Legislature cannot limit or take away the broad and general jurisdiction of the district courts, as conferred by the Nebraska Constitution. But it can give county courts concurrent original jurisdiction over the same subject matter. Jesse B. v. Tylee H., 293 Neb. 973, 883 N.W.2d 1 (2016).

When a district court has exercised jurisdiction over a habeas proceeding to challenge the legality of an adoption before an adoption proceeding is filed in county court, the doctrine of jurisdictional priority requires the district court to retain jurisdiction over the matter to the exclusion of the county court until it determines whether the child is being legally detained for an adoption. Jesse B. v. Tylee H., 293 Neb. 973, 883 N.W.2d 1 (2016).

Subdivision (11) of this section vests exclusive original jurisdiction over adoption proceedings in the county courts. Peterson v. Jacobitz, 29 Neb. App. 486, 955 N.W.2d 329 (2021).

Subdivision (1) of this section gives county courts exclusive original jurisdiction of all matters relating to decedents' estates. In re Estate of Stretesky, 29 Neb. App. 338, 955 N.W.2d 1 (2021).

24-734.

Subsection (4) of this section only pertains to allowing a witness to be examined telephonically with the consent of the parties. It does not address permitting a party to appear and participate at trial telephonically. In re Estate of Newman, 25 Neb. App. 771, 913 N.W.2d 744 (2018).

25-201.01.

The savings clause in this section does not apply to an action under the State Tort Claims Act. Saylor v. State, 304 Neb. 779, 936 N.W.2d 924 (2020).

25-201.02.

Pursuant to subdivision (2)(b)(ii) of this section, while the mistaken identity inquiry of relation back is appropriately focused on what the defendant knew or should have known, the question is what the defendant knew or should have known about the plaintiff's intent when filing the original complaint. Davis v. Ridder, 309 Neb. 865, 963 N.W.2d 23 (2021).

Amended pleading to identify intended defendant and to plead that intended defendant had constructive notice of lawsuit would not relate back to original complaint which was served on defendant's father who bore same name, for purposes of 4-year limitations period; name of defendant was same in both original and proposed amended complaint, and thus, there was nothing to amend, and summary judgment evidence indicated that intended defendant did not know about lawsuit before limitations period expired. Rudd v. Debora, 20 Neb. App. 850, 835 N.W.2d 765 (2013).

25-202.

A seller under a land installment contract who has received a distinct and unequivocal repudiation of the contract by the buyer cannot wait more than 10 years after the repudiation to commence an ejectment action. Beckner v. Urban, 309 Neb. 677, 962 N.W.2d 497 (2021).

This section is a general statute of limitations that must yield to the more specific limitation provided in section 25-218 regarding inverse condemnation actions brought against the State. Hike v. State, 297 Neb. 212, 899 N.W.2d 614 (2017).

In the context of a regulatory taking, a cause of action for inverse condemnation begins to accrue when the injured party has the right to institute and maintain a lawsuit due to a city's infringement, or an attempt at infringement, of a landowner's legal rights in the property. Strode v. City of Ashland, 295 Neb. 44, 886 N.W.2d 293 (2016).

25-205.

Although this section provides a 5-year statute of limitations on breach of contract claims, 28 U.S.C. 1367(d) tolls the state statute of limitations during the time the claim is being litigated in federal court. Ryan v. Streck, Inc., 309 Neb. 98, 958 N.W.2d 703 (2021).

A claim for indemnification filed after the applicable statute of limitations for the underlying breach of contract does not preserve a separate cause of action for breach of contract. Keith v. Data Enters., 27 Neb. App. 23, 925 N.W.2d 723 (2019).

A claim for indemnification filed after the applicable statute of limitations for the underlying negligence or negligent misrepresentation claims does not preserve separate causes of action for negligence or negligent misrepresentation. Keith v. Data Enters., 27 Neb. App. 23, 925 N.W.2d 723 (2019).

25-206.

The time limitations provided for in this section and section 25-218 do not infringe upon the Department of Labor's ability to collect an overpayment by setoff under section 48-665. McCoy v. Albin, 298 Neb. 297, 903 N.W.2d 902 (2017).

25-207.

In order to toll the statute of limitations, allegations of fraudulent concealment must be pleaded with particularity. Chafin v. Wisconsin Province Society of Jesus, 301 Neb. 94, 917 N.W.2d 821 (2018).

Amended pleading to identify intended defendant and to plead that intended defendant had constructive notice of lawsuit would not relate back to original complaint which was served on defendant's father who bore same name, for purposes of 4-year limitations period; name of defendant was same in both original and proposed amended complaint, and thus, there was nothing to amend, and summary judgment evidence indicated that intended defendant did not know about lawsuit before limitations period expired. Rudd v. Debora, 20 Neb. App. 850, 835 N.W.2d 765 (2013).

The discovery provision in this section relates to when an action must be instituted and does not depend upon the eventual success of a fraud claim. Kalkowski v. Nebraska Nat. Trails Museum Found., 20 Neb. App. 541, 826 N.W.2d 589 (2013).

25-216.

A judgment is not a contract for purposes of the tolling provision of this section. Nelssen v. Ritchie, 304 Neb. 346, 934 N.W.2d 377 (2019).

25-217.

"Appearance of Counsel" filed by the defendant's attorneys was not a voluntary appearance which waived service of the complaint because it did not request general relief from the court on an issue other than sufficiency of service or process or personal jurisdiction. Stone Land & Livestock Co. v. HBE, 309 Neb. 970, 962 N.W.2d 903 (2021).

Nothing in this section states that the action is dismissed against all the defendants or that the action stands dismissed as a whole. Davis v. Moats, 308 Neb. 757, 956 N.W.2d 682 (2021).

An action is dismissed by operation of law, without any action by either the defendant or the court, as to any defendant who is named in the action and not served with process within 6 months after the complaint is filed. Rudd v. Debora, 20 Neb. App. 850, 835 N.W.2d 765 (2013).

In Nebraska, a defendant must be served within 6 months from the date the complaint was filed, regardless of whether the plaintiff falsely believed he had served the correct defendant. Rudd v. Debora, 20 Neb. App. 850, 835 N.W.2d 765 (2013).

This section, requiring that complaint be dismissed if not served on defendant within 6 months of filing, was self-executing and mandatory, and did not authorize trial court to extend time for filing service of summons and complaint on intended defendant after 6-month deadline expired based on injured plaintiff's having erroneously served summons and complaint on intended defendant's father, who bore same name as defendant. Rudd v. Debora, 20 Neb. App. 850, 835 N.W.2d 765 (2013).

Six months after the date a complaint is filed, the action is dismissed, without prejudice, as to any defendant not served, without predicate action by the trial court. If service is effected after this date, such service does not negate the dismissal. Old Home Enterprise v. Fleming, 20 Neb. App. 705, 831 N.W.2d 46 (2013).

25-218.

The time limitations provided for in section 25-206 and this section do not infringe upon the Department of Labor's ability to collect an overpayment by setoff under section 48-665. McCoy v. Albin, 298 Neb. 297, 903 N.W.2d 902 (2017).

Inverse condemnation actions against the State must be commenced 2 years from the time of taking or damaging. Hike v. State, 297 Neb. 212, 899 N.W.2d 614 (2017).

Section 25-202 is a general statute of limitations that must yield to the more specific limitation provided in this section regarding inverse condemnation actions brought against the State. Hike v. State, 297 Neb. 212, 899 N.W.2d 614 (2017).

25-222.

In a professional negligence action, a physician did not waive and was not estopped from asserting as a defense the statute of limitations set forth in this section, where the physician engaged in discovery after a complaint was filed rather than immediately moving to dismiss the complaint on statute of limitations grounds. Bonness v. Armitage, 305 Neb. 747, 942 N.W.2d 238 (2020).

ANNOTATIONS

A massage therapist is not a "professional" for the purpose of application of the professional negligence statute of limitations; while a massage therapist is required to be licensed, the licensing requirements do not require long and intensive training or preparation, including instruction in skills and methods as well as in the scientific, historical, or scholarly principles underlying such skills and methods, which would be comparable to that of a college degree, and the standards for membership in the occupation of massage therapy did not include high standards of achievement. Wehrer v. Dynamic Life Therapy & Wellness, 302 Neb. 1025, 926 N.W.2d 107 (2019).

Each of the elements set forth in the *Tylle* definition of "profession" are considered to be necessary and not merely possible factors for consideration; therefore, to constitute a "profession" within the meaning of this section, a particular type of endeavor must meet all of the principal elements. Wehrer v. Dynamic Life Therapy & Wellness, 302 Neb. 1025, 926 N.W.2d 107 (2019).

Great emphasis is placed on college degrees in considering whether a particular occupation is a "profession" for the purpose of applying this section. Wehrer v. Dynamic Life Therapy & Wellness, 302 Neb. 1025, 926 N.W.2d 107 (2019).

In analyzing whether a particular group or organization meets the definition of a "profession" for purposes of the professional negligence statute of limitations, each of the following principal elements must be demonstrated, as an occupation is not a "profession" unless: (1) The profession requires specialized knowledge; (2) the profession requires long and intensive preparation; (3) preparation must include instruction in skills and methods of the profession; (4) preparation must include scientific, historical, or scholarly principles underlying the skills and methods of the profession; (5) membership in a professional organization is required; (6) a professional organization or concerted opinion within an organization regulates and enforces standards for membership; (7) the standards for membership include high standards of achievement; (8) the standards for membership include high standards of conduct; (9) its members are committed to continued study; (10) its members are committed to a specific kind of work; and (11) the specific kind of work has for its primary purpose the rendering of a public service. Wehrer v. Dynamic Life Therapy & Wellness, 302 Neb. 1025, 926 N.W.2d 107 (2019).

The 1-year discovery exception in this section is a tolling provision, but it applies only in those cases in which the plaintiff did not discover, and could not have reasonably discovered, the existence of the cause of action within the applicable statute of limitations. Walz v. Harvey, 28 Neb. App. 7, 938 N.W.2d 110 (2020).

25-223.

When homeowners contract with individual contractors for separate construction projects, the 4-year statute of limitations begins to run against each contractor on the date it substantially completes its project. McCaulley v. C L Enters., 309 Neb. 141, 959 N.W.2d 225 (2021).

If a contract is divisible, breaches of its severable parts give rise to separate causes of action, and the statute of limitations will generally begin to run at the time of each breach. If, however, a contract is indivisible, an action can be maintained on it only when a breach occurs or the contract is in some way terminated, and the statute of limitations will begin to run from that time only. Fuelberth v. Heartland Heating & Air Conditioning, 307 Neb. 1002, 951 N.W.2d 758 (2020).

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

25-228.

This section does not apply to an action that was already barred under the existing statutes of limitations at the time this section was enacted in 2012. Doe v. McCoy, 297 Neb. 321, 899 N.W.2d 899 (2017).

25-301.

Because a sanitary and improvement district cannot hold private property for purposes of a takings claim against its own parent state, it cannot be the real party in interest to such a takings claim. SID No. 67 v. State, 309 Neb. 600, 961 N.W.2d 796 (2021).

The purpose of the real party in interest requirement is to ensure that actions are prosecuted only by persons who have some real interest in the cause of action or a legal or equitable right, title, or interest in the subject matter of a controversy. SID No. 67 v. State, 309 Neb. 600, 961 N.W.2d 796 (2021).

Third-party-beneficiary theory is a common-law doctrine that allows a nonparty to a contract to enforce an interest owed by a promisor under the contract, provided the nonparty was an intended beneficiary whose rights and interest were apparently contemplated by the contract's language itself. Equestrian Ridge v. Equestrian Ridge Estates II, 308 Neb. 128, 953 N.W.2d 16 (2021).

The plaintiff was the real party in interest where the defendant's legal malpractice caused harm to the plaintiff's company and where throughout litigation, the parties acknowledged and recognized the plaintiff's interest in the judgment. LeRette v. Howard, 300 Neb. 128, 912 N.W.2d 706 (2018).

The assignee of a chose in action is the proper and only party who can maintain the suit thereon; the assignor loses all right to control or enforce the assigned right against the obligor. Midwest Renewable Energy v. American Engr. Testing, 296 Neb. 73, 894 N.W.2d 221 (2017).

The purpose of the "real party in interest" statute is to prevent the prosecution of actions by persons who have no right, title, or interest in the cause. Cattle Nat. Bank & Trust Co. v. Watson, 293 Neb. 943, 880 N.W.2d 906 (2016).

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

The court has continuing jurisdiction when the real party in interest is substituted for another party. Walker v. Probandt, 29 Neb. App. 704, 958 N.W.2d 459 (2021).

25-302.

A written assignment must be proved by a preponderance of the evidence. Hawley v. Skradski, 304 Neb. 488, 935 N.W.2d 212 (2019).

An assignee of a chose in action may maintain an action thereon in the assignee's own name when the assignment being sued upon is in writing. Hawley v. Skradski, 304 Neb. 488, 935 N.W.2d 212 (2019).

25-303.

The assignee of a chose in action acquires no greater rights than those of the assignor, and takes it subject to all the defenses existent at the time. Midwest Renewable Energy v. American Engr. Testing, 296 Neb. 73, 894 N.W.2d 221 (2017).

25-304.

An assignee can establish standing to bring an action in its own name, and thus show the court had subject matter jurisdiction, if it proves by a preponderance of the evidence the existence of a written assignment. Western Ethanol Co. v. Midwest Renewable Energy, 305 Neb. 1, 938 N.W.2d 329 (2020).

A written assignment must be proved by a preponderance of the evidence. Hawley v. Skradski, 304 Neb. 488, 935 N.W.2d 212 (2019).

An assignee of a chose in action may maintain an action thereon in the assignee's own name when the assignment being sued upon is in writing. Hawley v. Skradski, 304 Neb. 488, 935 N.W.2d 212 (2019).

25-319.

A prison inmate, who sought to bring class action claims for declaratory and injunctive relief alleging that conditions at the Nebraska State Penitentiary, including overcrowding, cell assignments, flooding, and inadequate showering conditions, violated his rights, lacked commonality with members of the purported class, and thus the inmate was unqualified to represent the class, where claims became moot after he was transferred to another correctional facility. Nesbitt v. Frakes, 300 Neb. 1, 911 N.W.2d 598 (2018).

25-322.

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

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

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

25-323.

In an action for grandparent visitation, the district court lacked subject matter jurisdiction to make a determination as to grandparent visitation rights where the noncustodial father was not made a party to the action and not given an opportunity to participate in the proceedings. Davis v. Moats, 308 Neb. 757, 956 N.W.2d 682 (2021).

Necessary parties are parties who have an interest in the controversy, and should ordinarily be joined unless their interests are separable so that the court can, without injustice, proceed in their absence. Indispensable parties are parties whose interest is such that a final decree cannot be entered without affecting them, or that termination of controversy in their absence would be inconsistent with equity. Midwest Renewable Energy v. American Engr. Testing, 296 Neb. 73, 894 N.W.2d 221 (2017).

This section imposes a duty on the court to require an indispensable party be added to the litigation sua sponte when one is absent and statutorily deprives the court of subject matter jurisdiction over the controversy absent the presence of all indispensable parties. Midwest Renewable Energy v. American Engr. Testing, 296 Neb. 73, 894 N.W.2d 221 (2017).

The language of this section tracks the traditional distinction between the necessary and indispensable parties. Panhandle Collections v. Singh, 28 Neb. App. 924, 949 N.W.2d 554 (2020).

The first clause of this section makes the inclusion of necessary parties discretionary when a controversy of interest to them is severable from their rights. The second clause, however, mandates that the district court order indispensable parties to be brought into the controversy. All persons interested in the contract or property involved in an action are necessary parties, whereas all persons whose interests therein may be affected by a decree in equity are indispensable parties. The absence of an indispensable party to a controversy deprives the court of subject matter jurisdiction to determine the controversy and cannot be waived. When it appears that all indispensable parties to a proper and complete determination of an equity cause were not before the court, an appellate court will remand the cause for the purpose of having such parties brought in. In re Trust Created by Augustin, 27 Neb. App. 593, 935 N.W.2d 493 (2019).

25-328.

For a court as a preliminary matter to permit intervention as a matter of right, the intervenor must plead some interest in the subject matter of the litigation to give him or her standing in court, describing the ultimate facts evidencing the intervenor's interest in the matter of litigation; otherwise, the intervenor is a mere interloper and wholly incompetent to challenge the contentions of the opposing parties. Carroll v. Gould, 308 Neb. 12, 952 N.W.2d 1 (2020).

Where no motion is filed under Neb. Ct. R. Pldg. § 6-1112, a hearing and ruling on a complaint to intervene is not required any more than it would be for any other complaint, though the Supreme Court has indicated that a court may exercise sua sponte its authority to exclude from the case an intervenor whose pleadings do not disclose a direct interest in the matter in litigation. Carroll v. Gould, 308 Neb. 12, 952 N.W.2d 1 (2020).

While intervention under this section is a matter of right, the court may make a preliminary determination whether the complaint in intervention sufficiently alleges the requisite interest, assuming the allegations set forth in the complaint are true. Carroll v. Gould, 308 Neb. 12, 952 N.W.2d 1 (2020).

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

Alleged father's petition to intervene in child dependency proceeding was timely filed; the petition was filed less than 1 month after adjudication, prior to the first disposition and placement hearing. In re Interest of Sarah H., 21 Neb. App. 441, 838 N.W.2d 389 (2013).

25-329.

Only after a motion to dismiss or judgment on the pleadings attacking a complaint in intervention has been overruled on the grounds that the complaint met the requirements of section 25-328 will the question later be determined, when the action is finally decided, whether the allegations in the pleadings are true and that the proof establishes the party seeking to intervene has an actual interest in the subject of the controversy. Carroll v. Gould, 308 Neb. 12, 952 N.W.2d 1 (2020).

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

25-330.

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

25-505.01.

Although this section does not require service to be sent to the defendant's residence or restrict delivery to the addressee, due process requires notice to be reasonably calculated to apprise interested parties of the pendency of the action and to afford them the opportunity to present their objections. Capital One Bank v. Lehmann, 23 Neb. App. 292, 869 N.W.2d 917 (2015).

25-510.02.

In analyzing the service of an agency, as when analyzing the option to serve an individual through certified mail under section 25-508.01, appellate courts look to section 25-505.01(1)(c) for the requirements of service by certified mail. Omaha Expo. & Racing v. Nebraska State Racing Comm., 307 Neb. 172, 949 N.W.2d 183 (2020).

25-516.01.

"Appearance of Counsel" filed by the defendant's attorneys was not a voluntary appearance which waived service of the complaint because it did not request general relief from the court on an issue other than sufficiency of service or process or personal jurisdiction. Stone Land & Livestock Co. v. HBE, 309 Neb. 970, 962 N.W.2d 903 (2021).

The voluntary appearance of a party is equivalent to service of process for purposes of personal jurisdiction; parties cannot confer subject matter jurisdiction on a court by waiving statutory requirements for a court to obtain jurisdiction through a voluntary appearance. J.S. v. Grand Island Public Schools, 297 Neb. 347, 899 N.W.2d 893 (2017).

Judicially noticed filings and the bill of exceptions in a prior modification proceeding between the parties showed that the defendant made a general appearance in the subsequent modification proceeding by asking the trial court to vacate an order, to disqualify the plaintiff's counsel, and to strike the complaint. Burns v. Burns, 293 Neb. 633, 879 N.W.2d 375 (2016).

By filing a suggestion in bankruptcy and an amended suggestion in bankruptcy, the party asked the court to bring its powers into action on a matter other than the question of jurisdiction, thus making a general appearance and waiving any defects in the service of process. Bayliss v. Clason, 26 Neb. App. 195, 918 N.W.2d 612 (2018).

Intended defendant's father, who bore same name as defendant without distinction of "Sr." or "Jr.," had no obligation to assert affirmative defense of lack of jurisdiction or insufficient service either in answer or by motion, in plaintiff's action for personal injuries, as grounds for permitting plaintiff to serve intended defendant rather than dismissing complaint with prejudice; trial court acquired personal jurisdiction over father when father was served, and there was no objection to service of summons on father. Rudd v. Debora, 20 Neb. App. 850, 835 N.W.2d 765 (2013).

25-520.01.

A personal representative must prove that it complied with the requirement that it mail published notice to reasonably ascertainable creditors by showing that the personal representative made a reasonably diligent search, such as a reasonably prudent person would make in view of the circumstances and must extend to those places

where information is likely to be obtained and to those persons who would be likely to have information regarding a decedent's creditors. In re Estate of Loder, 308 Neb. 210, 953 N.W.2d 541 (2021).

Because the appellant did not file an affidavit that complied with this section, the appellant's constructive service was improper and the district court lacked personal jurisdiction over the appellee. Francisco v. Gonzalez, 301 Neb. 1045, 921 N.W.2d 350 (2019).

25-531.

The lis pendens statute does not operate to prevent a subsequent purchaser from fully participating as a party in a quiet title action affecting the subject property. Brown v. Jacobsen Land & Cattle Co., 297 Neb. 541, 900 N.W.2d 765 (2017).

25-536.

Nebraska's long-arm statute extends Nebraska's jurisdiction over nonresidents having any contact with or maintaining any relation to this state as far as the U.S. Constitution permits. It was the intention of the Legislature to provide for the broadest allowable jurisdiction over nonresidents under Nebraska's long-arm statute, and when a state construes its long-arm statute to confer jurisdiction to the fullest extent constitutionally permitted, the inquiry collapses into the single question of whether jurisdiction comports with due process. Yeransian v. Willkie Farr, 305 Neb. 693, 942 N.W.2d 226 (2020).

Nebraska's long-arm statute extends Nebraska's jurisdiction over nonresidents having any contact with or maintaining any relation to this state as far as the U.S. Constitution permits. Thus, courts need only look to the Due Process Clause when determining personal jurisdiction. Lanham v. BNSF Railway Co., 305 Neb. 124, 939 N.W.2d 363 (2020).

If a Nebraska court's exercise of personal jurisdiction would comport with the Due Process Clause of the 14th Amendment to the U.S. Constitution, it is authorized by subsection (2) of this section. Hand Cut Steaks Acquisitions v. Lone Star Steakhouse, 298 Neb. 705, 905 N.W.2d 644 (2018).

An ongoing relationship, by itself, is not sufficient to establish personal jurisdiction. The quality and nature of the ongoing business relationship is important, not just the fact that a business relationship exists. Roth Grading v. Martin Bros. Constr., 25 Neb. App. 928, 916 N.W.2d 70 (2018).

The existence of a contract with a party in a forum state or the mere use of interstate facilities, such as telephones and mail, does not, in and of itself, provide the necessary contacts for personal jurisdiction. Roth Grading v. Martin Bros. Constr., 25 Neb. App. 928, 916 N.W.2d 70 (2018).

To determine whether a defendant's contract supplies the contacts necessary for personal jurisdiction in a forum state, a court is to consider the parties' prior negotiations and future contemplated consequences, along with the terms of the contract and the parties' actual course of dealing. Roth Grading v. Martin Bros. Constr., 25 Neb. App. 928, 916 N.W.2d 70 (2018).

Nebraska courts lacked personal jurisdiction over a wife to adjudicate personal matters that were incidences of the parties' marriage, such as child custody, parenting time, child support, and division of property and debts, where the wife and children never had contact with Nebraska, and the parties were married, had children, and separated in Canada. Metzler v. Metzler, 25 Neb. App. 757, 913 N.W.2d 733 (2018).

25-538.

The district court considered the public interest factors of forum non conveniens and dismissed the plaintiff's action, concluding that New York was a better forum. However, the district court failed to also consider the unique circumstances of the case, namely, that a New York court had already dismissed the plaintiff's case because it determined that the case should be heard in Nebraska pursuant to a forum selection clause in the parties' contract; the New York court did not address the public interest factors of forum non conveniens in its decision. Given the unique circumstances, rather than dismissing the action, the district court should have stayed the action on the condition that the case is filed in and accepted by the New York courts. Milmar Food Group II v. Applied Underwriters, 29 Neb. App. 714, 958 N.W.2d 920 (2021).

25-601.

Under this section, a plaintiff has the right to dismiss an action without prejudice any time before final submission of the case, so long as no counterclaim or setoff has been filed by an opposing party. HBI, L.L.C. v. Barnette, 305 Neb. 457, 941 N.W.2d 158 (2020).

A motion for summary judgment can be a final submission that will prevent voluntary dismissal under this section. Millard Gutter Co. v. American Family Ins. Co., 300 Neb. 466, 915 N.W.2d 58 (2018).

25-824.

Arguments to vacate an arbitrator's award, although not meritorious, were not frivolous when the district court had not explored what a party must show to demonstrate that an arbitrator exceeded his or her powers under the Nebraska Uniform Arbitration Act or whether an arbitration award governed by the Nebraska Uniform Arbitration Act could be vacated on the grounds that the arbitrator manifestly disregarded the law. City of Omaha v. Professional Firefighters Assn., 309 Neb. 918, 963 N.W.2d 1 (2021).

A claim or defense that was not frivolous at its commencement may become frivolous over the course of discovery and in light of pretrial rulings. McGill Restoration v. Lion Place Condo. Assn., 309 Neb. 202, 959 N.W.2d 251 (2021).

A cognizable claim brought with a reasonable belief that discovery would support its allegations is not frivolous. George Clift Enters. v. Oshkosh Feedyard Corp., 306 Neb. 775, 947 N.W.2d 510 (2020).

Attorney fees may be assessed when a party persists in asserting a claim after it knows or reasonably should know it would not prevail on the claim. George Clift Enters. v. Oshkosh Feedyard Corp., 306 Neb. 775, 947 N.W.2d 510 (2020).

A trial court's decision awarding or denying attorney fees under this section will be upheld absent an abuse of discretion. Seldin v. Estate of Silverman, 305 Neb. 185, 939 N.W.2d 768 (2020).

Under subsection (2) of this section, attorney fees shall be awarded against a party who alleged a claim or defense that the court determined was frivolous, interposed any part of the action solely for delay or harassment, or unnecessarily expanded the proceeding by other improper conduct. Seldin v. Estate of Silverman, 305 Neb. 185, 939 N.W.2d 768 (2020).

Where an attorney pursues a motion for recusal that is frivolous or made in bad faith, the district court has jurisdiction to enter a sanction under this statute when it is timely requested, regardless of whether the district court lacked jurisdiction to adjudicate the merits of the underlying dispute. State of Florida v. Countrywide Truck Ins. Agency, 294 Neb. 400, 883 N.W.2d 69 (2016).

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

Subsection (2) of this section provides generally that a court can award reasonable attorney fees and court costs against any attorney or party who has brought or defended a civil action that alleges a claim or defense that a court determines is frivolous or made in bad faith. In re Guardianship of Aimee S., 26 Neb. App. 380, 920 N.W.2d 18 (2018).

The term "frivolous," as used in this section, providing for the award of attorney fees for the bringing of a frivolous claim, connotes an improper motive or legal position so wholly without merit as to be ridiculous. Shandera v. Schultz, 23 Neb. App. 521, 876 N.W.2d 667 (2016).

25-824.01.

In determining whether to assess attorney fees and costs and the amount to be assessed against offending attorneys and parties, the court considers a number of factors, including, but not limited to, the 10 factors listed in this section. In re Guardianship of Aimee S., 26 Neb. App. 380, 920 N.W.2d 18 (2018).

25-840.01.

The plaintiff's failure to request a retraction under this section constitutes an affirmative defense which must be raised by the defendant prior to trial. Funk v. Lincoln-Lancaster Cty. Crime Stoppers, 294 Neb. 715, 885 N.W.2d 1 (2016).

25-914.

A docket entry/journal entry contained in the "Judges Notes" constituted an interlocutory order disposing of the party's motion to alter or amend; it did not need to be a separate file-stamped document. Pearce v. Mutual of Omaha Ins. Co., 28 Neb. App. 410, 945 N.W.2d 516 (2020).

An unsigned journal entry without a file stamp can constitute an interlocutory order; but it cannot constitute a final, appealable order, particularly when it does not dispose of all issues. Pearce v. Mutual of Omaha Ins. Co., 28 Neb. App. 410, 945 N.W.2d 516 (2020).

25-1011.

No substantial right was affected where the judgment debtor unsuccessfully objected to a garnishment pursuant to this section. Shawn E. on behalf of Grace E. v. Diane S., 300 Neb. 289, 912 N.W.2d 920 (2018).

25-1030.

If a garnishor fails to file an application to determine the garnishee's liability within 20 days of when the garnishee's answers to interrogatories are filed, this section prescribes an unequivocal and mandatory conclusion that the garnishee shall be released and discharged. Huntington v. Pedersen, 294 Neb. 294, 883 N.W.2d 48 (2016).

25-1090.

An order confirming a public sale is a final order, because it both is an order disposing of receivership property and gives the receiver directions. Priesner v. Starry, 300 Neb. 81, 912 N.W.2d 249 (2018).

An order of further direction to the receiver to release liens before continuing with the public sale is a final order. Priesner v. Starry, 300 Neb. 81, 912 N.W.2d 249 (2018).

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

25-1113.

A trial court's failure to mark a jury instruction as "given" or "refused" pursuant to this section is not available as error on appeal in the absence of an objection made on these statutory grounds at trial. Schuemann v. Menard, Inc., 27 Neb. App. 977, 938 N.W.2d 378 (2020).

25-1114.

An objection that jury instructions were not filed by the clerk before being read to the jury as required by this section must be made when or before the instructions are read, or the objection is waived. Schuemann v. Menard, Inc., 27 Neb. App. 977, 938 N.W.2d 378 (2020).

25-1116.

The failure of the court to notify counsel of a jury's question is reversible error only if prejudice results. Facilities Cost Mgmt. Group v. Otoe Cty. Sch. Dist., 298 Neb. 777, 906 N.W.2d 1 (2018).

25-1126.

The client is bound by the attorney's choice to waive a jury trial in a civil action. McGill Restoration v. Lion Place Condo. Assn., 309 Neb. 202, 959 N.W.2d 251 (2021).

25-1127.

Under this section, in the absence of a request by a party for specific findings, a trial court is not required to make detailed findings of fact and need only make its findings generally for the prevailing party. Cullinane v. Beverly Enters. - Neb., 300 Neb. 210, 912 N.W.2d 774 (2018).

In the absence of a request by a party for specific findings, a trial court is not required to make detailed findings of fact and need only make its findings generally for the prevailing party. Lesser v. Eagle Hills Homeowners' Assn., 20 Neb. App. 423, 824 N.W.2d 77 (2012).

25-1129.

A referee's factual findings are entitled to some deference, but no such deference is owed to the referee's conclusions or recommendations. Becher v. Becher, 299 Neb. 206, 908 N.W.2d 12 (2018).

25-1131.

A district court is not required to make specific findings that a referee's factual findings are against the clear weight of the evidence. Becher v. Becher, 299 Neb. 206, 908 N.W.2d 12 (2018).

25-1140.

In order for the appellate court to consider evidence, the evidence must be marked, identified, and made a part of the bill of exceptions at the trial court. Bohling v. Bohling, 304 Neb. 968, 937 N.W.2d 855 (2020).

The party appealing has the responsibility of including within the bill of exceptions matters from the record which the party believes are material to the issues presented for review. State v. Saylor, 294 Neb. 492, 883 N.W.2d 334 (2016).

25-1141.

This section does not apply to testimony given by a different witness when no objection is made to that witness' testimony. State v. Pope, 305 Neb. 912, 943 N.W.2d 294 (2020).

This section applies to objections made to the testimony of the same nature by the same witness and therefore does not apply to objections made to a demonstrative exhibit and/or statements made by the prosecutor during closing arguments. State v. Howard, 26 Neb. App. 628, 921 N.W.2d 869 (2018).

25-1142.

A motion for new trial, under this section, is not an effective motion to terminate the running of time to file notice of an appeal when the court grants a motion for summary judgement. Clarke v. First Nat. Bank of Omaha, 296 Neb. 632, 895 N.W.2d 284 (2017).

In a trial to establish custody of a child born out of wedlock, a mother's rights were not substantially affected as a result of the father's failure to answer interrogatories. State on behalf of Keegan M. v. Joshua M., 20 Neb. App. 411, 824 N.W.2d 383 (2012).

25-1144.01.

A motion for new trial filed after the court announced the jury verdict but before the entry of judgment is treated as filed after the entry of judgment and on the day thereof and is an effective terminating motion. Lindsay Internat. Sales & Serv. v. Wegener, 297 Neb. 788, 901 N.W.2d 278 (2017).

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

25-1148.

An appellate court will assess motions to continue a trial that do not fully comply with the rule governing requests for continuance in the broader context of the parties' substantial rights. State on behalf of Keegan M. v. Joshua M., 20 Neb. App. 411, 824 N.W.2d 383 (2012).

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

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

25-1241.

In connection with an affidavit, a notary public completes a certificate, known as a jurat, which confirms that the affiant appeared before the notary, attested to the truth of his or her statements, and signed the affidavit. AVG Partners I v. Genesis Health Clubs, 307 Neb. 47, 948 N.W.2d 212 (2020).

Unless required by statute, an omission in a jurat that an affidavit was sworn to will not be fatal if the fact otherwise appears. AVG Partners I v. Genesis Health Clubs, 307 Neb. 47, 948 N.W.2d 212 (2020).

25-12,125.

Under this section, the presumption that a statement was taken under duress may be rebutted by evidence that the statement was not made under duress. Schuemann v. Menard, Inc., 27 Neb. App. 977, 938 N.W.2d 378 (2020).

25-1301.

A criminal judgment is not final for purposes of appeal until a file-stamped sentencing order is entered by the clerk. State v. Melton, 308 Neb. 159, 953 N.W.2d 246 (2021).

A final judgment is one that disposes of the case either by dismissing it before hearing is had upon the merits, or after trial by rendition of judgment for the plaintiff or defendant. Conversely, every direction of a court or judge, made or entered in writing and not included in a judgment, is an order. Boyd v. Cook, 298 Neb. 819, 906 N.W.2d 31 (2018).

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

A docket entry/journal entry contained in the "Judges Notes" constituted an interlocutory order disposing of the party's motion to alter or amend; it did not need to be a separate file-stamped document. Pearce v. Mutual of Omaha Ins. Co., 28 Neb. App. 410, 945 N.W.2d 516 (2020).

An unsigned journal entry without a file stamp can constitute an interlocutory order; but it cannot constitute a final, appealable order, particularly when it does not dispose of all issues. Pearce v. Mutual of Omaha Ins. Co., 28 Neb. App. 410, 945 N.W.2d 516 (2020).

25-1315.

This section is implicated where a habeas corpus petition is asserted in the same action as a petition in error, and therefore a party must wait to appeal until the court enters a "final order" within the meaning of section 25-1902 that addresses both petitions, or the court expressly directs the entry of a final order regarding the habeas corpus petition and determines that there is no just reason for delay of an immediate appeal. Tyrrell v. Frakes, 309 Neb. 85, 958 N.W.2d 673 (2021).

Absent a specific statute allowing an immediate appeal, when the proceedings below involve multiple claims for relief or multiple parties, and the court has adjudicated fewer than all the claims or the rights and liabilities of fewer than all the parties, this section controls. TDP Phase One v. The Club at the Yard, 307 Neb. 795, 950 N.W.2d 640 (2020).

In an action for forcible entry and detainer, the plain language of section 25-21,233 does not allow an immediate appeal of an order of restitution when the order implicates this section, meaning the order adjudicates fewer than all claims for relief or the rights and liabilities of fewer than all the parties, without being certified pursuant to subsection (1) of this section. TDP Phase One v. The Club at the Yard, 307 Neb. 795, 950 N.W.2d 640 (2020).

This section was implicated in a paternity action initiated for two children where (1) the presumptive father filed a cross-claim against the mother for custody and visitation as to one child and a counterclaim against the State for disestablishment of paternity as to the other child and (2) the district court granted disestablishment of paternity but did not determine the custody issues as to the other child. State on behalf of Marcelo K. & Rycki K. v. Ricky K., 300 Neb. 179, 912 N.W.2d 747 (2018).

This section provides that when a case involves multiple claims or multiple parties, a party may generally only appeal when all claims and the rights of all parties have been resolved. If a court issues an order that is final as to some, but not all, of the claims or parties, such an order is appealable only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such an entry of judgment, orders adjudicating fewer than all claims or the rights of fewer than all the parties are not final and are subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties. Thus, absent an entry of judgment under this section, no appeal will lie unless all claims have been disposed as to all parties in the case. Boyd v. Cook, 298 Neb. 819, 906 N.W.2d 31 (2018).

The trial court should not have certified as final its order resolving a claim against the trustee where the trustee's third-party claim for contribution was unresolved and nothing in the record suggested that a delay of a few months before the third-party complaint would be ready for trial would cause an unusual hardship for the parties. Rafert v. Meyer, 298 Neb. 461, 905 N.W.2d 30 (2017).

This section does not modify final order jurisprudence as it regards orders denying intervention. Streck, Inc. v. Ryan Family, 297 Neb. 773, 901 N.W.2d 284 (2017).

In enacting this section, the Legislature did not amend the partition statutes or attempt to change the effect of prior jurisprudence. Both before and after the adoption of this section, section 25-2179 characterized the settlement of all ownership rights as a "judgment" and Nebraska case law characterizes the order as a final order. Guardian Tax Partners v. Skrupa Invest. Co., 295 Neb. 639, 889 N.W.2d 825 (2017).

An order granting a lender's motions for summary judgment to enforce a guaranty, but failing to adjudicate a cross-claim and not directing the entry of final judgment under this section, is not a judgment sufficient to support execution or garnishment in aid of execution. Cattle Nat. Bank & Trust Co. v. Watson, 293 Neb. 943, 880 N.W.2d 906 (2016).

One may bring an appeal pursuant to subsection (1) of this section governing entry of a final judgment as to fewer than all of the claims or parties only when (1) multiple causes of action or multiple parties are present, (2) the court enters a "final order" as to one or more but fewer than all of the causes of action or parties, and (3) the trial court expressly directs the entry of such final order and expressly determines that there is no just reason for delay of an immediate appeal. Southwest Omaha Hospitality v. Werner-Robertson, 20 Neb. App. 930, 834 N.W.2d 617 (2013).

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

25-1316.

Where offsetting claims and counterclaims were tried separately, the final judgment did not occur until all claims were adjudicated and both jury verdicts were accepted by the district court. VKGS v. Planet Bingo, 309 Neb. 950, 962 N.W.2d 909 (2021).

25-1329.

A judgment entered by the district court at the conclusion of an error proceeding pursuant to sections 25-1901 to 25-1908 is a judgment within the meaning of this section. McEwen v. Nebraska State College Sys., 303 Neb. 552, 931 N.W.2d 120 (2019).

A second motion to reconsider a final order entered 11 days earlier did not terminate the time for filing a notice of appeal, and because appellant did not appeal within 30 days of the overruling of his first motion to reconsider—which was properly construed as a motion to alter or amend—the appellate court lacked jurisdiction over the appeal. Bryson L. v. Izabella L., 302 Neb. 145, 921 N.W.2d 829 (2019).

A motion to alter or amend filed more than 10 days after the court's denial of a postconviction claim does not terminate or extend the time to appeal that denial. State v. Lotter, 301 Neb. 125, 917 N.W.2d 850 (2018).

A motion for reconsideration is the functional equivalent of a motion to alter or amend a judgment. Clarke v. First Nat. Bank of Omaha, 296 Neb. 632, 895 N.W.2d 284 (2017).

In order to qualify for treatment as a motion to alter or amend a judgment, the motion must be filed no later than 10 days after the entry of judgment, as required under this section, and must seek substantive alteration of the judgment. Bayliss v. Clason, 26 Neb. App. 195, 918 N.W.2d 612 (2018).

Under this section, a motion for reconsideration is the functional equivalent of a motion to alter or amend a judgment. Bayliss v. Clason, 26 Neb. App. 195, 918 N.W.2d 612 (2018).

Under this section, if a postjudgment motion seeks a substantive alteration of the judgment—as opposed to the correction of clerical errors or relief wholly collateral to the judgment—a court may treat the motion as one to alter or amend the judgment. Bayliss v. Clason, 26 Neb. App. 195, 918 N.W.2d 612 (2018).

25-1332.

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

25-1334.

The trial court's consideration of a nursing home director's affidavit, when deciding a motion for summary judgment, was not plain error in a negligence action arising from a nursing home resident's death after an alleged fall from bed, where the director had sufficient personal knowledge, the affidavit set forth facts that would be admissible, and the director was competent to testify to the matters stated. Apkan v. Life Care Centers of America, 26 Neb. App. 154, 918 N.W.2d 601 (2018).

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

25-1335.

This section provides a safeguard against an improvident or premature grant of summary judgment. George Clift Enters. v. Oshkosh Feedyard Corp., 306 Neb. 775, 947 N.W.2d 510 (2020).

25-1401.

A survival action is personal to the decedent for damages suffered by the decedent between the wrongful act and his or her death, and recovery for such damage belongs to the decedent's estate and is administered as an estate asset. In re Estate of McConnell, 28 Neb. App. 303, 943 N.W.2d 722 (2020).

A wrongful death action and a survival action are two distinct causes of action which may be brought by a decedent's personal representative. Although they are frequently joined in a single action, they are conceptually separate. In re Estate of McConnell, 28 Neb. App. 303, 943 N.W.2d 722 (2020).

Although damages for pain and suffering may be difficult to compute, that cannot preclude the entry of damages where they are appropriate as discernible by sufficient evidence. The amount of damages is a matter solely for the fact finder. In re Estate of McConnell, 28 Neb. App. 303, 943 N.W.2d 722 (2020).

An action under Nebraska's survival statute is the continuance of the decedent's own right of action, which he or she possessed prior to his or her death. The survival action is brought on behalf of the decedent's estate and encompasses the decedent's claim for predeath pain and suffering, medical expenses, funeral and burial expenses, and any loss of earnings sustained by the decedent, from the time of the injury up until his or her death. In re Estate of McConnell, 28 Neb. App. 303, 943 N.W.2d 722 (2020).

The same individuals may stand to recover in both a wrongful death and a survival action, as the decedent's next of kin may also be beneficiaries of a survival claim under the decedent's will or the laws of intestate succession. In re Estate of McConnell, 28 Neb. App. 303, 943 N.W.2d 722 (2020).

25-1420.

A judgment is not a contract for purposes of the tolling provision of section 25-216. Nelssen v. Ritchie, 304 Neb. 346, 934 N.W.2d 377 (2019).

25-1506.

When the party sought a stay more than 20 days after the initial foreclosure decree, but less than 20 days after the supplemental decree, the party was not entitled to a stay. Mutual of Omaha Bank v. Watson, 301 Neb. 833, 920 N.W.2d 284 (2018).

25-1558.

The basic subsistence limitation under the child support guidelines was not applicable to reduce the amount being withheld from the father's monthly Social Security benefits to pay his child support arrearages. Ybarra v. Ybarra, 28 Neb. App. 216, 943 N.W.2d 447 (2020).

25-1635.

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

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

25-1708.

This section does not apply to a discretionary award of reasonable litigation expenses under either 18 U.S.C. 2520 or section 86-297. Brumbaugh v. Bendorf, 306 Neb. 250, 945 N.W.2d 116 (2020).

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

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

25-1711.

This section governs the taxation of costs in equitable actions and does not require the court to tax costs to the unsuccessful party. Mock v. Neumeister, 296 Neb. 376, 892 N.W.2d 569 (2017).

25-1803.

The mere fact that the State has not been successful in an appellate court does not mean its position was not substantially justified. In re Interest of A.A. et al., 308 Neb. 749, 957 N.W.2d 138 (2021).

This section does not waive sovereign immunity regarding attorney fees and expenses incurred to defend against positions taken against particular parties on particular motions within an action that was, as a whole, substantially justified. In re Interest of A.A. et al., 308 Neb. 749, 957 N.W.2d 138 (2021).

A judgment does not become final and appealable until the trial court has ruled upon a pending request for attorney fees made pursuant to state statute. Webb v. Nebraska Dept. of Health & Human Servs., 301 Neb. 810, 920 N.W.2d 268 (2018).

A party seeking fees authorized by state law must make a request for such fees prior to a judgment in the cause. Webb v. Nebraska Dept. of Health & Human Servs., 301 Neb. 810, 920 N.W.2d 268 (2018).

Attorney fees awarded pursuant to this section are generally treated as an element of court costs, and an award of costs in a judgment is considered a part of the judgment. Webb v. Nebraska Dept. of Health & Human Servs., 301 Neb. 810, 920 N.W.2d 268 (2018).

25-1901.

Regardless of whether collective bargaining is generally legislatively authorized, the adjudicatory procedures set forth in a collective bargaining agreement for a committee that was never expressly contemplated by the Legislature do not establish any tribunal, board, or officer inferior in jurisdiction to the district court, which is capable of rendering judgments and final orders in the exercise of judicial functions for purposes of review by a petition in error. Champion v. Hall County, 309 Neb. 55, 958 N.W.2d 396 (2021).

The mere act of deciding a question of adjudicative fact after an evidentiary hearing, when the law has not contemplated the entity and any power to exercise judicial functions, does not render any tribunal's, board's, or officer's decision reviewable in district court by a petition in error. Champion v. Hall County, 309 Neb. 55, 958 N.W.2d 396 (2021).

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

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

25-1902.

An order which set aside a default order of modification of child support and allowed the obligor an opportunity to answer and defend was not a final order, because it did not affect a substantial right of the parties in the subject action. Porter v. Porter, 309 Neb. 167, 959 N.W.2d 235 (2021).

Although requiring a probationer to live in a specific location might affect a substantial right in some cases, here the probationer was merely allowed to continue residing in Kansas instead of Nebraska. Thus, allowing her to continue living in Kansas did not affect the subject matter of the litigation by diminishing a claim or defense that was available to her. Therefore, because no substantial right was affected by the amended order of probation, the amended order was not a final, appealable order. State v. Reames, 308 Neb. 361, 953 N.W.2d 807 (2021).

An order ending a discrete phase of probate proceedings is a final, appealable order, but one that is merely preliminary to such an order is not. In re Estate of Larson, 308 Neb. 240, 953 N.W.2d 535 (2021).

An order denying a biological father's motion for placement is not a mere continuation of a prior order of temporary physical custody when the court's order was its first adjudication of the father's parental right to temporary custody. In re Interest of A.A. et al., 307 Neb. 817, 951 N.W.2d 144 (2020).

An order which changed a parenting time schedule on a temporary basis and was set for a review hearing in 4 ½ months did not affect a substantial right and, thus, was not a final order. Yori v. Helms, 307 Neb. 375, 949 N.W.2d 325 (2020).

A trial court's order denying a judgment debtor's motion to quash and vacate a foreign judgment affected a substantial right, and thus, the order was a final, appealable order; once the court ordered garnishment of the debtor's bank account, forcing him to postpone his appeal from such an order would have significantly undermined his right to the use and enjoyment of his property. Gem City Bone & Joint v. Meister, 306 Neb. 710, 947 N.W.2d 302 (2020).

The order granting an application to proceed in forma pauperis is not a final, appealable order because it does not affect a substantial right. State v. Fredrickson, 306 Neb. 81, 943 N.W.2d 701 (2020).

When there has been an amendment to the final order statute to make a previously interlocutory order a final order, it is a procedural change and not a substantive change and is therefore binding upon a tribunal upon the effective date of the amendment; this allows a party to file an appeal if the amendment took place within 30 days of the interlocutory order. Great Northern Ins. Co. v. Transit Auth. of Omaha, 305 Neb. 609, 941 N.W.2d 497 (2020).

An order overruling a plea in bar was not a final, appealable order, where the defendant's plea in bar did not present a colorable double jeopardy claim. State v. Kelley, 305 Neb. 409, 940 N.W.2d 568 (2020).

An order finding a defendant to be indigent and appointing appellate counsel at the county's expense did not affect a substantial right of the parties and was not a final order for purposes of appeal, where the order did not obligate the county to pay any specific amount or set a deadline for payment, such determinations were to be the subject of future proceedings addressing the question of reasonable attorney fees, and the State had the ability to challenge the findings of indigency and recoup any subsequently expended funds from the defendant. State v. Fredrickson, 305 Neb. 165, 939 N.W.2d 385 (2020).

An order denying a motion to modify or eliminate a probation condition is a final, appealable order. State v. Paulsen, 304 Neb. 21, 932 N.W.2d 849 (2019).

An order reinstating a case does not affect a substantial right merely because reinstatement would affect a defense in a future hypothetical action. Fidler v. Life Care Centers of America, 301 Neb. 724, 919 N.W.2d 903 (2018).

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Not every order vacating a dismissal and reinstating a case is final and appealable; rather, the statutory criteria of this section must be applied to determine whether the order appealed from is final. Fidler v. Life Care Centers of America, 301 Neb. 724, 919 N.W.2d 903 (2018).

Under this section, the denial of a motion to compel arbitration is a final, appealable order, because it affects a substantial right and is made in a special proceeding. Cullinane v. Beverly Enters. - Neb., 300 Neb. 210, 912 N.W.2d 774 (2018).

An order affecting a substantial right that is issued upon a summary application in an action after judgment is an order ruling on a postjudgment motion in an action. State v. Coble, 299 Neb. 434, 908 N.W.2d 646 (2018).

An order on a motion seeking to remove the record of a criminal citation from the public record under section 29-3523 affects a substantial right for purposes of this section. State v. Coble, 299 Neb. 434, 908 N.W.2d 646 (2018).

Final orders and judgments issued by a county court may be appealed to district court. A district court order affirming, reversing, or remanding an order or judgment of the county court is itself a final order that an appellate court has jurisdiction to review. State v. Coble, 299 Neb. 434, 908 N.W.2d 646 (2018).

An order issuing a stay within an action is generally not appealable. But a stay that is tantamount to a dismissal of an action or has the effect of a permanent denial of the requested relief is a final order. Boyd v. Cook, 298 Neb. 819, 906 N.W.2d 31 (2018).

Generally, an order of dismissal is a final, appealable order. Boyd v. Cook, 298 Neb. 819, 906 N.W.2d 31 (2018).

The only three types of final orders which may be reviewed on appeal are (1) an order which affects a substantial right and which determines the action and prevents a judgment, (2) an order affecting a substantial right made during a special proceeding, and (3) an order affecting a substantial right made on summary application in an action after judgment is rendered. Boyd v. Cook, 298 Neb. 819, 906 N.W.2d 31 (2018).

A determination of the statute of limitations governing the prosecution of a criminal charge has no bearing on the correctness of a speedy trial determination. State v. Gill, 297 Neb. 852, 901 N.W.2d 679 (2017).

Even if, in the face of a defendant's insistence, a court refuses to rule on the merits of a motion to quash an information on limitations grounds, the court's refusal to rule would be no more final, for purposes of an appeal, than a ruling on the motion would have been. State v. Gill, 297 Neb. 852, 901 N.W.2d 679 (2017).

The illegality of an arrest gives rise only to "collateral" rights and remedies in the underlying criminal action, which are effectively vindicated on appeal from the judgment. Dugan v. State, 297 Neb. 444, 900 N.W.2d 528 (2017).

An order that merely holds bond funds in the court and does not state who is entitled to the funds is not a final, appealable order. State v. McColery, 297 Neb. 53, 898 N.W.2d 349 (2017).

Under this section, an order is final for purposes of appeal if it affects a substantial right and (1) determines the action and prevents a judgment, (2) is made during a special proceeding, or (3) is made on summary application in an action after judgment is rendered. State v. McColery, 297 Neb. 53, 898 N.W.2d 349 (2017).

An order disqualifying counsel in a civil case is not a final, appealable order, overruling Richardson v. Griffiths, 251 Neb. 825, 560 N.W.2d 430 (1997), and cases relying upon it. Heckman v. Marchio, 296 Neb. 458, 894 N.W.2d 296 (2017).

An order imposing a discovery sanction was not a final order; it did not dispose of the whole merits of the case, was not made during a special proceeding, and was not made after a judgment was rendered. Ginger Cove Common Area Co. v. Wiekhorst, 296 Neb. 416, 893 N.W.2d 467 (2017).

An order refusing to vacate a discovery sanction order was not a final order, because it did not affect a substantial right. Ginger Cove Common Area Co. v. Wiekhorst, 296 Neb. 416, 893 N.W.2d 467 (2017).

The language in Peterson v. Damoude, 95 Neb. 469, 145 N.W. 847 (1914), concerning the appealability of orders in a partition action, harmonizes the final order language of this section with the partition procedure mandated by section 25-2179. Guardian Tax Partners v. Skrupa Invest. Co., 295 Neb. 639, 889 N.W.2d 825 (2017).

ANNOTATIONS

The denial of a motion to transfer a criminal case from district court to juvenile court is not final and appealable under this section. State v. Bluett, 295 Neb. 369, 889 N.W.2d 83 (2016).

An order changing a permanency plan in a juvenile case adjudicated under section 43-247(3)(a) does not necessarily affect a substantial right of the parent for purposes of this section when the order continues prior orders directed at family preservation and reunification or remedying the reasons that led to the adjudication. In re Interest of LeVanta S., 295 Neb. 151, 887 N.W.2d 502 (2016).

Juvenile court proceedings are "special proceedings" for purposes of this section. In re Interest of LeVanta S., 295 Neb. 151, 887 N.W.2d 502 (2016).

Subsequent review orders in a juvenile case adjudicated under section 43-247(3)(a) do not typically affect a substantial right for purposes of appeal under this section, because the parent has been given the full and fair opportunity to respond to the allegations at the adjudication stage. In re Interest of LeVanta S., 295 Neb. 151, 887 N.W.2d 502 (2016).

Under this section, an order in a juvenile case adjudicated under section 43-247(3)(a), which order continues prior dispositional orders but changes the permanency objective from family reunification to another objective, is a final, appealable order only if the parent's ability to achieve rehabilitation and family reunification has been clearly eliminated, because such an order affects a substantial right. In re Interest of LeVanta S., 295 Neb. 151, 887 N.W.2d 502 (2016).

Orders overruling a guarantor's and a coguarantor's objections to writs of execution and garnishment were orders made on summary application after judgment was rendered and affected the guarantor's and coguarantor's substantial rights and, thus, were final and appealable. Cattle Nat. Bank & Trust Co. v. Watson, 293 Neb. 943, 880 N.W.2d 906 (2016).

A finding of abandonment under section 43-104(2)(b) in an ongoing adoption proceeding is not a final, appealable order; such a finding does not terminate parental rights or standing in the proceedings, but merely eliminates the need for the abandoning parent's consent and authorizes the execution of substitute consent, and such finding has no real and immediate effect on parental obligations, visitation, custody, or other matters pertaining to the parent's contact with the child during the pendency of the final judgment granting or denying the petition for adoption. In re Adoption of Madysen S. et al., 293 Neb. 646, 879 N.W.2d 34 (2016).

An order overruling a motion to terminate parental rights is a final, appealable order. In re Interest of Isabel P. et al., 293 Neb. 62, 875 N.W.2d 848 (2016).

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

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

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

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

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

When an appeal presents two jurisdictional issues—whether a party has appealed from a final order or judgment and whether the lower court had jurisdiction over the parties' dispute—the first step in determining appellate jurisdiction is to determine whether the lower court's order was final and appealable. Shasta Linen Supply v. Applied

Underwriters, 290 Neb. 640, 861 N.W.2d 425 (2015); Big John's Billiards v. State, 283 Neb. 496, 811 N.W.2d 205 (2012).

Juvenile court orders which changed the permanency objective from reunification to adoption, with concurrent plans that did not include reunification with the mother, were appealable even though they contained many of the same goals and strategies as previous orders, because an oral statement by the juvenile court from the bench had the effect of ending any services aimed at reunification with the mother and, thus, affected the mother's substantial rights. In re Interest of Octavio B. et al., 290 Neb. 589, 861 N.W.2d 415 (2015).

The three types of final orders which may be reviewed on appeal are (1) an order which affects a substantial right in an action and which in effect determines the action and prevents a judgment, (2) an order affecting a substantial right made during a special proceeding, and (3) an order affecting a substantial right made on summary application in an action after a judgment is rendered. Kilgore v. Nebraska Dept. of Health & Human Servs., 277 Neb. 456, 763 N.W.2d 77 (2009); State v. Bjorklund, 258 Neb. 432, 604 N.W.2d 169 (2000); State v. Silvers, 255 Neb. 702, 587 N.W.2d 325 (1998); In re Interest of Anthony G., 255 Neb. 442, 586 N.W.2d 427 (1998); State v. Kula, 254 Neb. 962, 579 N.W.2d 541 (1998); Hull v. Aetna Ins. Co., 247 Neb. 713, 529 N.W.2d 783 (1995); Rohde v. Farmers Alliance Mut. Ins. Co., 244 Neb. 863, 509 N.W.2d 618 (1994); Jarrett v. Eichler, 244 Neb. 310, 506 N.W.2d 682 (1993); In re Interest of R.G., 238 Neb. 405, 470 N.W.2d 780 (1991); Abante, LLC v. Premier Fighter, 19 Neb. App. 730, 814 N.W.2d 109 (2012); Michael B. v. Donna M., 11 Neb. App. 346, 652 N.W.2d 618 (2002); Jacobson v. Jacobson, 10 Neb. App. 622, 635 N.W.2d 272 (2001); O'Connor v. Kaufman, 6 Neb. App. 382, 574 N.W.2d 513 (1998).

A juvenile court order ceasing reasonable efforts and rejecting the permanency plan of reunification affected a substantial right of the parent, and thus was a final, appealable order that had to be appealed within 30 days; it did not matter that the court's order did not also simultaneously specify a new permanency plan, but instead returned the case to the Department of Health and Human Services for alternative permanency planning recommendations. In re Interest of LeAntonaé D. et al., 28 Neb. App. 144, 942 N.W.2d 784 (2020).

Under the collateral order doctrine, the denial of a claim for qualified immunity is appealable, notwithstanding the absence of a final judgment, if the denial of immunity turns on a question of law. D.M. v. State, 25 Neb. App. 596, 911 N.W.2d 621 (2018).

An appellate court may review three types of final orders: (1) an order that affects a substantial right and that determines the action and prevents a judgment, (2) an order that affects a substantial right made during a special proceeding, and (3) an order that affects a substantial right made on summary application in an action after a judgment is rendered. Moyers v. International Paper Co., 25 Neb. App. 282, 905 N.W.2d 87 (2017).

Substantial rights within the meaning of the statute include those legal rights that a party is entitled to enforce or defend. Moyers v. International Paper Co., 25 Neb. App. 282, 905 N.W.2d 87 (2017).

A final, appealable order must affect a substantial right. In re Guardianship of Aimee S., 24 Neb. App. 230, 885 N.W.2d 330 (2016).

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A substantial right under this section is an essential legal right. Furstenfeld v. Pepin, 23 Neb. App. 673, 875 N.W.2d 468 (2016).

An order on summary application in an action after judgment under this section is an order ruling on a postjudgment motion in an action. Furstenfeld v. Pepin, 23 Neb. App. 673, 875 N.W.2d 468 (2016).

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on summary application in an action after a judgment is rendered. Belitz v. Belitz, 21 Neb. App. 716, 842 N.W.2d 613 (2014).

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

25-1905.

Petition in error statute that mandates that appellant file with his or her petition for review a transcript of the proceedings or a praecipe directing the tribunal, board, or officer to prepare the transcript of the proceedings plainly indicates that the transcript or praecipe must be filed specifically with the petition in error and must contain the final judgment or order sought to be reversed, vacated, or modified. Meints v. City of Beatrice, 20 Neb. App. 129, 820 N.W.2d 90 (2012).

25-1911.

An order finding a defendant to be indigent and appointing appellate counsel at the county's expense did not affect a substantial right of the parties and was not a final order for purposes of appeal, where the order did not obligate the county to pay any specific amount or set a deadline for payment, such determinations were to be the subject of future proceedings addressing the question of reasonable attorney fees, and the State had the ability to challenge the findings of indigency and recoup any subsequently expended funds from the defendant. State v. Fredrickson, 305 Neb. 165, 939 N.W.2d 385 (2020).

Because the district court's order denying the plaintiff's request for a stay did not finally determine the rights of the parties in an action, it was not a judgment and thus is only appealable if it qualifies as a final order. Mutual of Omaha Bank v. Watson, 301 Neb. 833, 920 N.W.2d 284 (2018).

25-1912.

A defendant proceeding in forma pauperis does not perfect the appeal when the notary stamp on the affidavit to proceed in forma pauperis is expired. State v. Greer, 309 Neb. 667, 962 N.W.2d 217 (2021).

The dismissal of a prior unperfected appeal is not res judicata as to a properly perfected second attempt to appeal. State v. Greer, 309 Neb. 667, 962 N.W.2d 217 (2021).

A motion to alter or amend a judgment is a "terminating motion" under subsection (3) of this section. State ex rel. BH Media Group v. Frakes, 305 Neb. 780, 943 N.W.2d 231 (2020).

A motion to alter or amend filed within 10 days of a judgment entered by the district court disposing of a petition in error will terminate the time for running of appeal under subsection (3) of this section. McEwen v. Nebraska State College Sys., 303 Neb. 552, 931 N.W.2d 120 (2019).

Where a court does not reach the merits of a claim, its order does not announce a "decision or final order" which would trigger the saving clause for a premature notice of appeal. State v. Lotter, 301 Neb. 125, 917 N.W.2d 850 (2018).

To trigger the savings clause for premature notices of appeal, an announcement must pertain to a decision or order that, once entered, would be final and appealable. Lindsay Internat. Sales & Serv. v. Wegener, 297 Neb. 788, 901 N.W.2d 278 (2017).

A motion for new trial, under section 25-1142, is not a proper motion to terminate the running of time to file a notice of appeal when the court grants a motion for summary judgement. Clarke v. First Nat. Bank of Omaha, 296 Neb. 632, 895 N.W.2d 284 (2017).

"[A]nnounces" in subsection (3) of this section requires some type of public or official notification by the court and includes a judge's proclamation from the bench, trial docket notes, file-stamped but unsigned journal entries, and signed journal entries which are not file stamped. Clarke v. First Nat. Bank of Omaha, 296 Neb. 632, 895 N.W.2d 284 (2017).

To determine whether a postjudgment motion was effective to terminate the running of time to file a notice of appeal, an appellate court reviews the motion based on the relief it seeks, rather than its title. Clarke v. First Nat. Bank of Omaha, 296 Neb. 632, 895 N.W.2d 284 (2017).

To determine whether the savings clause in subsection (3) of this section applies to a notice of appeal filed before the entry of judgment on a postjudgment motion, the court must determine if the postjudgment motion was timely and effective and then determine if the notice was filed after the court announced its decision on the postjudgment motion. Clarke v. First Nat. Bank of Omaha, 296 Neb. 632, 895 N.W.2d 284 (2017).

The proper procedure to be followed when taking an appeal from a final order of the district court under section 71-1214 is the general appeal procedure set forth in this section. In re Interest of L.T., 295 Neb. 105, 886 N.W.2d 525 (2016).

A docket entry/journal entry contained in the "Judges Notes" constituted an interlocutory order disposing of the party's motion to alter or amend; it did not need to be a separate file-stamped document. Pearce v. Mutual of Omaha Ins. Co., 28 Neb. App. 410, 945 N.W.2d 516 (2020).

An unsigned journal entry without a file stamp can constitute an interlocutory order; but it cannot constitute a final, appealable order, particularly when it does not dispose of all issues. Pearce v. Mutual of Omaha Ins. Co., 28 Neb. App. 410, 945 N.W.2d 516 (2020).

To obtain a reversal, vacation, or modification of judgments and decrees rendered or final orders made by the district court, a notice of appeal must be filed within 30 days after the entry of such judgment, decree, or final order. State v. Barber, 26 Neb. App. 339, 918 N.W.2d 359 (2018).

Pursuant to this section, a defendant has just 30 days to appeal from the denial of an evidentiary hearing; the failure to do so results in the defendant's losing the right to pursue those allegations further. State v. Huff, 25 Neb. App. 219, 904 N.W.2d 281 (2017).

Under subsection (1) of this section, a notice of appeal must be filed within 30 days of the entry of the final order in order to vest an appellate court with jurisdiction. In re Interest of Shane L. et al., 21 Neb. App. 591, 842 N.W.2d 140 (2013).

25-1912.01.

Where a party has not made a motion for new trial in the trial court, but argues on appeal that there was insufficient evidence to support the amount of damages awarded at trial, an appellate court will review only the sufficiency of the evidence to support the jury's verdict. First Nat. Bank North Platte v. Cardenas, 299 Neb. 497, 909 N.W.2d 79 (2018).

25-1937.

When a decision regarding a conditional use or special exception permit is appealed under section 23-114.01(5) and a trial is held de novo under this section, the findings of the district court shall have the effect of a jury verdict and the court's judgment will not be set aside by an appellate court unless the court's factual findings are clearly erroneous or the court erred in its application of the law. Egan v. County of Lancaster, 308 Neb. 48, 952 N.W.2d 664 (2020).

25-2001.

A district court lacks a lawful basis to vacate an order for fraud absent a showing of fraud by the moving party and a finding of fraud by the district court. State v. Bartel, 308 Neb. 169, 953 N.W.2d 224 (2021).

The standard for showing fraud under subsection (4) of this section is high. State v. Bartel, 308 Neb. 169, 953 N.W.2d 224 (2021).

Without statutory authorization, a district court's order purporting to vacate a previous order is without legal effect. State v. Bartel, 308 Neb. 169, 953 N.W.2d 224 (2021).

Courts have the power to vacate or modify their own judgments and orders at any time during the term at which they were pronounced. But this power may not be used to circumvent the Legislature's power to fix the time limit to take an appeal. A court may not vacate an order or judgment and reinstate it at a later date just for the purpose of extending the time for appeal. One exception to this rule against using a court's power to vacate as a tool to extend the time for appeal is where a clerk fails to provide notice of a judgment to a party, thereby impairing the party's ability to appeal. In re Interest of Luz P. et al., 295 Neb. 814, 891 N.W.2d 651 (2017).

Juvenile courts have the power to vacate or modify their own judgments and orders during or after the term in which they were made in the same manner as provided for district courts under this section. In re Interest of Luz P. et al., 295 Neb. 814, 891 N.W.2d 651 (2017).

The purpose of an order nunc pro tunc is to correct clerical or formal errors in order to make the record correctly reflect the judgment actually rendered by the court. A nunc pro tunc order reflects now what was actually done before, but was not accurately recorded. The power to issue nunc pro tunc orders is not only conveyed by statute, but is inherent in the power of the courts. In re Interest of Luz P. et al., 295 Neb. 814, 891 N.W.2d 651 (2017).

The district court did not abuse its discretion in overruling a motion to reopen the case where "new evidence" was not material to the proponent's case and could have been discovered through due diligence. Frederick v. City of Falls City, 295 Neb. 795, 890 N.W.2d 498 (2017).

The rule is well-established in Nebraska that the lack of diligence or negligence of counsel is not an unavoidable casualty or misfortune in the context of subdivision (4)(f) of this section, entitling the applicant to vacation of a judgment after adjournment of the term at which the judgment has been rendered. Woodcock v. Navarrete-James, 26 Neb. App. 809, 923 N.W.2d 769 (2019).

Trial court had no obligation, under statute permitting correction of clerical mistakes in judgments, to set supersedeas bond pending borrower's appeal from order entered in forcible entry and detainer action, so as to prevent issuance of writ of restitution pending borrower's appeal from judgment entered in forcible entry and detainer action brought by lender who purchased property at trustees' sale after borrower defaulted on deed of trust; rather, it was borrower who should have posted supersedeas bond to prevent writ of restitution from being issued pending appeal. Enterprise Bank v. Knight, 20 Neb. App. 662, 832 N.W.2d 25 (2013).

Pursuant to subsection (3) of this section, an order nunc pro tunc is appropriate only to remedy an error arising from oversight or omission, but not to allow a court to sua sponte clarify prior order in absence of any clerical or scrivener's error. Willis v. Brammer, 20 Neb. App. 574, 826 N.W.2d 908 (2013).

25-2121.

A party to an action who fails to obey an order of the court, made for the benefit of the opposing party, is, ordinarily, guilty of a mere civil contempt. Vyhlidal v. Vyhlidal, 309 Neb. 376, 960 N.W.2d 309 (2021).

Civil contempt proceedings are instituted to preserve and enforce the rights of private parties to a suit when a party fails to comply with a court order made for the benefit of the opposing party. Vyhlidal v. Vyhlidal, 309 Neb. 376, 960 N.W.2d 309 (2021).

In order to prove civil contempt, unless the alleged contemptuous acts occurred within the presence of the judge, or the parties stipulate otherwise, an evidentiary hearing is necessary so that the moving party can offer evidence to demonstrate both that a violation of a court order occurred and that the violation was willful. Vyhlidal v. Vyhlidal, 309 Neb. 376, 960 N.W.2d 309 (2021).

25-2124.

Unless a provision in a land installment contract provides that a vendor has the right to declare the contract terminated and repossess the premises if a vendee defaults, the vendor cannot bring an action for ejectment. Beckner v. Urban, 309 Neb. 677, 962 N.W.2d 497 (2021).

25-2163.

The issuance of a peremptory writ of mandamus under this section because of a respondent's failure to answer the alternative writ is the equivalent of a default judgment. State ex rel. Unger v. State, 293 Neb. 549, 878 N.W.2d 540 (2016).

25-2170.01.

A tenant cannot seek partition of a landlord's property. Dreesen Enters. v. Dreesen, 308 Neb. 433, 954 N.W.2d 874 (2021).

25-2179.

In enacting section 25-1315, the Legislature did not amend the partition statutes or attempt to change the effect of our prior jurisprudence. Both before and after the adoption of section 25-1315, this section characterized the

settlement of all ownership rights as a "judgment" and our case law characterizes the order as a final order. Guardian Tax Partners v. Skrupa Invest. Co., 295 Neb. 639, 889 N.W.2d 825 (2017).

The language in Peterson v. Damoude, 95 Neb. 469, 145 N.W. 847 (1914), concerning the appealability of orders in a partition action, harmonizes the final order language of section 25-1902 with the partition procedure mandated by this section. Guardian Tax Partners v. Skrupa Invest. Co., 295 Neb. 639, 889 N.W.2d 825 (2017).

25-21,149.

A declaratory judgment will not lie where a writ of mandamus, another equally serviceable remedy, is available. State ex rel. Wagner v. Evnen, 307 Neb. 142, 948 N.W.2d 244 (2020).

District courts have inherent equity jurisdiction to resolve custody disputes, and they have jurisdiction over habeas proceedings challenging adoption proceedings. Accordingly, district courts have jurisdiction over a related declaratory judgment action challenging the constitutionality of Nebraska adoption statutes. In re Adoption of Jaelyn B., 293 Neb. 917, 883 N.W.2d 22 (2016).

25-21,150.

A declaratory judgment is appropriate to declare one party's then-existing rights under a contract or real covenant. Equestrian Ridge v. Equestrian Ridge Estates II, 308 Neb. 128, 953 N.W.2d 16 (2021).

The district court was correct in concluding that it did not have authority to enter a declaratory judgment for a taxpayer seeking an order declaring the meaning of the Nebraska Supreme Court's prior opinion and directing the county assessor to record the taxable value that the opinion and the mandate required, because a writ of mandamus issued to the Tax Equalization and Review Commission was a serviceable remedy. Cain v. Lymber, 306 Neb. 820, 947 N.W.2d 541 (2020).

District courts have inherent equity jurisdiction to resolve custody disputes, and they have jurisdiction over habeas proceedings challenging adoption proceedings. Accordingly, district courts have jurisdiction over a related declaratory judgment action challenging the constitutionality of Nebraska adoption statutes. In re Adoption of Jaelyn B., 293 Neb. 917, 883 N.W.2d 22 (2016).

25-21,159.

Landowners in a sanitary improvement district are indispensable parties to a declaratory judgment action seeking construction of a statute governing landowner voting rights. SID No. 2 of Knox Cty. v. Fischer, 308 Neb. 791, 957 N.W.2d 154 (2021).

25-21,185.07.

In an action that accrued after February 8, 1992, the jury should not be instructed with the "slight" and "gross" comparative negligence formulation. City of Wahoo v. NIFCO Mech. Systems, 306 Neb. 203, 944 N.W.2d 757 (2020).

25-21,185.08.

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

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

25-21,185.09.

A wrongful death action brought in the name of a 6-year-old child's mother, as representative of the child's estate, was brought for the exclusive benefit of the child's next of kin, and thus, the child's father, as next of kin and beneficiary of the child's estate, was properly included in the court's instruction to the jury regarding the allocation of percentages of contributory negligence, even though the father was not brought into the action either as a claimant within the meaning of the statute that governed the defense of contributory negligence or as a third-party defendant. Curtis v. States Family Practice, 20 Neb. App. 234, 823 N.W.2d 224 (2012).

25-21,185.10.

In an action that accrued after February 8, 1992, the jury should not be instructed with the "slight" and "gross" comparative negligence formulation. City of Wahoo v. NIFCO Mech. Systems, 306 Neb. 203, 944 N.W.2d 757 (2020).

Joint tort-feasors who are defendants in an action involving more than one defendant share joint and several liability to the claimant for economic damages. Ammon v. Nagengast, 24 Neb. App. 632, 895 N.W.2d 729 (2017).

The proper timeframe to consider whether there are multiple defendants is when the case is submitted to the finder of fact. Ammon v. Nagengast, 24 Neb. App. 632, 895 N.W.2d 729 (2017).

25-21,185.11.

In an action that accrued after February 8, 1992, the jury should not be instructed with the "slight" and "gross" comparative negligence formulation. City of Wahoo v. NIFCO Mech. Systems, 306 Neb. 203, 944 N.W.2d 757 (2020).

A claimant cannot recover from a nonsettling joint tort-feasor more than that tort-feasor's proportionate share in order to compensate for the fact that the claimant made a settlement with another that may prove to be inadequate. Ammon v. Nagengast, 24 Neb. App. 632, 895 N.W.2d 729 (2017).

When the claimant settles with a joint tort-feasor, the claimant forfeits joint and several liability. Ammon v. Nagengast, 24 Neb. App. 632, 895 N.W.2d 729 (2017).

25-21,206.

This section expressly waives the State's sovereign immunity, but only if all requirements of the section are met. Burke v. Board of Trustees, 302 Neb. 494, 924 N.W.2d 304 (2019).

25-21,233.

In an action for forcible entry and detainer, the plain language of this section does not allow an immediate appeal of an order of restitution when the order implicates section 25-1315, meaning the order adjudicates fewer than all claims for relief or the rights and liabilities of fewer than all the parties, without being certified pursuant to section 25-1315(1). TDP Phase One v. The Club at the Yard, 307 Neb. 795, 950 N.W.2d 640 (2020).

25-21,234.

Trial court had no obligation, under statute permitting correction of clerical mistakes in judgments, to set supersedeas bond pending borrower's appeal from order entered in forcible entry and detainer action, so as to prevent issuance of writ of restitution pending borrower's appeal from judgment entered in forcible entry and detainer action brought by lender who purchased property at trustees' sale after borrower defaulted on deed of trust; rather, it was borrower who should have posted supersedeas bond to prevent writ of restitution from being issued pending appeal. Enterprise Bank v. Knight, 20 Neb. App. 662, 832 N.W.2d 25 (2013).

25-2214.

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

25-2301.

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

25-2301.01.

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

25-2301.02.

The right to interlocutory appeal of the denial of in forma pauperis status in subsection (1) of this section applies only to denials made pursuant to the two bases for denial set forth in that subsection. Robinson v. Houston, 298 Neb. 746, 905 N.W.2d 636 (2018).

A petitioner for habeas corpus relief whose initial motion to proceed in forma pauperis was denied and who takes a timely interlocutory appeal from that denial, accompanied by a motion to proceed in forma pauperis on appeal, is not required to file a second appeal where the district court erroneously denies the second in forma pauperis motion in order to obtain appellate review of the initial denial. Campbell v. Hansen, 298 Neb. 669, 905 N.W.2d 519 (2018).

When an in forma pauperis application is denied and the applicant seeks leave to proceed in forma pauperis in order to obtain appellate review of that denial, the trial court does not have authority to issue an order that would interfere with such appellate review. Campbell v. Hansen, 298 Neb. 669, 905 N.W.2d 519 (2018).

A trial court does not have authority to deny an in forma pauperis application once an in forma pauperis application is denied and the applicant wishes to seek interlocutory appellate review of the denial. Mumin v. Frakes, 298 Neb. 381, 904 N.W.2d 667 (2017).

A trial court has the authority to deny an in forma pauperis application requested to commence, prosecute, defend, or appeal a case if the court finds the applicant has sufficient funds or the legal positions being asserted therein are frivolous or malicious. Mumin v. Frakes, 298 Neb. 381, 904 N.W.2d 667 (2017).

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

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

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

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

A district court's denial of in forma pauperis under this section is reviewed de novo on the record based on the transcript of the hearing or the written statement of the court. In re Change of Name of Pattangall, 23 Neb. App. 131, 868 N.W.2d 816 (2015).

A frivolous legal position pursuant to this section is one wholly without merit, that is, without rational argument based on the law or on the evidence. In re Change of Name of Pattangall, 23 Neb. App. 131, 868 N.W.2d 816 (2015).

Except in those cases where the denial of in forma pauperis status would deny a defendant his or her constitutional right to appeal in a felony case, this section allows the court on its own motion to deny in forma pauperis status on the basis that the legal positions asserted by the applicant are frivolous or malicious, provided that the court issue a written statement of its reasons, findings, and conclusions for denial. In re Change of Name of Pattangall, 23 Neb. App. 131, 868 N.W.2d 816 (2015).

A district court's denial of in forma pauperis status is reviewed de novo on the record based on the transcript of the hearing or the written statement of the court. Gray v. Kenney, 22 Neb. App. 739, 860 N.W.2d 214 (2015).

A frivolous legal position is one wholly without merit, that is, without rational argument based on the law or on the evidence. Gray v. Kenney, 22 Neb. App. 739, 860 N.W.2d 214 (2015).

Except in those cases where the denial of in forma pauperis status would deny a defendant his or her constitutional right to appeal in a felony case, this section allows the court on its own motion, or upon objection by an interested party, to deny in forma pauperis status on the basis that the legal positions asserted by the applicant are frivolous or malicious. Gray v. Kenney, 22 Neb. App. 739, 860 N.W.2d 214 (2015).

For the purposes of the statute governing applications to proceed in forma pauperis, a "frivolous legal position" is one wholly without merit, that is, without rational argument based on the law or on the evidence. Lenz v. Hicks, 20 Neb. App. 431, 824 N.W.2d 769 (2012).

The former clients' action against the attorney was not frivolous, and thus, the denial of their petition to proceed in forma pauperis for the failure to plead a cause of action was not warranted; liberally construed, the former clients' action alleged that the attorney committed legal malpractice in his representation of them in a bankruptcy case. Lenz v. Hicks, 20 Neb. App. 431, 824 N.W.2d 769 (2012).

25-2401.

A defendant does not waive his due process rights by failing to request an interpreter. But the absence of such request by a defendant or defense counsel is a fact relevant to whether the court should have recognized on its own that the defendant needed interpretative services. State v. Bol, 294 Neb. 248, 882 N.W.2d 674 (2016).

Even though a defendant might not speak grammatically correct English, where the record satisfactorily demonstrates that such defendant had a sufficient command of the English language to understand questions posed and answers given, a court does not abuse its discretion in refusing to appoint an interpreter. State v. Bol, 294 Neb. 248, 882 N.W.2d 674 (2016).

Generally, a defendant in a criminal proceeding may be entitled to have an interpreter provided only where he or she timely requests one, or it is otherwise brought to the trial court's attention that the defendant or a witness has a language difficulty that may prevent meaningful understanding of, or communication in, the proceeding. State v. Bol, 294 Neb. 248, 882 N.W.2d 674 (2016).

The appointment of an interpreter for an accused at trial is a matter resting largely in the discretion of the trial court. State v. Bol, 294 Neb. 248, 882 N.W.2d 674 (2016).

25-2405.

A court interpreter is not required to recite an oath at the beginning of each proceeding if the interpreter is already certified under the rules of the Nebraska Supreme Court. State v. Garcia, 27 Neb. App. 705, 936 N.W.2d 1 (2019).

A trial court can accept, without further inquiry, an interpreter's representation that he or she is a certified court interpreter. State v. Garcia, 27 Neb. App. 705, 936 N.W.2d 1 (2019).

25-2602.01.

A delegation of arbitrability of future policyholder claims in an agreement concerning or relating to an insurance policy is invalid under subdivision (f)(4) of this section. Citizens of Humanity v. Applied Underwriters, 299 Neb. 545, 909 N.W.2d 614 (2018).

25-2603.

This section does not defeat the Federal Arbitration Act's objective, expressed in 9 U.S.C. 4 (2012), that if the making of the arbitration agreement or the failure, neglect, or refusal to perform the same be in issue, the court shall proceed summarily to the trial thereon. Cullinane v. Beverly Enters. - Neb., 300 Neb. 210, 912 N.W.2d 774 (2018).

Under subsection (a) of this section, on application of a party showing a valid arbitration agreement and the opposing party's refusal to arbitrate, the court shall order the parties to proceed with arbitration, but if the opposing party denies the existence of the agreement to arbitrate, the court shall proceed summarily to the determination of the issue so raised and shall order for the moving party; otherwise, the application shall be denied. Cullinane v. Beverly Enters. - Neb., 300 Neb. 210, 912 N.W.2d 774 (2018).

25-2612.

When a party seeks to confirm an arbitration award pursuant to Nebraska's Uniform Arbitration Act, a court must confirm that award unless a party has sought to vacate, modify, or correct the award and grounds for such vacation, modification, or correction exist. Garlock v. 3DS Properties, 303 Neb. 521, 930 N.W.2d 503 (2019).

25-2613.

Arbitration awards governed by the Nebraska Uniform Arbitration Act cannot be vacated on the grounds that the arbitrator manifestly disregarded the law. City of Omaha v. Professional Firefighters Assn., 309 Neb. 918, 963 N.W.2d 1 (2021).

Arbitration in Nebraska is governed by the Federal Arbitration Act if it arises from a contract involving interstate commerce; otherwise, it is governed by the Nebraska Uniform Arbitration Act. City of Omaha v. Professional Firefighters Assn., 309 Neb. 918, 963 N.W.2d 1 (2021).

Courts lack the authority to vacate arbitration awards governed by the Nebraska Uniform Arbitration Act on the grounds that the arbitrator manifestly disregarded the law. City of Omaha v. Professional Firefighters Assn., 309 Neb. 918, 963 N.W.2d 1 (2021).

"Evident partiality" exists under subsection (a)(2) of this section when a reasonable person would have to conclude that an arbitrator was partial to one party to the arbitration. City of Omaha v. Professional Firefighters Assn., 309 Neb. 918, 963 N.W.2d 1 (2021).

It is only when the arbitrator issues an award that simply reflects the arbitrator's personal notions of justice rather than drawing its essence from the contract that a court may find that the arbitrator exceeded his or her powers. City of Omaha v. Professional Firefighters Assn., 309 Neb. 918, 963 N.W.2d 1 (2021).

Serious legal or factual error by the arbitrator does not, standing on its own, provide a basis for vacating an award. City of Omaha v. Professional Firefighters Assn., 309 Neb. 918, 963 N.W.2d 1 (2021).

Subsection (a)(3) of this section is interpreted under the rubric outlined by the U.S. Supreme Court's interpretation of 9 U.S.C. 10(a)(4) found in Oxford Health Plans LLC v. Sutter, 569 U.S. 564, 133 S. Ct. 2064, 186 L. Ed. 2d 113 (2013). City of Omaha v. Professional Firefighters Assn., 309 Neb. 918, 963 N.W.2d 1 (2021).

The circumstances under which an arbitrator's rulings alone could demonstrate the requisite partiality to vacate an award must be quite rare. City of Omaha v. Professional Firefighters Assn., 309 Neb. 918, 963 N.W.2d 1 (2021).

The sole question presented when a party claims that an arbitrator exceeded his or her powers is whether the arbitrator (even arguably) interpreted the parties' contract, not whether he or she got its meaning right or wrong. City of Omaha v. Professional Firefighters Assn., 309 Neb. 918, 963 N.W.2d 1 (2021).

To vacate an arbitration award on the grounds that the arbitrator exceeded his or her powers, the party must show more than that the arbitrator committed an error—or even a serious error. City of Omaha v. Professional Firefighters Assn., 309 Neb. 918, 963 N.W.2d 1 (2021).

25-2620.

An order denying an application to vacate an arbitration award is not a final and appealable order; such an order may be reviewed upon an appeal from an order confirming the arbitration award. Cinatl v. Prososki, 307 Neb. 477, 949 N.W.2d 505 (2020).

When this section is silent regarding the appealability of an arbitration-related order, an appellate court looks to section 25-1902 to determine whether the order is final and appealable. Cinatl v. Prososki, 307 Neb. 477, 949 N.W.2d 505 (2020).

This section authorizes appellate jurisdiction to review certain arbitration-related orders, such as an order denying an application to compel arbitration or an order granting an application to stay arbitration. But this section does not address whether a party may appeal an order granting an application to compel arbitration or to stay judicial proceedings. Appellate jurisdiction to review an order compelling arbitration and staying the action is determined by looking to the general final order statute, section 25-1902. Boyd v. Cook, 298 Neb. 819, 906 N.W.2d 31 (2018).

25-2720.01.

County courts have the power to vacate or modify their own judgments and orders during or after the term in which they were made in the same manner as provided for district courts under section 25-2001. In re Interest of Luz P. et al., 295 Neb. 814, 891 N.W.2d 651 (2017).

Courts have the power to vacate or modify their own judgments and orders at any time during the term at which they were pronounced. But this power may not be used to circumvent the Legislature's power to fix the time limit to take an appeal. A court may not vacate an order or judgment and reinstate it at a later date just for the purpose of extending the time for appeal. One exception to this rule against using a court's power to vacate as a tool to extend

the time for appeal is where a clerk fails to provide notice of a judgment to a party, thereby impairing the party's ability to appeal. In re Interest of Luz P. et al., 295 Neb. 814, 891 N.W.2d 651 (2017).

25-2728.

A county court's order overruling the defendant's motion to seal records, filed years after her case had been dismissed, was a final, appealable order, because the order ruled on a postjudgment motion and affected a substantial right. The right invoked was the statutory right to remove the record of the defendant's citation from the public record, no mere technical right. State v. Coble, 299 Neb. 434, 908 N.W.2d 646 (2018).

25-2733.

The district court and higher appellate courts generally review judgments from a small claims court for error appearing on the record. Schmunk v. Aquatic Solutions, 29 Neb. App. 940, 962 N.W.2d 581 (2021).

District courts and higher appellate courts generally review appeals from county courts for error appearing on the record. Lesser v. Eagle Hills Homeowners' Assn., 20 Neb. App. 423, 824 N.W.2d 77 (2012).

25-2806.

The formal rules of evidence do not apply in small claims court. Flodman v. Robinson, 22 Neb. App. 943, 864 N.W.2d 716 (2015).

25-3401.

The right to interlocutory appeal of the denial of in forma pauperis status in subsection (1) of section 25-2301.02 applies only to denials made pursuant to the two bases for denial set forth in that subsection, and not to denials based on the "three strikes" provision in this section. Robinson v. Houston, 298 Neb. 746, 905 N.W.2d 636 (2018).

A district court's denial of in forma pauperis under this section is reviewed de novo on the record based on the transcript of the hearing or written statement of the court. Mumin v. Nebraska Dept. of Corr. Servs., 25 Neb. App. 89, 903 N.W.2d 483 (2017).

The district court erred when it failed to make determinations as to whether any or all of the prisoner's previous civil actions were related to or involved the prisoner's conditions of confinement, as further defined in subdivision (1)(b) of this section, were motions for postconviction relief, or were petitions for habeas corpus relief. Mumin v. Nebraska Dept. of Corr. Servs., 25 Neb. App. 89, 903 N.W.2d 483 (2017).

The definition of "civil action" in this section expressly excludes petitions for habeas corpus relief from consideration in determining whether a prisoner has filed three or more civil actions that have been found to be frivolous. Gray v. Nebraska Dept. of Corr. Servs., 24 Neb. App. 713, 898 N.W.2d 380 (2017).

The standard of review for denial of in forma pauperis under this section is de novo on the record. Gray v. Nebraska Dept. of Corr. Servs., 24 Neb. App. 713, 898 N.W.2d 380 (2017).

27-105.

Because evidence of other acts submitted for a proper purpose may at the same time lead the jury to infer bad character and employ propensity reasoning, the trial court must, if requested by the defendant, instruct the jury to focus only on the proper purpose of the evidence. State v. Oldson, 293 Neb. 718, 884 N.W.2d 10 (2016).

27-106.

Under the "rule of completeness" in this section, a party is entitled to admit the entirety of an act, declaration, conversation, or writing when the other party admits a part and when the entirety is necessary to make it fully understood. State v. Rocha, 295 Neb. 716, 890 N.W.2d 178 (2017).

27-201.

An appellate court may examine its own records and take judicial notice of the proceedings and judgment in a former action involving one of the parties, and it may take judicial notice of a document, including briefs filed in an appeal, in a separate but related action concerning the same subject matter in the same court. Western Ethanol Co. v. Midwest Renewable Energy, 305 Neb. 1, 938 N.W.2d 329 (2020).

In determining whether to adjudicate children as to their father, the juvenile court could not take judicial notice of the mother's admission that domestic violence occurred between her and the father in the home, because the admission consisted of adjudicative facts which the father disputed and such facts were not subject to any test by the father at the time of the mother's admission. In re Interest of Lilly S. & Vincent S., 298 Neb. 306, 903 N.W.2d 651 (2017).

While a court may judicially notice its own records under this section, testimony must be transcribed, properly certified, and marked and documents must be marked and identified and each made part of the record so that an appellate court may review the admissibility of each noticed item. In re Estate of Radford, 297 Neb. 748, 901 N.W.2d 261 (2017).

27-301.

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

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

27-401.

Testimony regarding controlled substances seized from the defendant's home was relevant to corroborate testimony of eyewitness and two jailhouse informants in a murder trial, where the eyewitness testified that she purchased marijuana from the defendant on the night of the incident, the first informant testified that the defendant told him that drugs were found during the search of his house, and the second informant testified as to the defendant's statements about the substances seized from his house. State v. Devers, 306 Neb. 429, 945 N.W.2d 470 (2020).

Relevance is a relational concept and carries meaning only in context. Evidence may be irrelevant if it is directed at a fact not properly an issue under the substantive law of the case or if the evidence fails to alter the probabilities of the existence or nonexistence of a fact in issue. State v. Rocha, 295 Neb. 716, 890 N.W.2d 178 (2017).

To be admitted at trial, evidence must be relevant, meaning evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. State v. Rocha, 295 Neb. 716, 890 N.W.2d 178 (2017).

To determine whether a statement by a law enforcement official in a recorded interview is relevant for the purpose of providing context to a defendant's statement, a court first considers whether the defendant's statement itself is relevant, whether it makes a material fact more or less probable. If the defendant's statement is itself relevant, then a court must consider whether the law enforcement statement is relevant to provide context to the defendant's statement. To do this, a court considers whether the defendant's statement would be any less probative in the absence of the law enforcement statement. If the law enforcement statement does not make the defendant's statement any more probative, it is not relevant. State v. Rocha, 295 Neb. 716, 890 N.W.2d 178 (2017).

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

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

Evidence of risk-of-procedure or risk-of-surgery discussions with the patient is generally irrelevant and unfairly prejudicial where the plaintiff alleges only negligence, and not lack of informed consent. Hillyer v. Midwest Gastrointestinal Assocs., 24 Neb. App. 75, 883 N.W.2d 404 (2016).

27-402.

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

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

Evidence of risk-of-procedure or risk-of-surgery discussions with the patient is generally irrelevant and unfairly prejudicial where the plaintiff alleges only negligence, and not lack of informed consent. Hillyer v. Midwest Gastrointestinal Assocs., 24 Neb. App. 75, 883 N.W.2d 404 (2016).

Under this section, all relevant evidence is admissible unless there is some specific constitutional or statutory reason to exclude such evidence. Furstenfeld v. Pepin, 23 Neb. App. 155, 869 N.W.2d 353 (2015).

27-403.

While the fact that a defendant was acquitted of sexual assault charges in a prior prosecution does not affect the threshold admissibility of the evidence under section 27-414, it is relevant to the undue prejudice analysis conducted under that section and under this section. State v. Lierman, 305 Neb. 289, 940 N.W.2d 529 (2020).

In the context of this section, unfair prejudice means an undue tendency to suggest a decision based on an improper basis. Unfair prejudice speaks to the capacity of some concededly relevant evidence to lure the fact finder into declaring guilt on a ground different from proof specific to the offense charged, commonly on an emotional basis. State v. Sierra, 305 Neb. 249, 939 N.W.2d 808 (2020).

An appellate court reviews for an abuse of discretion a trial court's evidentiary rulings on the admissibility of a defendant's other crimes or bad acts under subsection (2) of this section or under the inextricably intertwined exception to the rule. State v. Lee, 304 Neb. 252, 934 N.W.2d 145 (2019).

Gruesome crimes produce gruesome evidence, but the State may generally choose its evidence to present a coherent picture of the facts of the crimes charged. State v. Munoz, 303 Neb. 69, 927 N.W.2d 25 (2019).

The defendant's statements about family abuse do not bear a significant risk of unfair prejudice. State v. Hernandez, 299 Neb. 896, 911 N.W.2d 524 (2018).

The defendant's statements in which he referenced "gang-banging" in his past and not believing in God carried a risk of unfair prejudice, but the risk was not significant given the isolated and brief nature of the statements in the context of the 2-hour interview. State v. Hernandez, 299 Neb. 896, 911 N.W.2d 524 (2018).

Under this section and sections 27-701 and 27-702, a witness may not give an opinion as to a defendant's guilt or how the case should be decided, but, rather, must leave the conclusions to be drawn by the trier of fact, because such opinions are not helpful. State v. Rocha, 295 Neb. 716, 890 N.W.2d 178 (2017).

Under this section, even evidence that is relevant is not admissible if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. State v. Rocha, 295 Neb. 716, 890 N.W.2d 178 (2017).

Only rarely, and in extraordinarily compelling circumstances, will an appellate court, from the vista of a cold appellate record, reverse a trial court's on-the-spot judgment concerning the relative weighing of probative value and unfair effect to determine whether relevant evidence should be excluded. State v. Oldson, 293 Neb. 718, 884 N.W.2d 10 (2016).

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

A court should exclude an expert's opinion when it gives rise to conflicting inferences of equal probability, so the choice between them is a matter of conjecture. An expert opinion which is equivocal and is based upon such words

as "could," "may," or "possibly" lacks the certainty required to sustain the burden of proof of causation for which the opinion has been offered. State v. Johnson, 290 Neb. 862, 862 N.W.2d 757 (2015).

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

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

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

27-404.

Under this section, other types of character or bad acts evidence are presumed to be *inadmissible*, and where admissible for one or more of the particular purposes as set forth by this section, the evidence may be considered only for those purposes. Thus, while this section is a rule of exclusion, section 27-414 is a rule of admissibility. State v. Lierman, 305 Neb. 289, 940 N.W.2d 529 (2020).

This section's restriction on evidence of other crimes, wrongs, or acts did not apply when evidence of the defendant's pandering of another victim was inextricably intertwined with the evidence of the charged crimes. State v. Briggs, 303 Neb. 352, 929 N.W.2d 65 (2019).

Subsection (2) of this section does not apply to evidence of a defendant's other crimes or bad acts if the evidence is inextricably intertwined with the charged crime. Inextricably intertwined evidence includes evidence that forms part of the factual setting of the crime, or evidence that is so blended or connected to the charged crime that proof of the charged crime will necessarily require proof of the other crimes or bad acts, or if the other crimes or bad acts are necessary for the prosecution to present a coherent picture of the charged crime. State v. Burries, 297 Neb. 367, 900 N.W.2d 483 (2017).

Upon objection to evidence offered under subsection (2) of this section, the proponent must state on the record the specific purpose or purposes for which the evidence is being offered, and the trial court must similarly state the purpose or purposes for which it is receiving the evidence. A trial court must then consider whether the evidence is independently relevant, which means that its relevance does not depend upon its tendency to show propensity. Additionally, evidence offered under subsection (2) of this section is subject to the overriding protection of section 27-403, which requires a trial court to consider whether the probative value of the evidence is substantially outweighed by the danger of unfair prejudice. Finally, when requested, the trial court must instruct the jury on the specific purpose or purposes for which it is admitting the extrinsic acts evidence under subsection (2) of this section, to focus the jurors' attention on that purpose and ensure that it does not consider it for an improper purpose. State v. Burries, 297 Neb. 367, 900 N.W.2d 483 (2017).

Evidence of a defendant's threat against an individual that he shot 2 days later was inextricably intertwined with the shooting. State v. Parnell, 294 Neb. 551, 883 N.W.2d 652 (2016).

The State cannot introduce other acts that are relevant only through the inference that the defendant is by propensity a probable perpetrator of the crime. State v. Oldson, 293 Neb. 718, 884 N.W.2d 10 (2016).

This section codifies the common-law tradition prohibiting resort by the prosecution to any kind of evidence of a defendant's evil character to establish a probability of his guilt. State v. Oldson, 293 Neb. 718, 884 N.W.2d 10 (2016).

Under subsection (1) of this section, proof of a person's character is barred only when in turn, character is used in order to show action in conformity therewith. State v. Oldson, 293 Neb. 718, 884 N.W.2d 10 (2016).

While this section may prevent the admission of other acts evidence for propensity purposes as a protection of the presumption of innocence, it does not follow that the State violates due process by adducing testimony that could result in the revelation of other acts if the defense chooses to pursue certain lines of questioning on cross-examination. State v. Oldson, 293 Neb. 718, 884 N.W.2d 10 (2016).

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

The defendant's statement that the abuse between her and her husband was "50/50" was not evidence of prior bad acts in violation of this section, but, rather, was inextricably intertwined with the charged crime and admissible to present a coherent picture of the assault. State v. Cavitte, 28 Neb. App. 601, 945 N.W.2d 228 (2020).

Subsection (2) of this section does not apply to evidence of a defendant's other crimes or bad acts if the evidence is inextricably intertwined with the charged crime. State v. Kelly, 20 Neb. App. 871, 835 N.W.2d 79 (2013).

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

27-408.

A court's determination of preliminary questions of fact conditioning the applicability of the exclusionary rule set forth in this section are reviewed for clear error. McGill Restoration v. Lion Place Condo. Assn., 309 Neb. 202, 959 N.W.2d 251 (2021).

An admission against interest concerning an element of the disputed claim is not an exception to the general inadmissibility of conduct or statements made in settlement negotiations. McGill Restoration v. Lion Place Condo. Assn., 309 Neb. 202, 959 N.W.2d 251 (2021).

Conduct or statements made in settlement negotiations are not admissible for another purpose to impeach a prior inconsistent statement. McGill Restoration v. Lion Place Condo. Assn., 309 Neb. 202, 959 N.W.2d 251 (2021).

Documents are not immunized from admissibility merely by being strategically presented in the course of compromise negotiations, and a fact presented during compromise negotiations is not immunized if it was obtained from sources independent of the compromise negotiations. McGill Restoration v. Lion Place Condo. Assn., 309 Neb. 202, 959 N.W.2d 251 (2021).

If a statement violates the Nebraska Evidence Rules governing compromise and offers to compromise, a trial court does not have discretion to admit the statement. McGill Restoration v. Lion Place Condo. Assn., 309 Neb. 202, 959 N.W.2d 251 (2021).

The exclusion set forth in this section does not distinguish between offers to settle and admissions of fact made during settlement negotiations. McGill Restoration v. Lion Place Condo. Assn., 309 Neb. 202, 959 N.W.2d 251 (2021).

Whether a particular writing, conduct, or statement is made in or a product of compromise negotiations is largely a question of fact. McGill Restoration v. Lion Place Condo. Assn., 309 Neb. 202, 959 N.W.2d 251 (2021).

27-412.

A trial court did not abuse its discretion in determining that the defendant could not question the victim about previous sexual encounters because they were not similar enough to be relevant. The victim's encounter with the defendant occurred when the defendant was 18 years old and the victim was 10 years old and involved sexual penetration; the victim's previous encounters involved sexual touching between other similarly aged children. State v. Dady, 304 Neb. 649, 936 N.W.2d 486 (2019).

A false accusation of rape where no sexual activity is involved is itself not "sexual behavior" involving the victim, and such statements fall outside of the rape shield law. State v. Swindle, 300 Neb. 734, 915 N.W.2d 795 (2018).

Before defense counsel launches into cross-examination about false allegations of sexual assault, a defendant must establish, outside of the presence of the jury, by a greater weight of the evidence, that (1) the accusation or accusations were in fact made, (2) the accusation or accusations were in fact false, and (3) the evidence is more probative than prejudicial. State v. Swindle, 300 Neb. 734, 915 N.W.2d 795 (2018).

In limited circumstances, a defendant's right to confrontation can require the admission of evidence that would be inadmissible under the rape shield statute. State v. Swindle, 300 Neb. 734, 915 N.W.2d 795 (2018).

Subject to several exceptions, subsection (1) of this section bars evidence offered to prove that any victim engaged in other sexual behavior and evidence offered to prove any victim's sexual predisposition in civil or criminal proceedings involving alleged sexual misconduct. State v. Swindle, 300 Neb. 734, 915 N.W.2d 795 (2018).

Pursuant to subdivision (2)(a) of this section, a court does not err in excluding evidence about a victim's sexual history prior to an assault when the State does not open the door to such evidence, when the evidence does not directly relate to the issue of consent, and when the evidence would not give the jury a significantly different impression of the victim's credibility. State v. McSwine, 24 Neb. App. 453, 890 N.W.2d 518 (2017).

27-414.

Because the standard set forth as to the question of whether allegations of sexual assault were proved for purposes of this section is lower than the standard of proof the State is held to in prosecuting those allegations, the principles of collateral estoppel do not bar the admission of such evidence in the situation where the defendant was acquitted of the prior allegations. State v. Lierman, 305 Neb. 289, 940 N.W.2d 529 (2020).

Despite the prejudice inherent in allegations of sexual assault, the Legislature enacted this section permitting the admission of such evidence. Assuming that this evidence met the balancing test of this section, the Legislature set no limitation on a fact finder's use of this evidence. State v. Lierman, 305 Neb. 289, 940 N.W.2d 529 (2020).

Under section 27-404, other types of character or bad acts evidence are presumed to be inadmissible, and where admissible for one or more of the particular purposes as set forth by section 27-404, the evidence may be considered only for those purposes. Thus, while section 27-404 is a rule of exclusion, this section is a rule of admissibility. State v. Lierman, 305 Neb. 289, 940 N.W.2d 529 (2020).

Under this section, assuming that notice and hearing requirements are met and the evidence survives a more-probative-than-prejudicial balancing test, evidence of prior sexual assaults are admissible if proved by clear and convincing evidence. State v. Lierman, 305 Neb. 289, 940 N.W.2d 529 (2020).

While the fact that a defendant was acquitted of sexual assault charges in a prior prosecution does not affect the threshold admissibility of the evidence under this section, it is relevant to the undue prejudice analysis conducted under this section and under section 27-403. State v. Lierman, 305 Neb. 289, 940 N.W.2d 529 (2020).

A hearing on prior bad acts evidence is not required if the evidence forms the factual setting of the charged offenses and is necessary to present a complete and coherent picture of the facts. State v. Kelly, 20 Neb. App. 871, 835 N.W.2d 79 (2013).

This section does not change the law regarding acts which are inextricably intertwined to the charged offenses, so that acts that were not considered extrinsic and therefore not subject to section 27-404 before are not extrinsic and not subject to this section now. State v. Kelly, 20 Neb. App. 871, 835 N.W.2d 79 (2013).

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

27-504.

This section provides a privilege for professional counsel-patient communications, but under subsection (4)(d), no privilege exists in criminal prosecutions for injuries to children. State v. McMillion, 23 Neb. App. 687, 875 N.W.2d 877 (2016).

27-510.

A ruling made under the initial step of subdivision (3)(b) of this section, regarding whether an informer may be able to give testimony necessary to a fair determination, requires a court to use its judgment and thus exercise its discretion. An appellate court therefore reviews such a ruling for an abuse of discretion. State v. Blair, 300 Neb. 372, 914 N.W.2d 428 (2018).

The decision whether to reveal the identity of a confidential informant is controlled by this section, and judicial discretion is involved only to the extent this section makes discretion a factor in determining that question. Where this section commits a question at issue to the discretion of the trial court, an appellate court reviews the trial court's determination for an abuse of discretion. State v. Blair, 300 Neb. 372, 914 N.W.2d 428 (2018).

27-513.

A trial court may bar the testimony of a defendant's accomplice who seeks to exculpate the defendant by testifying as to events that are crucial regarding the defendant's culpability, but intends to invoke his or her Fifth Amendment privilege against self-incrimination during cross-examination. State v. Clausen, 307 Neb. 968, 951 N.W.2d 764 (2020).

Although a witness invoked his Fifth Amendment privilege in the jury's presence, no error was plainly evident from the record where the bill of exceptions did not contain evidence showing that the parties or the court knew the witness would invoke his privilege and where, after being given immunity, the witness testified and was subject to cross-examination. State v. Munoz, 303 Neb. 69, 927 N.W.2d 25 (2019).

27-602.

Under this section and sections 27-701 and 27-702, it is improper for a witness to testify whether another person may or may not have been telling the truth in a specific instance. State v. Rocha, 295 Neb. 716, 890 N.W.2d 178 (2017).

Under this section, lay witnesses may testify only as to factual matters based upon their personal knowledge. State v. Rocha, 295 Neb. 716, 890 N.W.2d 178 (2017).

A party's "assumption" of a fact confesses the absence of personal knowledge of the fact. Sulu v. Magana, 293 Neb. 148, 879 N.W.2d 674 (2016).

27-605.

Comments by the judge presiding over a matter are clearly not evidence, because a judge may not assume the role of a witness. In re Interest of J.K., 300 Neb. 510, 915 N.W.2d 91 (2018).

27-606.

In an evidentiary hearing regarding an alternate juror's impermissible presence and possible participation in deliberations of the jury, the court is allowed to question individual jurors and the alternate as to how, if at all, the alternate communicated to the jury and inquire as to individual jurors whether the alternate's outside influence was brought to bear upon them. State v. Madren, 308 Neb. 443, 954 N.W.2d 881 (2021).

Juror affidavits cannot be used for the purpose of showing a juror was confused. Facilities Cost Mgmt. Group v. Otoe Cty. Sch. Dist., 298 Neb. 777, 906 N.W.2d 1 (2018).

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

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

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

27-608.

Subsection (2) of this section does not affect the admissibility of evidence that has become relevant and admissible under the specific contradiction doctrine. State v. Carpenter, 293 Neb. 860, 880 N.W.2d 630 (2016).

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

To be admissible, reputation evidence of a witness's untruthfulness must embody the collective judgment of the community and must be derived from a group whose size constitutes an indicium of inherent reliability. The community in which the party has the reputation for untruthfulness must be sufficiently large; if the group is too insular, its opinion of the witness's reputation for untruthfulness may not be reliable because it may have been formed with the same set of biases. State v. Brooks, 23 Neb. App. 560, 873 N.W.2d 460 (2016).

27-609.

When a defendant testifies in a criminal trial in his or her own behalf, he or she is precluded from testifying regarding the details or the nature of the previous convictions because such information is not relevant to the defendant's credibility. The defendant may testify as to whether he or she has previous felony convictions or convictions involving dishonesty. State v. Howell, 26 Neb. App. 842, 924 N.W.2d 349 (2019).

27-612.

This section requires production of not only documents used to refresh recollection in the courtroom while the witness is testifying, but also those writings the witness reviewed prior to giving testimony. State v. McMillion, 23 Neb. App. 687, 875 N.W.2d 877 (2016).

27-614.

Trial court erred in failing to allow party to cross-examine witness following interrogation by judge where counsel's request to examine or cross-examine any witnesses was denied. Hronek v. Brosnan, 20 Neb. App. 200, 823 N.W.2d 204 (2012).

27-701.

A defendant doctor's testimony was not hearsay, because it was limited only to his perception of another treating doctor's opinion, rather than providing the actual content of the other treating doctor's out-of-court statement. The defendant doctor had firsthand knowledge of the other treating doctor's statement, his belief as to the opinion was an inference that was rationally based on the context, and the testimony was helpful to an ultimate issue. Rodriguez v. Surgical Assocs., 298 Neb. 573, 905 N.W.2d 247 (2018).

Because the credibility of witnesses is a determination within the province of the trier of fact, testimony that usurps that role is not helpful and thus is improper opinion testimony under this section and section 27-702. State v. Rocha, 295 Neb. 716, 890 N.W.2d 178 (2017).

The abolition of the "ultimate issue rule" does not lower the bar so as to admit all opinions, because under this section and section 27-702, opinions must be helpful to the trier of fact. State v. Rocha, 295 Neb. 716, 890 N.W.2d 178 (2017).

Under this section and section 27-702, opinion testimony, whether by a lay or expert witness, is permissible only if it is helpful to the trier of fact in making a determination of a fact in issue. State v. Rocha, 295 Neb. 716, 890 N.W.2d 178 (2017).

Under this section and sections 27-403 and 27-702, a witness may not give an opinion as to a defendant's guilt or how the case should be decided, but, rather, must leave the conclusions to be drawn by the trier of fact, because such opinions are not helpful. State v. Rocha, 295 Neb. 716, 890 N.W.2d 178 (2017).

Under this section and sections 27-602 and 27-702, it is improper for a witness to testify whether another person may or may not have been telling the truth in a specific instance. State v. Rocha, 295 Neb. 716, 890 N.W.2d 178 (2017).

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

Lay witness opinion testimony concerning the identity of a person depicted in a photograph or video is admissible if there is evidence that the witness is better able to correctly identify the contents of the photograph or video than the jury. State v. Hickey, 27 Neb. App. 516, 933 N.W.2d 891 (2019).

27-702.

In a bench trial, an expert's testimony will be admitted and given the weight to which it is entitled. Reiber v. County of Gage, 303 Neb. 325, 928 N.W.2d 916 (2019).

ANNOTATIONS

When a court is faced with a decision regarding the admissibility of expert opinion evidence, the trial judge must determine at the outset, pursuant to the evidence rule governing expert witness testimony, whether the expert is proposing to testify to (1) scientific, technical, or other specialized knowledge that (2) will assist the trier of fact to understand or determine a fact in issue. Pitts v. Genie Indus., 302 Neb. 88, 921 N.W.2d 597 (2019).

Because the credibility of witnesses is a determination within the province of the trier of fact, testimony that usurps that role is not helpful and thus is improper opinion testimony under section 27-701 and this section. State v. Rocha, 295 Neb. 716, 890 N.W.2d 178 (2017).

The abolition of the "ultimate issue rule" does not lower the bar so as to admit all opinions, because under section 27-701 and this section, opinions must be helpful to the trier of fact. State v. Rocha, 295 Neb. 716, 890 N.W.2d 178 (2017).

Under section 27-701 and this section, opinion testimony, whether by a lay or expert witness, is permissible only if it is helpful to the trier of fact in making a determination of a fact in issue. State v. Rocha, 295 Neb. 716, 890 N.W.2d 178 (2017).

Under this section and sections 27-403 and 27-701, a witness may not give an opinion as to a defendant's guilt or how the case should be decided, but, rather, must leave the conclusions to be drawn by the trier of fact, because such opinions are not helpful. State v. Rocha, 295 Neb. 716, 890 N.W.2d 178 (2017).

Under this section and sections 27-602 and 27-701, it is improper for a witness to testify whether another person may or may not have been telling the truth in a specific instance. State v. Rocha, 295 Neb. 716, 890 N.W.2d 178 (2017).

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

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

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

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

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

The trial court's admission of a doctor's testimony regarding "grooming" in a sexual assault of a child case, without performing its gatekeeping function under the *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S. Ct. 2786, 125 L. Ed. 2d 469 (1993), and *Schafersman v. Agland Coop*, 262 Neb. 215, 631 N.W.2d 862 (2001), framework, was prejudicial error. State v. Edwards, 28 Neb. App. 893, 949 N.W.2d 799 (2020).

An expert's opinion is ordinarily admissible under this section if the witness (1) qualifies as an expert, (2) has an opinion that will assist the trier of fact, (3) states his or her opinion, and (4) is prepared to disclose the basis of that opinion on cross-examination. In re Interest of Aly T. & Kazlynn T., 26 Neb. App. 612, 921 N.W.2d 856 (2018).

Sufficient foundation existed for a doctor's expert opinion in his affidavit that a nursing home's actions or inactions did not cause a resident's injuries and subsequent death, so that the opinion could be considered by the trial court when deciding a motion for summary judgment where the affidavit and attached curriculum vitae established that

the doctor, board certified in family and geriatric medicine, had regularly cared for residents of assisted living facilities and was qualified to evaluate the cause of injuries and death. Apkan v. Life Care Centers of America, 26 Neb. App. 154, 918 N.W.2d 601 (2018).

An individual's summary judgment affidavit was not sufficient to meet the requirements to qualify him as an expert in regard to whether a roofing contractor's repairs were defective; the affidavit failed to set forth sufficient foundation for his opinion, because he included no references to his occupation, training, experience, qualifications, or education, and he failed to accurately describe the property he inspected and the methodology he employed during such inspection. Edwards v. Mount Moriah Missionary Baptist Church, 21 Neb. App. 896, 845 N.W.2d 595 (2014).

It is within the trial court's discretion to determine whether there is sufficient foundation for an expert witness to give his opinion about an issue in question. Edwards v. Mount Moriah Missionary Baptist Church, 21 Neb. App. 896, 845 N.W.2d 595 (2014).

27-703.

The defendant doctor could testify to the opinion of another treating doctor to demonstrate the basis for his own opinion. Rodriguez v. Surgical Assocs., 298 Neb. 573, 905 N.W.2d 247 (2018).

27-704.

This section abolished the "ultimate issue" rule in Nebraska. Reiber v. County of Gage, 303 Neb. 325, 928 N.W.2d 916 (2019).

Under this section, a witness may not give an opinion as to how the case should be decided, but, rather, must leave the conclusions to be drawn by the trier of fact, because such opinions are not helpful. Reiber v. County of Gage, 303 Neb. 325, 928 N.W.2d 916 (2019).

Under this section, the basic approach to opinions, lay and expert, is to admit them when helpful to the trier of fact. Reiber v. County of Gage, 303 Neb. 325, 928 N.W.2d 916 (2019).

The "ultimate issue rule," which prohibited witnesses from giving opinions or conclusions on an ultimate fact in issue because such testimony, it was believed, usurps the function or invades the province of the jury, was abolished in Nebraska by this section. State v. Rocha, 295 Neb. 716, 890 N.W.2d 178 (2017).

Under this section, the basic approach to opinions, lay and expert, is to admit them when helpful to the trier of fact. State v. Rocha, 295 Neb. 716, 890 N.W.2d 178 (2017).

27-706.

If proposed expert testimony is fundamentally flawed by the expert's own admission, it is not an abuse of discretion for the trial court to refuse to appoint the expert under this section when there is no showing that this shortcoming in the expert's proposed testimony has been remedied. State v. Quezada, 20 Neb. App. 836, 834 N.W.2d 258 (2013).

27-801.

Witness interview statements that were gathered as part of an investigation and were relied upon by the employer in making an employment decision were not hearsay, because they were not offered to prove the truth of the matter asserted. Baker-Heser v. State, 309 Neb. 979, 963 N.W.2d 59 (2021).

Where the translator of a defendant's out-of-court verbal or written statements from a foreign language to English is initially shown by the State to be qualified by knowledge, skill, experience, training, or education to perform such translation, and where the translator testifies at trial and is subject to cross-examination, the translation is admissible as nonhearsay under subdivision (4) of this section, and any challenges to the accuracy of the translation go to the weight of the evidence and not to its admissibility. State v. Martinez, 306 Neb. 516, 946 N.W.2d 445 (2020).

The State must prove by a greater weight of the evidence that a defendant authored or made a statement in order to establish preliminary admissibility as nonhearsay by a party opponent. State v. Savage, 301 Neb. 873, 920 N.W.2d 692 (2018).

A declarant's out-of-court statement offered for the truth of the matter asserted is inadmissible unless it falls within a definitional exclusion or statutory exception. State v. Burries, 297 Neb. 367, 900 N.W.2d 483 (2017).

ANNOTATIONS

Excited utterances are an exception to the hearsay rule, because the spontaneity of excited utterances reduces the risk of inaccuracies inasmuch as the statements are not the result of a declarant's conscious effort to make them. The justification for the excited utterance exception is that circumstances may produce a condition of excitement which temporarily stills the capacity for reflection and produces utterances free of conscious fabrication. State v. Burries, 297 Neb. 367, 900 N.W.2d 483 (2017).

For a statement to be an excited utterance, the following criteria must be met: (1) There must be a startling event, (2) the statement must relate to the event, and (3) the declarant must have made the statement while under the stress of the event. An excited utterance does not have to be contemporaneous with the exciting event. An excited utterance may be subsequent to the startling event if there was not time for the exciting influence to lose its sway. The true test for an excited utterance is not when the exclamation was made, but whether, under all the circumstances, the declarant was still speaking under the stress of nervous excitement and shock caused by the event. State v. Burries, 297 Neb. 367, 900 N.W.2d 483 (2017).

The period in which the excited utterance exception applies depends on the facts of the case. Relevant facts include the declarant's physical conditions or manifestation of stress and whether the declarant spoke in response to questioning. But a declarant's response to questioning, other than questioning from a law enforcement officer, may still be an excited utterance if the context shows that the declarant made the statement without conscious reflection. State v. Burries, 297 Neb. 367, 900 N.W.2d 483 (2017).

"Owe notes" offered to show that the owner of the writings possessed illegal substances for purposes of sale and distribution were not hearsay, because they were not offered to show that a recorded drug sale actually took place. State v. Schwaderer, 296 Neb. 932, 898 N.W.2d 318 (2017).

A conspirator recounting past transactions or events having no connection with what is being done in promotion of the common design cannot be assumed to represent those conspirators associated with him or her. State v. Britt, 293 Neb. 381, 881 N.W.2d 818 (2016).

Pursuant to subdivision (4) of this section, the necessary commonality of interests between conspirators is no longer present when the central purpose of the conspiracy has succeeded or failed. State v. Britt, 293 Neb. 381, 881 N.W.2d 818 (2016).

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

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

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

Text messages attributed to the victim were not hearsay where offered to show their effect on the defendant. State v. Wynne, 24 Neb. App. 377, 887 N.W.2d 515 (2016).

Where there was sufficient evidence to establish that the defendant authored the text messages attributed to him, those text messages, which were his own statements, were not hearsay. State v. Wynne, 24 Neb. App. 377, 887 N.W.2d 515 (2016).

Pursuant to subsection (1) of this section, a defendant's mother's utterance to a police officer, asking whether the officer was alone, was not a "statement" under the Nebraska Evidence Rules, was not offered for any truth of any matter, and was therefore not hearsay, in a prosecution for third degree assault on a law enforcement officer and second-offense resisting arrest; the utterance was not an assertion or declaration, but instead was an interrogatory seeking information and not asserting any particular fact. State v. Heath, 21 Neb. App. 141, 838 N.W.2d 4 (2013).

27-802.

The Nebraska Evidence Rules provide that hearsay is admissible when authorized by the statutes of the State of Nebraska. In re Application No. OP-0003, 303 Neb. 872, 932 N.W.2d 653 (2019).

27-803.

ANNOTATIONS

An exhibit composed of printouts from the county treasurer's official website and a letter from the treasurer setting forth the amount of delinquent taxes for a property, along with pages showing the tax billed each year, the tax paid, and the interest paid, fit within the business record exception to hearsay. AVG Partners I v. Genesis Health Clubs, 307 Neb. 47, 948 N.W.2d 212 (2020).

Pretrial notice of an intent to admit evidence under the residual hearsay exception is mandatory, and an adverse party's knowledge of a statement is not enough to satisfy the notice requirement. State v. Martinez, 306 Neb. 516, 946 N.W.2d 445 (2020).

Testimony by an examining physician concerning a 10-year-old victim's diagnoses was admissible pursuant to the hearsay exception governing medical diagnosis or treatment, where the physician testified that she learned of the diagnoses while conducting a patient interview for the purpose of treating the victim during a visit to the emergency room following the underlying incident. The physician further testified that obtaining a patient history was an important part of her job and that she attempted to obtain a medical history from every patient she treated. State v. Dady, 304 Neb. 649, 936 N.W.2d 486 (2019).

A sexual assault victim's statements to a sexual assault nurse examiner during an examination performed in an emergency room and to a doctor performing a followup examination that the defendant sexually abused her were admissible under the medical purpose hearsay exception. State v. Mora, 298 Neb. 185, 903 N.W.2d 244 (2017).

Statements made by a child victim of sexual assault to a forensic interviewer with a dual medical and investigatory purpose were admissible under subdivision (3) of this section when the forensic interviewer was in the chain of medical care and circumstantial evidence permitted an inference that the statements were made in legitimate and reasonable contemplation of medical diagnosis or treatment. State v. Jedlicka, 297 Neb. 276, 900 N.W.2d 454 (2017).

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

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

Subdivision (5)(b) of this section, on its face, does not apply to criminal proceedings. State v. Walker, 29 Neb. App. 292, 953 N.W.2d 65 (2020).

A child sexual assault victim's statements to parents were admissible as excited utterances under subdivision (1) of this section. State v. Edwards, 28 Neb. App. 893, 949 N.W.2d 799 (2020).

Pursuant to subdivision (3) of this section, a child sexual assault victim's statements, as relayed to a doctor by a forensic examiner and testified to by the doctor, were admissible even though they were double hearsay because each part of the combined statements conformed with an exception to the hearsay rule. State v. Edwards, 28 Neb. App. 893, 949 N.W.2d 799 (2020).

Pursuant to subdivision (3) of this section, statements made by a child victim of sexual abuse to a forensic interviewer in the chain of medical care may be admissible even though the interview has the partial purpose of assisting law enforcement. State v. Edwards, 28 Neb. App. 893, 949 N.W.2d 799 (2020).

Statements having a dual medical and investigatory purpose are admissible under subdivision (3) of this section only if the proponent of the statements demonstrates that (1) the declarant's purpose in making the statements was to assist in the provision of medical diagnosis or treatment and (2) the statements were of a nature reasonably pertinent to medical diagnosis or treatment by a medical professional. State v. Edwards, 28 Neb. App. 893, 949 N.W.2d 799 (2020).

Subdivision (3) of this section is based on the notion that a person seeking medical attention will give a truthful account of the history and current status of his or her condition in order to ensure proper treatment. State v. Edwards, 28 Neb. App. 893, 949 N.W.2d 799 (2020).

Under subdivision (3) of this section, the appropriate state of mind of the declarant may be reasonably inferred from the circumstances; such a determination is necessarily fact specific. State v. Edwards, 28 Neb. App. 893, 949 N.W.2d 799 (2020).

Under subdivision (3) of this section, the fundamental inquiry when considering a declarant's intent is whether the statement was made in legitimate and reasonable contemplation of medical diagnosis or treatment. State v. Edwards, 28 Neb. App. 893, 949 N.W.2d 799 (2020).

Under subdivision (3) of this section, a statement is generally considered admissible under the medical purpose hearsay exception if gathered for dual medical and investigatory purposes, as long as the statement, despite its dual purpose, was made in legitimate and reasonable contemplation of medical diagnosis and treatment. State v. Cheloha, 25 Neb. App. 403, 907 N.W.2d 317 (2018).

27-804.

Pursuant to subdivision (2)(c) of this section, a trial court cannot rely simply on the State's assurances of unavailability or on the declarant's invocation of the privilege against self-incrimination and the failure to call the declarant to testify as a result. Instead, before a declarant may be excused as unavailable based on a claim of privilege, the declarant must appear at trial, assert the privilege, and have that assertion approved by the trial judge. In addition, the witness must be exempted from testifying by a ruling of the court. State v. Britt, 293 Neb. 381, 881 N.W.2d 818 (2016).

Whether a particular remark within a larger narrative is truly self-inculpatory—such that a reasonable person would make the statement only if believed to be true—is a fact-intensive inquiry requiring careful examination of all the circumstances surrounding the criminal activity involved. When considering statements of a mixed nature, the question is whether the statements have a net exculpatory versus net inculpatory effect. State v. Britt, 293 Neb. 381, 881 N.W.2d 818 (2016).

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

27-805.

A child sexual assault victim's statements, as relayed to a doctor by a forensic examiner and testified to by a doctor, were admissible even though they were double hearsay because each part of the combined statements conformed with an exception to the hearsay rule. State v. Edwards, 28 Neb. App. 893, 949 N.W.2d 799 (2020).

27-901.

A chief financial officer's testimony about exhibits satisfied the authentication requirement by providing sufficient information to show that the documents were what they purported to be. AVG Partners I v. Genesis Health Clubs, 307 Neb. 47, 948 N.W.2d 212 (2020).

The identity of a participant in a telephone conversation may be established by circumstantial evidence, such as the circumstances preceding or following the telephone conversation. State v. Burries, 297 Neb. 367, 900 N.W.2d 483 (2017).

This section requires authentication or identification of evidence sufficient to support a finding that a matter is what the proponent claims as a condition precedent for admission. But authentication or identification under this section is not a high hurdle. A proponent is not required to conclusively prove the genuineness of the evidence or to rule out all possibilities inconsistent with authenticity. If the evidence is sufficient to support a finding that the evidence is what it purports to be, the rule is satisfied. State v. Burries, 297 Neb. 367, 900 N.W.2d 483 (2017).

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

If the proponent's showing is sufficient to support a finding that the evidence is what it purports to be, the proponent has satisfied the requirement of this section. State v. Wynne, 24 Neb. App. 377, 887 N.W.2d 515 (2016).

This section does not impose a high hurdle for authentication or identification. State v. Wynne, 24 Neb. App. 377, 887 N.W.2d 515 (2016).

Where evidence showed that the defendant used his cell phone during the month of the murder; that in the period prior to the murder, there was contact between the cell phone attributed to the defendant and the telephone numbers of various family members and the defendant's girlfriend; that there was no evidence to suggest that anyone other than the defendant was using the cell phone in question at the time of the murder; that the content of the text messages and sequence of subsequent call contacts between the cell phone attributed to the defendant and the victim's cell phone were consistent with the timeline established for the murder; and that all outgoing contacts by the cell phone attributed to the defendant ceased just shortly before the murder occurred, the trial court did not abuse its discretion in overruling the defendant's objections with respect to his authorship of the text messages attributed to him. State v. Wynne, 24 Neb. App. 377, 887 N.W.2d 515 (2016).

27-902.

While not a high hurdle, it is still the burden of the proponent of the evidence to provide the court with sufficient evidence that the document or writing is what it purports to be. VKGS v. Planet Bingo, 309 Neb. 950, 962 N.W.2d 909 (2021).

27-1002.

By its terms, this section applies to proof of the contents of a recording. Chevalier v. Metropolitan Util. Dist., 24 Neb. App. 874, 900 N.W.2d 565 (2017).

The best evidence rule is a rule of preference for the production of the original of a writing, recording, or photograph when the contents of the item are sought to be proved. Chevalier v. Metropolitan Util. Dist., 24 Neb. App. 874, 900 N.W.2d 565 (2017).

The purpose of the best evidence rule is the prevention of fraud, inaccuracy, mistake, or mistransmission of critical facts contained in a writing, recording, or photograph when its contents are an issue in a proceeding. Chevalier v. Metropolitan Util. Dist., 24 Neb. App. 874, 900 N.W.2d 565 (2017).

The best evidence rule, also known as the original document rule, states that the original writing, recording, or photograph is required to prove the content of that writing, recording, or photograph. Flodman v. Robinson, 22 Neb. App. 943, 864 N.W.2d 716 (2015).

28-105.

The nonretroactive provision of subsection (7) of this section applies to the changes made by 2015 Neb. Laws, L.B. 605, to penalties for Class IV felony convictions under section 29-2204.02. State v. Benavides, 294 Neb. 902, 884 N.W.2d 923 (2016).

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

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

A defendant's sentence on a Class IIIA felony needed to be an indeterminate sentence pursuant to subsection (4) of section 29-2204.02, because the defendant was also sentenced on Class II felonies. State v. Wells, 28 Neb. App. 118, 940 N.W.2d 847 (2020).

Under subsection (2) of this section, sentences of less than 1 year shall be served in the county jail, whereas sentences of 1 year or more for Class IIIA felonies shall be served in institutions under the jurisdiction of the Department of Correctional Services. State v. Minnick, 22 Neb. App. 907, 865 N.W.2d 117 (2015).

28-105.02.

A sentence of 70 years' to life imprisonment was not excessive or a de facto life sentence for an offender who, at age 14, murdered his younger sister. State v. Thieszen, 300 Neb. 112, 912 N.W.2d 696 (2018).

A sentence of 110 to 126 years' imprisonment for a murder committed at age 17 was not excessive or a de facto life sentence; the court considered the relevant sentencing factors along with the offender's youth and attendant characteristics and the fact that the offender would be eligible for parole at age 72. State v. Russell, 299 Neb. 483, 908 N.W.2d 669 (2018).

The defendant's resentencing of 60 to 80 years' imprisonment with credit for time served for murder committed as a juvenile offender did not violate Miller v. Alabama, 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012), where the defendant was not sentenced to life imprisonment without parole and instead had the opportunity for parole in just under 14 years, a full mitigation hearing was held before his sentencing at which both the State and the defendant were given an opportunity to present evidence, and the court stated that it had to consider the fact that a jury convicted the defendant of murder in the first degree but also had to consider the mitigating factors under this section, as well as a psychological evaluation. State v. Jackson, 297 Neb. 22, 899 N.W.2d 215 (2017).

28-106.

A determinate sentence, as used in subsection (2) of this section, is imposed when the defendant is sentenced to a single term of years. State v. Vanness, 300 Neb. 159, 912 N.W.2d 736 (2018).

A defendant's sentences on various misdemeanors needed to be indeterminate sentences pursuant to subsection (5) of section 29-2204.02, because the defendant was also sentenced on Class II felonies. State v. Wells, 28 Neb. App. 118, 940 N.W.2d 847 (2020).

28-109.

Under this section, "serious bodily injury" means bodily injury which involves a (1) substantial risk of death, (2) substantial risk of serious permanent disfigurement, or (3) protracted loss or impairment of the function of any part or organ of the body. State v. Williams, 306 Neb. 261, 945 N.W.2d 124 (2020).

The record supported that a shoulder injury was a serious bodily injury where the victim had to be anesthetized twice in emergency room before the dislocated shoulder could be put back into place, was administered pain medication, required physical therapy and subsequent shoulder surgery, was placed on light-duty work after the injury, and was not yet fully healed at the time of testimony. State v. Kearns, 29 Neb. App. 648, 956 N.W.2d 739 (2021).

28-111.

The phrase "because of" requires the State to prove some causal connection between the victim's association with a person of a certain sexual orientation and the criminal act. State v. Duncan, 293 Neb. 359, 878 N.W.2d 363 (2016).

28-116.

The nonretroactive provision of section 28-105(7) applies to the changes made by 2015 Neb. Laws, L.B. 605, to penalties for Class IV felony convictions under section 29-2204.02. State v. Benavides, 294 Neb. 902, 884 N.W.2d 923 (2016).

28-201.

First degree assault and attempted voluntary manslaughter are two distinct offenses. First degree assault requires serious bodily injury to occur, and attempted voluntary manslaughter does not require any injury to occur. State v. Smith, 294 Neb. 311, 883 N.W.2d 299 (2016).

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

28-202.

Pursuant to subsection (1) of this section, a conviction requires only that an agreement for the commission of a criminal act was entered into and an overt act in furtherance of the conspiracy was committed. State v. Theisen, 306 Neb. 591, 946 N.W.2d 677 (2020).

28-205.

There is no requirement that the underlying felony referred to in this section be committed in Nebraska. State v. Schiesser, 24 Neb. App. 407, 888 N.W.2d 736 (2016).

28-303.

A question of premeditation is for the jury to decide. State v. Cotton, 299 Neb. 650, 910 N.W.2d 102 (2018).

Under subdivision (1) of this section, the three elements which the State must prove beyond a reasonable doubt to obtain a conviction for first degree murder are as follows: The defendant (1) killed another person, (2) did so purposely, and (3) did so with deliberate and premeditated malice. State v. Cotton, 299 Neb. 650, 910 N.W.2d 102 (2018).

28-305.

First degree assault and attempted voluntary manslaughter are two distinct offenses. First degree assault requires serious bodily injury to occur, and attempted voluntary manslaughter does not require any injury to occur. State v. Smith, 294 Neb. 311, 883 N.W.2d 299 (2016).

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

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

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

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

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

28-306.

Just as in the context of habitual criminal and driving under the influence sentence enhancements, evidence of a prior conviction must be introduced in order to enhance a sentence for motor vehicle homicide. State v. Valdez, 305 Neb. 441, 940 N.W.2d 840 (2020).

28-308.

First degree assault and attempted voluntary manslaughter are two distinct offenses. First degree assault requires serious bodily injury to occur, and attempted voluntary manslaughter does not require any injury to occur. State v. Smith, 294 Neb. 311, 883 N.W.2d 299 (2016).

Malice is not an element of first degree assault, and, as such, "sudden quarrel" would not be applicable to negate it. State v. Smith, 294 Neb. 311, 883 N.W.2d 299 (2016).

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

28-309.

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

28-311.02.

Evidence was insufficient to support a finding that an alleged harasser's behavior fit the statutory definition of a harassing "course of conduct" as defined by subdivision (2)(b) of this section, where the incident between the alleged

harasser and the alleged victims occurred within a span of 10 to 20 minutes on one particular day, and there was no evidence of harassment prior to or after the incident. Knopik v. Hahn, 25 Neb. App. 157, 902 N.W.2d 716 (2017).

Nebraska's stalking and harassment statutes are given an objective construction, and the victim's experience resulting from the perpetrator's conduct should be assessed on an objective basis. Glantz v. Daniel, 21 Neb. App. 89, 837 N.W.2d 563 (2013).

28-311.09.

"[A]ppear," as it is found in subdivision (8)(b) of this section, is not narrowly confined to require the presence of a respondent in person. Rather, it is the same as any other "appearance" in court. Weatherly v. Cochran, 301 Neb. 426, 918 N.W.2d 868 (2018).

Under this section, a respondent is entitled to appear by and through his or her counsel. Weatherly v. Cochran, 301 Neb. 426, 918 N.W.2d 868 (2018).

This section was amended operative January 1, 2020, and now provides that the petition and affidavit shall be deemed to have been offered into evidence at any show cause hearing, and the petition and affidavit shall be admitted into evidence unless specifically excluded by the court; this was a substantive amendment and therefore was not applicable to the pending case. Prentice v. Steede, 28 Neb. App. 423, 944 N.W.2d 323 (2020).

When a trial court determines an ex parte temporary harassment protection order is not warranted, an evidentiary hearing is not mandated under the harassment protection order statute as it is under the domestic abuse protection order statute. In harassment protection order proceedings, a trial court has the discretion to direct a respondent to show cause why an order should not be entered or, alternatively, the court can dismiss the petition if insufficient grounds have been stated in the petition and affidavit. Rosberg v. Rosberg, 25 Neb. App. 856, 916 N.W.2d 62 (2018).

The court erred in finding sufficient evidence to support issuance of harassment protection orders because the alleged harasser had not engaged in the type of stalking offense for which this section provides relief, where the incident between the alleged harasser and the alleged victims occurred within a span of 10 to 20 minutes on one particular day, and there was no evidence of harassment prior to or after the incident. Knopik v. Hahn, 25 Neb. App. 157, 902 N.W.2d 716 (2017).

The 5-day time requirement specified in this section for requesting a hearing is not essential to accomplishing the main objective of Nebraska's stalking and harassment statutes. Glantz v. Daniel, 21 Neb. App. 89, 837 N.W.2d 563 (2013).

The requirement in this section to request a hearing within 5 days of service of the ex parte order is directory rather than mandatory. Glantz v. Daniel, 21 Neb. App. 89, 837 N.W.2d 563 (2013).

28-311.11.

A party seeking a sexual assault protection order must prove a sexual assault offense by a preponderance of the evidence. S.B. v. Pfeifler, 26 Neb. App. 448, 920 N.W.2d 851 (2018).

28-313.

The victim's ability to effectuate an escape despite being bound and gagged does not equate with a voluntary release under subsection (3) of this section. State v. Betancourt-Garcia, 295 Neb. 170, 887 N.W.2d 296 (2016).

28-318.

"[C]oercion," under subdivision (8)(a)(i) of this section, includes nonphysical force. State v. McCurdy, 301 Neb. 343, 918 N.W.2d 292 (2018).

Sufficient evidence existed to establish sexual contact when the defendant touched the buttocks of a 12-year-old girl over her clothing on multiple occasions, coupled with the defendant's position of authority over the victim, his knowledge of her "tough" upbringing, and his watching pornography immediately after touching the victim on one occasion. State v. Cheloha, 25 Neb. App. 403, 907 N.W.2d 317 (2018).

Under subdivision (5) of this section, sexual contact means the intentional touching of the victim's sexual or intimate parts or the intentional touching of the victim's clothing covering the immediate area of the victim's sexual

or intimate parts, and it includes only such conduct which can be reasonably construed as being for the purpose of sexual arousal or gratification of either party. State v. Cheloha, 25 Neb. App. 403, 907 N.W.2d 317 (2018).

28-319.

Evidence was sufficient to support a conviction for first degree sexual assault where the victim testified she did not consent to having sex with anyone on the night of her party, an attendee at the party testified that the defendant said he had sex with the victim, and there was abundant testimony about the victim's intoxication. State v. Guzman, 305 Neb. 376, 940 N.W.2d 552 (2020).

Subdivision (1)(b) of this section applies to a wide array of situations that affect a victim's capacity, including age. State v. Dady, 304 Neb. 649, 936 N.W.2d 486 (2019).

The definition of "mentally incapable" could have been excluded from the court's instructions, as the language of subdivision (1)(b) of this section is sufficiently clear that a definitional instruction would not normally be necessary. State v. Dady, 304 Neb. 649, 936 N.W.2d 486 (2019).

The evidence was sufficient to support a finding that a 10-year-old victim was incapable of appraising the nature of sexual conduct where the expert testimony provided an explanation of the brain capacities and reasoning abilities of a normal 10-year-old child and opined that the victim appeared to be a normally developed 10-year-old child. State v. Dady, 304 Neb. 649, 936 N.W.2d 486 (2019).

The trial court's ambiguous instruction was harmless error because the potential ambiguity did not in fact mislead the jury, because the instructions taken as a whole, combined with the evidence and arguments presented at trial, clarified the ambiguity of "because of the victim's age" such that the jury understood "age" in this context to be a subjective review of the victim's developmental age. State v. Dady, 304 Neb. 649, 936 N.W.2d 486 (2019).

Under subdivision (1)(b) of this section, whether the victim was incapable of consent depends upon a specific inquiry into the victim's capacity, i.e., whether the victim was mentally or physically incapable of resisting or appraising the nature of his or her conduct. State v. Dady, 304 Neb. 649, 936 N.W.2d 486 (2019).

Using the phrase "because of the victim's age" to preface the term "mentally incapable" is ambiguous as to whether age can be the sole basis for a finding that the victim was mentally incapable, without an individualized assessment of the victim's maturity. State v. Dady, 304 Neb. 649, 936 N.W.2d 486 (2019).

The victim's lack of consent is not an element of the crime of sexual assault when the victim is incapable of resisting or appraising the nature of his or her conduct. In re Interest of K.M., 299 Neb. 636, 910 N.W.2d 82 (2018).

To prove a lack-of-capacity sexual assault on the basis of a mental impairment, the State must prove beyond a reasonable doubt that the victim's impairment was so severe that he or she was mentally incapable of resisting or mentally incapable of appraising the nature of the sexual conduct with the alleged perpetrator. In re Interest of K.M., 299 Neb. 636, 910 N.W.2d 82 (2018).

Consent is not relevant and the State need not prove lack of consent for a charge under subdivision (1)(c) of this section. State v. Cramer, 28 Neb. App. 469, 945 N.W.2d 222 (2020).

28-319.01.

The age classifications of the victim in subdivision (1)(a) of this section are rationally related to plausible policy reasons considered by lawmakers, including the concern of protecting young people. The relationship of the classifications to legislative goals was not so attenuated as to render the distinction arbitrary or irrational, and it does not violate the Equal Protection Clause of the 14th Amendment of the Constitution of the United States or article I, sec. 3, of the Nebraska Constitution. State v. Hibler, 302 Neb. 325, 923 N.W.2d 398 (2019).

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

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

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

28-320.01.

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

28-322.04.

Under this section, the word "subject" means to cause to undergo the action of something specified. State v. Wood, 296 Neb. 738, 895 N.W.2d 701 (2017).

28-323.

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

28-324.

To find the element of taking "by putting in fear" under this section, the finder of fact must determine from the context established by the evidence whether the defendant's conduct would have placed a reasonable person in fear. State v. Garcia, 302 Neb. 406, 923 N.W.2d 725 (2019).

Evidence of a principal's intent to steal drugs from an undercover officer who had just purchased them from him was sufficient to support the defendant's conviction for aiding and abetting robbery; the principal told the officer to give him the drugs back, the officer refused at first and tried to leave, the principal took the money out of his pocket and insisted that the officer take his money back and give the drugs to the principal, the officer ultimately gave the drugs to the principal and took his money back, the officer felt threatened during the incident and felt that he had no choice but to give the drugs to the principal, and the principal had no right to the drugs after the transaction was complete. State v. Burbach, 20 Neb. App. 157, 821 N.W.2d 215 (2012).

For purposes of the robbery statute, "stealing" has commonly been described as taking without right or leave with intent to keep wrongfully; the focus of the statute is on the intent to deprive the owner of his or her property permanently, to keep it from him or her. State v. Burbach, 20 Neb. App. 157, 821 N.W.2d 215 (2012).

28-353.

This section does not limit family caregiver status to an order of court or express or implied contract. This section also includes reference to any person who has assumed responsibility for the care of a vulnerable adult voluntarily. State v. Boyd, 28 Neb. App. 874, 949 N.W.2d 540 (2020).

28-386.

The term "neglected" as used in subdivision (1)(f) of this section includes an act or omission. State v. Boyd, 28 Neb. App. 874, 949 N.W.2d 540 (2020).

28-518.

When items are stolen simultaneously from the same location, only one theft has occurred and the value of the items should be aggregated to determine the grade of the offense. State v. Sierra, 305 Neb. 249, 939 N.W.2d 808 (2020).

Where a jury found that the defendant unlawfully took multiple items, the jury's finding that the defendant did not take the items "pursuant to one scheme or course of conduct" did not require that the defendant be found not guilty. State v. Duncan, 294 Neb. 162, 882 N.W.2d 650 (2016).

Whether the theft of multiple items was "taken pursuant to one scheme or course of conduct" is not an essential element of a theft offense; instead, whether the items were "taken pursuant to one scheme or course of conduct" is relevant to the determination of whether the value of the items taken could be aggregated for purposes of grading the offense. State v. Duncan, 294 Neb. 162, 882 N.W.2d 650 (2016).

The defendant's prior two convictions for theft by shoplifting could be used to enhance his third conviction for theft by shoplifting, although the prior two convictions occurred before subsection (4) of this section was amended

by 2015 Neb. Laws, L.B. 605, to increase the maximum value of the thing involved, since the defendant's third conviction would have been classified under subsection (4) under either the old or the new version of this subsection. State v. Sack, 24 Neb. App. 721, 897 N.W.2d 317 (2017).

28-520.

The plain language of "knowing" in subdivision (1)(a) of this section, in the context of entering any building or occupied structure "knowing that he or she is not licensed or privileged to do so," imposes a subjective standard focused on the accused's actual knowledge. State v. Stanko, 304 Neb. 675, 936 N.W.2d 353 (2019).

28-522.

A person entering premises open to the public has not "complied with all lawful conditions imposed on access to or remaining in the premises" pursuant to subdivision (2) of this section if he or she has been lawfully barred from the premises and the business has not reinstated its implied consent to entry. State v. Stanko, 304 Neb. 675, 936 N.W.2d 353 (2019).

28-636.

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

28-638.

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

28-706.

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

28-707.

To convict a defendant of knowing and intentional child abuse resulting in death, the State must prove the defendant knowingly and intentionally caused or permitted the child to be abused in one or more of the ways defined in subsection (1) of this section, and also must prove the offense resulted in the child's death. It is not necessary to prove the defendant intended the abuse to result in the child's death. State v. Montoya, 304 Neb. 96, 933 N.W.2d 558 (2019).

Criminal endangerment in subsection (1) of this section, providing that a "person commits child abuse if he or she knowingly, intentionally, or negligently causes or permits a minor child to be . . . [p]laced in a situation that endangers his or her life or physical or mental health," encompasses not only conduct directed at the child, but also conduct that presents the likelihood of injury due to the child's having been placed in a situation caused by the defendant's conduct. State v. Ferguson, 301 Neb. 697, 919 N.W.2d 863 (2018).

Criminal endangerment in subsection (1)(a) of this section encompasses not only conduct directed at the child but also conduct which presents the likelihood of injury due to the child's having been placed in a situation caused by the defendant's conduct. State v. Mendez-Osorio, 297 Neb. 520, 900 N.W.2d 776 (2017).

The State is not required to prove a minor child was in the exclusive care or custody of the defendant when the child abuse occurred. State v. Olbricht, 294 Neb. 974, 885 N.W.2d 699 (2016).

This section only requires proof of the status of the victim as a minor child; it does not require proof of the victim's actual identity or birth date. State v. Thomas, 25 Neb. App. 256, 904 N.W.2d 295 (2017).

Under subsection (2) of this section, the statutory privilege between patient and professional counselor is not available in a prosecution for child abuse. State v. McMillion, 23 Neb. App. 687, 875 N.W.2d 877 (2016).

28-716.

The immunity provision set forth in this section which relates to mandatory reporting of suspected child abuse or neglect does not prohibit the juvenile court from acquiring jurisdiction of juveniles determined to be within the meaning of section 43-247(3)(a), even when such reporting is made by the parent of the subject juvenile(s). In re Interest of B.B. et al., 29 Neb. App. 1, 951 N.W.2d 526 (2020).

28-813.01.

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

28-831.

A defendant's knowledge of the victim's age is not an essential element of the offense of sex trafficking of a minor. State v. Swindle, 300 Neb. 734, 915 N.W.2d 795 (2018).

28-833.

Where a prosecution involves a minor child rather than a decoy, a defendant's knowledge that the recipient is under age 16 is an element of the crime of enticement by electronic communication device. State v. Paez, 302 Neb. 676, 925 N.W.2d 75 (2019).

28-901.

A police chief's failure to forward, in accordance with section 29-424, to the county attorney a citation charging a city employee with a crime in order to prevent the city employee's employment from being terminated was obstructing government operations as set forth in subsection (1) of this section. The police chief obstructed or impaired a governmental function by failing to forward the citation to the county attorney, as required by section 29-424, because the action of failing to forward the citation impaired the county attorney's performance of its prosecutorial functions. The police chief did not have discretion to remove the citation of the city employee from the packet of citations to be sent to the county attorney such to conclude that he did not breach section 29-424. State v. Wilkinson, 293 Neb. 876, 881 N.W.2d 850 (2016).

28-905.

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

An attempt to arrest or cite the defendant is an essential element of the offense of fleeing in a motor vehicle to avoid arrest. State v. Armagost, 22 Neb. App. 513, 856 N.W.2d 156 (2014).

28-906.

"Interference" means the action or fact of interfering or intermeddling (with a person, et cetera, or in some action). State v. Ferrin, 305 Neb. 762, 942 N.W.2d 404 (2020).

It is not necessary under this section for a defendant to engage in some sort of physical act. State v. Ferrin, 305 Neb. 762, 942 N.W.2d 404 (2020).

"Obstacle" means something that stands in the way or that obstructs progress (literal and figurative); a hindrance, impediment, or obstruction. State v. Ferrin, 305 Neb. 762, 942 N.W.2d 404 (2020).

To show a violation of this section, the State must prove that (1) the defendant intentionally obstructed, impaired, or hindered either a peace officer, a judge, or a police animal assisting a peace officer; (2) at the time the defendant did so, the peace officer or judge was acting under color of his or her official authority to enforce the penal law or preserve the peace; and (3) the defendant did so by using or threatening to use either violence, force, physical interference, or obstacle. State v. Ferrin, 305 Neb. 762, 942 N.W.2d 404 (2020).

28-907.

The defendant's allegedly false statements to the 911 emergency dispatch service concerning crimes being committed at a certain address were made to a peace officer for purposes of the criminal statute prohibiting false

reporting of a criminal matter; although the 911 emergency dispatch service was not a branch of law enforcement, it acted as an intermediary used by the general public to reach peace officers, and statements made to the emergency dispatch service were made with the intent to summon a law enforcement officer to that address. State v. Halligan, 20 Neb. App. 87, 818 N.W.2d 650 (2012).

28-919.

A defendant's reasons for attempting to induce a witness to commit any of the acts enumerated in this section are not relevant. State v. Benson, 305 Neb. 949, 943 N.W.2d 426 (2020).

Evidence was sufficient to support a conviction for tampering with a witness, where after the victim reported that she was sexually assaulted, the defendant relayed a message asking the victim to drop the charges; by doing so, the defendant essentially asked the victim to inform falsely or to withhold information. State v. Guzman, 305 Neb. 376, 940 N.W.2d 552 (2020).

28-930.

Pepper spray is a dangerous instrument, as it is an object which, because of its nature and the manner and intention of its use, is capable of inflicting bodily injury. State v. Simmons, 23 Neb. App. 462, 872 N.W.2d 293 (2015).

28-932.

The use of a deadly or dangerous weapon in the commission of an assault by a confined person is an element of the offense which must be submitted to the jury and proved beyond a reasonable doubt, because the use of a weapon increases the offense of assault by a confined person from a Class IIIA felony to a Class IIA felony. State v. Jenkins, 28 Neb. App. 931, 950 N.W.2d 124 (2020).

28-1201.

Given the amendment to section 28-1202 and the amendment to the term "knife" as defined in subsection (5) of this section, any knife with a blade over 3 1/2 inches in length is a deadly weapon per se, and the manner or intended use of such deadly weapon is not an element of the crime charged. State v. Nguyen, 293 Neb. 493, 881 N.W.2d 566 (2016).

28-1202.

A weapon is concealed on or about the person if it is concealed in such proximity to the passenger of a motor vehicle as to be convenient of access and within immediate physical reach. State v. Warlick, 308 Neb. 656, 956 N.W.2d 269 (2021).

Constructive possession does not establish the elements of this section of "carry[ing] a concealed weapon 'on or about his or her person.'" State v. Warlick, 308 Neb. 656, 956 N.W.2d 269 (2021).

Evidence that a machete was "tucked down by the center console" area of a vehicle and that an officer did not see it when he looked in the vehicle was sufficient to support a conviction for carrying a concealed weapon. State v. Lowman, 308 Neb. 482, 954 N.W.2d 905 (2021).

Given the amendment to this section and the amendment to the term "knife" as defined in section 28-1201(5), any knife with a blade over 3 1/2 inches in length is a deadly weapon per se, and the manner or intended use of such deadly weapon is not an element of the crime charged. State v. Nguyen, 293 Neb. 493, 881 N.W.2d 566 (2016).

28-1204.05.

The prohibition on possessing firearms in this section is not punishment imposed for a prior juvenile adjudication. In re Interest of Zoie H., 304 Neb. 868, 937 N.W.2d 801 (2020).

28-1205.

Malice is not an element of first degree assault, and, as such, "sudden quarrel" would not be applicable to negate it. A similar rationale applies to use of a deadly weapon to commit a felony, which does not have malice as an element. State v. Smith, 294 Neb. 311, 883 N.W.2d 299 (2016).

Under subsection (3) of this section, only those crimes defined in this section are treated as distinct offenses from the felony committed, and only the sentences imposed under this section are required to be consecutive to any other sentence imposed. State v. Elliott, 21 Neb. App. 962, 845 N.W.2d 612 (2014).

28-1206.

In the sufficiency of evidence context, the State is not required to prove that a defendant charged with violating this section had or waived counsel at the time of a prior conviction as an essential element of the crime. State v. Vann, 306 Neb. 91, 944 N.W.2d 503 (2020).

To prove that a defendant has a prior felony conviction in a felon in possession case, convictions obtained after *Gideon v. Wainwright*, 372 U.S. 335, 83 S. Ct. 792, 9 L. Ed. 2d 799 (1963), are entitled to a presumption of regularity such that records of conviction are admissible, unless the defendant can show that he or she did not have or waive counsel at the time of conviction. State v. Vann, 306 Neb. 91, 944 N.W.2d 503 (2020).

Statute prohibiting felon from possessing a firearm includes purchase and possession of antique firearm. State v. Tharp, 22 Neb. App. 454, 854 N.W.2d 651 (2014).

28-1212.03.

The absence of an intent to restore a firearm to the owner is a material element of possession of a stolen firearm and must be instructed to the jury. State v. Mann, 302 Neb. 804, 925 N.W.2d 324 (2019).

The use of the term "deprive" in a separate definition within the jury instructions does not instruct the jury that the absence of an intent to restore the property was a material element of the crime. State v. Mann, 302 Neb. 804, 925 N.W.2d 324 (2019).

28-1322.

A school security officer or campus supervisor may be a victim of disturbing the peace. In re Interest of Elainna R., 298 Neb. 436, 904 N.W.2d 689 (2017).

28-1407.

A defense under this section, otherwise known as the choice of evils justification, was not available to a defendant who left the scene of an injury accident to allegedly prevent loss to the cattle he was hauling in his semi-truck, where there was no allegation that the defendant intentionally collided with a motorist in an attempt to save the cattle in his trailer, and the defendant's act of leaving the scene was not done with force. State v. Schmaltz, 304 Neb. 74, 933 N.W.2d 435 (2019).

The justification or choice of evils defense statute specifies that conduct which the actor believes to be necessary to avoid a harm or evil to himself or to another is justifiable if the harm or evil sought to be avoided by such conduct is greater than that sought to be prevented by the law defining the offense charged and mandates that a legislative purpose to exclude the justification claimed not otherwise plainly appear. State v. Beal, 21 Neb. App. 939, 846 N.W.2d 282 (2014).

28-1408.

While the violation of department policy may be evidence that the degree or nature of force used was unlawful, section 28-1413 ultimately requires the court to make a determination that the force used was not forbidden by this section or section 28-1409. State v. Jackson, 26 Neb. App. 727, 923 N.W.2d 97 (2019).

28-1409.

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

While the violation of department policy may be evidence that the degree or nature of force used was unlawful, section 28-1413 ultimately requires the court to make a determination that the force used was not forbidden by section 28-1408 or this section. State v. Jackson, 26 Neb. App. 727, 923 N.W.2d 97 (2019).

When one is attacked within one's dwelling, the right to defend oneself and the privilege of nonretreat should apply equally, regardless of whether the attacker is a cohabitant or an unlawful entrant. State v. White, 20 Neb. App. 116, 819 N.W.2d 473 (2012).

28-1413.

While the violation of department policy may be evidence that the degree or nature of force used was unlawful, this section ultimately requires the court to make a determination that the force used was not forbidden by section 28-1408 or section 28-1409. State v. Jackson, 26 Neb. App. 727, 923 N.W.2d 97 (2019).

28-1439.01.

Conviction for possession of a controlled substance with intent to deliver was not based solely on the uncorroborated testimony of a cooperating individual, even though some testimony was elicited from two cooperating individuals, where the State provided evidence of text messages that indicated that the defendant was selling methamphetamine, as well as witness testimony from five other noncooperating individuals who generally corroborated the cooperating individuals' testimony. State v. Savage, 301 Neb. 873, 920 N.W.2d 692 (2018).

28-1463.02.

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

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

To determine whether photographs were taken for the purpose of real or simulated overt sexual gratification or sexual stimulation, an appellate court considers the following nonexclusive factors: (1) whether the focal point of the visual depiction is on the child's genitalia or pubic area; (2) whether the setting of the visual depiction is sexually suggestive, i.e., in a place or pose generally associated with sexual activity; (3) whether the child is depicted in an unnatural pose, or in inappropriate attire, considering the age of the child; (4) whether the child is fully or partially clothed, or nude; (5) whether the visual depiction suggests sexual coyness or willingness to engage in sexual activity; and (6) whether the visual depiction is intended or designed to elicit a sexual response in the viewer. State v. Smith, 292 Neb. 434, 873 N.W.2d 169 (2016).

29-119.

Although the victim's parents, and not the victim's sister, were statutorily-defined "victims" under this section, the court did not abuse its discretion in allowing the sister to read her impact statement at sentencing where the parents were elderly, lived out of state, and did not want to participate in the resentencing. State v. Thieszen, 300 Neb. 112, 912 N.W.2d 696 (2018).

29-122.

Voluntary intoxication is not a defense to any criminal offense and shall not be taken into consideration in determining the existence of a mental state that is an element of the criminal offense. State v. Cheloha, 25 Neb. App. 403, 907 N.W.2d 317 (2018).

29-215.

This section is not a venue statute. State v. Warlick, 308 Neb. 656, 956 N.W.2d 269 (2021).

Subsection (2)(d) of this section authorizes law enforcement to make an arrest outside his or her primary jurisdiction pursuant to an interlocal agreement, but there must be evidence that such an agreement exists and that it actually authorizes authority for the arrest. State v. Ohlrich, 20 Neb. App. 67, 817 N.W.2d 797 (2012).

29-411.

Given the facts viewed most favorably to the plaintiff, the defendant officer's statement identifying himself as a sheriff's deputy was insufficient to announce his office and purpose: The officer was dressed in jeans, a sweatshirt, and a ball cap, did not show his badge, displayed a weapon upon entry into the home, and failed to produce a copy

of the warrant before or after his forced entry into the home. Waldron v. Roark, 292 Neb. 889, 874 N.W.2d 850 (2016).

29-424.

A police chief's failure to forward, in accordance with this section, to the county attorney a citation charging a city employee with a crime in order to prevent the city employee's employment from being terminated was obstructing government operations as set forth in section 28-901(1). The police chief obstructed or impaired a governmental function by failing to forward the citation to the county attorney, as required by this section, because the action of failing to forward the citation impaired the county attorney's performance of its prosecutorial functions. The police chief did not have discretion to remove the citation of the city employee from the packet of citations to be sent to the county attorney such to conclude that he did not breach this section. State v. Wilkinson, 293 Neb. 876, 881 N.W.2d 850 (2016).

29-815.

Where there was no clear showing of prejudice, an officer's failure to return a search warrant within the time limit provided by this section was purely a ministerial defect and did not render the warrant invalid. State v. Nolt, 298 Neb. 910, 906 N.W.2d 309 (2018).

29-818.

The presumptive right to possession of seized property may be overcome when superior title in another is shown by a preponderance of the evidence. State v. Ebert, 303 Neb. 394, 929 N.W.2d 478 (2019).

The district court, as the court in which the criminal charge was filed, has exclusive jurisdiction to determine the rights to seized property and the property's disposition. State v. McGuire, 301 Neb. 895, 921 N.W.2d 77 (2018).

Postconviction proceedings are the equivalent of a "trial" for purposes of this section. State v. Buttercase, 296 Neb. 304, 893 N.W.2d 430 (2017).

A car was property seized for the purpose of enforcing criminal laws in the plaintiff's ongoing criminal case; therefore, the car had been and remained to be in the custody of the court in the criminal case. As such, the district court in the plaintiff's separate criminal case continued to have exclusive jurisdiction to determine the rights to the car and the car's disposition. Huff v. Otto, 28 Neb. App. 646, 947 N.W.2d 343 (2020).

A harmonious reading of this section and section 29-819 is that references to jurisdiction in each are to jurisdiction over seized property, not subject matter jurisdiction. Huff v. Otto, 28 Neb. App. 646, 947 N.W.2d 343 (2020).

This section mandates that the seized property is to be kept so long as necessary to make it available as evidence in "any trial." Postconviction proceedings are the equivalent of a "trial" for purposes of this section. Huff v. Otto, 28 Neb. App. 646, 947 N.W.2d 343 (2020).

Where invoked, the grant of "exclusive jurisdiction" under this section gives a criminal trial court exclusive jurisdiction over only two issues: the disposition of seized property and the determination of rights in seized property. Huff v. Otto, 28 Neb. App. 646, 947 N.W.2d 343 (2020).

29-819.

A harmonious reading of this section and section 29-818 is that references to jurisdiction in each are to jurisdiction over seized property, not subject matter jurisdiction. Huff v. Otto, 28 Neb. App. 646, 947 N.W.2d 343 (2020).

29-820.

This section applies only where the exclusive jurisdiction of a court under section 29-818 has not been invoked. State v. McGuire, 301 Neb. 895, 921 N.W.2d 77 (2018).

When criminal proceedings have terminated, the person from whom property was seized is presumed to have a right to its return, and the burden is on the government to show that it has a legitimate reason to retain the property. State v. Dubray, 24 Neb. App. 67, 883 N.W.2d 399 (2016).

29-822.

Absent an exception, a failure to move for the suppression of evidence seized unlawfully waives the objection. State v. Cotton, 299 Neb. 650, 910 N.W.2d 102 (2018).

The intention of this section is that motions to suppress evidence are to be ruled on and finally determined before trial, unless the motion is within the exceptions contained in the statute. State v. Cotton, 299 Neb. 650, 910 N.W.2d 102 (2018).

29-824.

This section provides the State with the specific right of appealing a district court's ruling granting a motion to suppress. State v. Hood, 23 Neb. App. 208, 869 N.W.2d 383 (2015).

29-825.

This section outlines the process for filing with the appellate court an application of review of an order granting a motion to suppress. State v. Hood, 23 Neb. App. 208, 869 N.W.2d 383 (2015).

This section specifically requires the appealing party, not the court reporter, to timely file the relevant documents with the clerk of the appellate court. State v. Hood, 23 Neb. App. 208, 869 N.W.2d 383 (2015).

29-826.

This section gives the district court the authority to establish time limits for the State to file a notice of intent with the clerk of the district court seeking review of an order granting a motion to suppress and to file the application with the appellate court. State v. Hood, 23 Neb. App. 208, 869 N.W.2d 383 (2015).

29-901.

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

29-908.

When a defendant fails to appear for a preliminary hearing on Thursday, and then is arrested on the following Monday, the evidence is sufficient to find that the defendant failed to surrender within 3 days of his or her failure to appear. State v. Hassan, 309 Neb. 644, 962 N.W.2d 210 (2021).

29-1201.

Nebraska's speedy trial statutes also apply to prosecutions commenced by the filing of a complaint in county court. State v. Chapman, 307 Neb. 443, 949 N.W.2d 490 (2020).

29-1207.

For purposes of speedy trial calculation, there is no meaningful distinction between the phrases "period of time" and "period of delay." State v. Coomes, 309 Neb. 749, 962 N.W.2d 510 (2021).

"Good cause" means a substantial reason, one that affords a legal excuse. Good cause is a factual question to be addressed on a case-by-case basis. State v. Coomes, 309 Neb. 749, 962 N.W.2d 510 (2021).

Pursuant to subdivision (4)(c)(i) of this section, the prosecution established a period of delay under the speedy trial statute, because the prosecutor's affidavit demonstrated the need for a continuance due to the unavailability of material witnesses; the prosecutor's exercise of due diligence in obtaining witnesses; and reasonable grounds to believe such evidence will be available at later date. State v. Billingsley, 309 Neb. 616, 961 N.W.2d 539 (2021).

Pursuant to subdivision (4)(c)(ii) of this section, the prosecution established a period of delay under the speedy trial statute, because the prosecutor's affidavit demonstrated the need for additional time to prepare its case because of exceptional circumstances. State v. Billingsley, 309 Neb. 616, 961 N.W.2d 539 (2021).

An excludable period of time under subdivision 4(a) of this section did not occur because the court could not reasonably infer that defendant was incarcerated pending further proceedings. State v. Hernandez, 309 Neb. 299, 959 N.W.2d 769 (2021).

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An excludable period of time under subdivision (4)(d) of this section did not occur because the State failed to prove it made diligent efforts to serve the bench warrant on the defendant while he was not incarcerated in another state. State v. Hernandez, 309 Neb. 299, 959 N.W.2d 769 (2021).

A pending arrest warrant can result in excludable speedy trial time only if the State proves diligent efforts to serve the warrant have been tried and failed. State v. Jennings, 308 Neb. 835, 957 N.W.2d 143 (2021).

To calculate the time for speedy trial purposes, a court must exclude the day the complaint was filed, count forward 6 months, back up 1 day, and then add any time excluded under subsection (4) of this section to determine the last day the defendant can be tried. State v. Chapman, 307 Neb. 443, 949 N.W.2d 490 (2020).

For speedy trial purposes, the calculation of excludable time for a continuance begins the day after the continuance is granted and includes the day on which the continuance ends. State v. Lovvorn, 303 Neb. 844, 932 N.W.2d 64 (2019).

Although amendments to subdivision (4)(b) of this section providing for waiver of speedy trial rights if delay results from a request for continuance were designed to prevent abuse, it does not follow that the waiver set forth therein applies only if the defendant's continuance was in bad faith; such a case-by-case evaluation of subjective intent would be untenable, and this section does not provide for it. State v. Bridgeford, 298 Neb. 156, 903 N.W.2d 22 (2017).

When ruling on a motion for absolute discharge pursuant to section 29-1208, the trial court shall make specific findings of each period of delay excludable under subdivisions (4)(a) to (e) of this section, in addition to the findings under subdivision (4)(f) of this section. Such findings shall include the date and nature of the proceedings, circumstances, or rulings which initiated and concluded each excludable period; the number of days composing each excludable period; and the number of days remaining in which the defendant may be brought to trial after taking into consideration all excludable periods. State v. Lintz, 298 Neb. 103, 902 N.W.2d 683 (2017).

The reason for the defendant's request for a continuance is irrelevant to whether the defendant has waived the statutory right to a speedy trial by requesting a continuance that results in the trial's being rescheduled to a date more than 6 months after the indictment is returned or information filed. State v. Gill, 297 Neb. 852, 901 N.W.2d 679 (2017).

This section does not impose a unitary speedy trial clock on all joined codefendants. The period of delay is determined by first calculating the defendant's speedy trial time absent the codefendant exclusion and then determining the number of days beyond that date that the joint trial is set to begin. State v. Beitel, 296 Neb. 781, 895 N.W.2d 710 (2017).

A Nebraska prisoner sought relief under two different speedy trial statutes, but only section 29-3805, governing intrastate detainers, applied. State v. Kolbjornsen, 295 Neb. 231, 888 N.W.2d 153 (2016).

When the State is statutorily authorized to take an interlocutory appeal from a district court's order granting a defendant's pretrial motion in a criminal case, then such an appeal is an expected and reasonable consequence of the defendant's motion and the time attributable to the appeal, regardless of the course the appeal takes, is properly excluded from speedy trial computation. State v. Hood, 294 Neb. 747, 884 N.W.2d 696 (2016).

This section requires discharge of a defendant whose case has not been tried within 6 months after the filing of the information. State v. Saylor, 294 Neb. 492, 883 N.W.2d 334 (2016).

For cases commenced with a complaint in county court but thereafter bound over to district court, the 6-month statutory speedy trial period does not commence until the filing of the information in district court. State v. Carrera, 25 Neb. App. 650, 911 N.W.2d 849 (2018).

If an information is filed initially in district court, referred to as a "direct information," such filing is treated in the nature of a complaint until a preliminary hearing is held or waived. In the case of a direct information, the day the information is filed for speedy trial act purposes is the day the district court finds probable cause or the day the defendant waives the preliminary hearing. State v. Carrera, 25 Neb. App. 650, 911 N.W.2d 849 (2018).

Pursuant to subdivision (4)(a) of this section, it is presumed that a delay in hearing defense pretrial motions is attributable to the defendant unless the record affirmatively indicates otherwise. A delay due to the appointment of the district court judge to the Nebraska Supreme Court, which caused the case to be reassigned, should be attributable to the defendant's motion to suppress as reasonable delay when there is no evidence of judicial neglect. State v. Carrera, 25 Neb. App. 650, 911 N.W.2d 849 (2018).

ANNOTATIONS

The time between the dismissal of an information and its refiling is not includable, or is tolled, for purposes of the statutory 6-month period. However, any nonexcludable time that passed under the original information is tacked onto any nonexcludable time under the refiled information, if the refiled information alleges the same offense charged in the previously dismissed information. State v. Carrera, 25 Neb. App. 650, 911 N.W.2d 849 (2018).

Unlike the requirement in subsection (4)(f) of this section that any delay be for good cause, conspicuously absent from subsection (4)(a) of this section is any limitation, restriction, or qualification of the time which may be charged to the defendant as a result of the defendant's motions. Rather, the plain terms of subsection (4)(a) exclude all time between the time of the filing of the defendant's pretrial motions and their final disposition, regardless of the promptness or reasonableness of the delay. State v. Johnson, 22 Neb. App. 747, 860 N.W.2d 222 (2015).

A defendant's motion to discharge based on statutory speedy trial grounds constitutes a waiver of that right under subsection (4)(b) of this section where (1) the filing of such motion results in the continuance of a timely trial to a date outside the statutory 6-month period, as calculated on the date the motion to discharge was filed, (2) discharge is denied, and (3) that denial is affirmed on appeal. State v. Fioramonti, 22 Neb. App. 52, 847 N.W.2d 95 (2014).

Subsection (1) of this section requires that every person indicted or informed against for any offense shall be brought to trial within 6 months, unless the 6 months are extended by any period to be excluded in computing the time for trial. State v. Fioramonti, 22 Neb. App. 52, 847 N.W.2d 95 (2014).

The phrase "period of delay," as used in subsection (4) of this section, is synonymous with the phrase "period of time." State v. Fioramonti, 22 Neb. App. 52, 847 N.W.2d 95 (2014).

To calculate the deadline for trial under the speedy trial statutes, a court must exclude the day the State filed the information, count forward 6 months, back up 1 day, and then add any time excluded under subsection (4) of this section. State v. Fioramonti, 22 Neb. App. 52, 847 N.W.2d 95 (2014).

During the period between dismissal of a first information and the filing of a second information which alleges the same charges, the speedy trial time is tolled and the time resumes upon the filing of the second information, including the day of its filing. State v. Florea, 20 Neb. App. 185, 820 N.W.2d 649 (2012).

Pursuant to subsection (4)(a) of this section, the time during which an appeal of a denial of a motion for discharge is pending on appeal is excludable from the speedy adjudication trial clock. In re Interest of Shaquille H., 20 Neb. App. 141, 819 N.W.2d 741 (2012).

Pursuant to subsection (4)(b) of this section, where a juvenile's counsel agrees to reset an adjudication proceeding, such period of delay resulting therefrom is excludable. In re Interest of Shaquille H., 20 Neb. App. 141, 819 N.W.2d 741 (2012).

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

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

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

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

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

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

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

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

29-1208.

If a trial court fails to include the computation as required by State v. Williams, 277 Neb. 133, 761 N.W.2d 514 (2009), in its order on a motion for absolute discharge, the appeal will be summarily remanded to the trial court so that it can prepare the required computation. State v. Lintz, 298 Neb. 103, 902 N.W.2d 683 (2017).

When ruling on a motion for absolute discharge pursuant to this section, the trial court shall make specific findings of each period of delay excludable under section 29-1207(4)(a) to (e), in addition to the findings under section 29-1207(4)(f). Such findings shall include the date and nature of the proceedings, circumstances, or rulings which initiated and concluded each excludable period; the number of days composing each excludable period; and the number of days remaining in which the defendant may be brought to trial after taking into consideration all excludable periods. State v. Lintz, 298 Neb. 103, 902 N.W.2d 683 (2017).

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

29-1209.

A writ of habeas corpus would not issue to permit collateral attack on a sentence for first degree sexual assault and first degree false imprisonment based on an alleged speedy trial violation that the prisoner waived by failing to file a motion for discharge. Jones v. Nebraska Dept. of Corr. Servs., 21 Neb. App. 206, 838 N.W.2d 51 (2013).

29-1301.01.

Two jury instructions read in conjunction with one another correctly instructed the jury that the offenses must have been "committed in this state." Taken as a whole, the instructions as to venue did not relieve the State of its burden to prove the acts were committed in Nebraska, and the defendant was not prejudiced as to necessitate a reversal on these grounds. State v. Lee, 304 Neb. 252, 934 N.W.2d 145 (2019).

29-1301.02.

Two jury instructions read in conjunction with one another correctly instructed the jury that the offenses must have been "committed in this state." Taken as a whole, the instructions as to venue did not relieve the State of its burden to prove the acts were committed in Nebraska, and the defendant was not prejudiced as to necessitate a reversal on these grounds. State v. Lee, 304 Neb. 252, 934 N.W.2d 145 (2019).

29-1407.01.

A hearing on a motion concerning the public disclosure of grand jury documents is a special proceeding. In re Grand Jury of Douglas Cty., 302 Neb. 128, 922 N.W.2d 226 (2019).

An order regarding the public disclosure of grand jury documents is made during a special proceeding. In re Grand Jury of Douglas Cty., 302 Neb. 128, 922 N.W.2d 226 (2019).

In a special proceeding, an order is final and appealable if it affects a substantial right of the aggrieved party. In re Grand Jury of Douglas Cty., 302 Neb. 128, 922 N.W.2d 226 (2019).

29-1418.

Any error in a ruling on a motion to dismiss under subsection (3) of this section based on the sufficiency of evidence before a grand jury is cured by a subsequent finding at trial of guilt beyond a reasonable doubt which is supported by sufficient evidence. State v. Chauncey, 295 Neb. 453, 890 N.W.2d 453 (2017).

29-1602.

The State must endorse a list of witnesses known to it, but it need not highlight a witness' expert status. State v. Figures, 308 Neb. 801, 957 N.W.2d 161 (2021).

29-1607.

In an informal preliminary hearing, it does not violate the Confrontation Clause to rely on out-of-court statements to determine probable cause for purposes of continuing a defendant's pretrial detention. State v. Anderson, 305 Neb. 978, 943 N.W.2d 690 (2020).

29-1808.

Objections to an information or the content of an information should be raised by a motion to quash. State v. Smith, 294 Neb. 311, 883 N.W.2d 299 (2016).

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

29-1816.

County courts have not been given authority to decide motions to transfer to juvenile court in cases in which they lack jurisdiction to try the case. State v. A.D., 305 Neb. 154, 939 N.W.2d 484 (2020).

Pursuant to subsection (2) of this section, alleged juvenile offenders have the ability to move for a transfer of their case from a county or district court to a juvenile court and this motion must be made within 30 days after arraignment unless otherwise permitted by the court for good cause shown. State v. Uhing, 301 Neb. 768, 919 N.W.2d 909 (2018).

Subsection (2) and subdivision (3)(c) of this section provide that an alleged juvenile offender can move for transfer to a juvenile court within 30 days of the juvenile's arraignment and that either the juvenile or the State can appeal an order on the motion within 10 days of its entry. State v. Uhing, 301 Neb. 768, 919 N.W.2d 909 (2018).

Pursuant to subdivision (3)(a) of this section, after considering the evidence and the criteria set forth in section 43-276, the court shall transfer the case to juvenile court unless a sound basis exists for retaining the case in county court or district court. State v. Tyler P., 299 Neb. 959, 911 N.W.2d 260 (2018).

Pursuant to subdivision (3)(b) of this section, the court is required to set forth findings for the reason for its decision. State v. Tyler P., 299 Neb. 959, 911 N.W.2d 260 (2018).

The district court abused its discretion in granting the transfer of two criminal cases to the juvenile court because there was substantial evidence supporting the retention of the cases in the district court for the sake of public safety and societal security, and there was a lack of evidence demonstrating that any further rehabilitation through the juvenile system would be practical and nonproblematical in the limited time left under the juvenile court's jurisdiction. State v. Esai P., 28 Neb. App. 226, 942 N.W.2d 416 (2020).

For matters initiated in the county or district court, a party can move to transfer to the juvenile court pursuant to subsection (3) of this section. State v. Comer, 26 Neb. App. 270, 918 N.W.2d 13 (2018).

The second degree murder and use of a deadly weapon charges filed against a 15-year-old were retained in the district court; the trial court's denial of a motion to transfer to the juvenile court is reviewed for an abuse of discretion. State v. Leroux, 26 Neb. App. 76, 916 N.W.2d 903 (2018).

The statutory amendment providing for interlocutory appeals from an order granting or denying transfer of the case from county or district court to juvenile court became effective August 24, 2017. State v. Leroux, 26 Neb. App. 76, 916 N.W.2d 903 (2018).

29-1817.

A plea in bar may be used to raise a double jeopardy challenge to the State's right to retry a defendant following a mistrial. State v. Combs, 297 Neb. 422, 900 N.W.2d 473 (2017).

29-1819.02.

Where the trial court provided the required advisement of possible immigration consequences, errors by the interpreter in communicating that advisement to the defendant do not create a statutory right to withdraw a plea of guilty or nolo contendere. State v. Garcia, 301 Neb. 912, 920 N.W.2d 708 (2018).

Even if a defendant was not sufficiently advised of his or her rights concerning immigration consequences to pleading guilty, failure to give the advisement is not alone sufficient to entitle a convicted defendant to have the conviction vacated and the plea withdrawn; a defendant must also allege and show that he or she actually faces an immigration consequence which was not included in the advisement given. State v. Llerenas-Alvarado, 20 Neb. App. 585, 827 N.W.2d 518 (2013).

The word "prior" has been interpreted to require the immigration advisement to be given by the court immediately before the entry of a plea of guilty or nolo contendere to ensure the defendant is aware of the immigration consequences of the plea when the plea is made, and to ensure a defendant who is arraigned and subsequently pleads to a lesser charge is aware that the immigration advisement applies. State v. Llerenas-Alvarado, 20 Neb. App. 585, 827 N.W.2d 518 (2013).

29-1823.

A finding of "conditionally competent" is not permitted under Nebraska law. State v. Lauhead, 306 Neb. 701, 947 N.W.2d 296 (2020).

Lay witness testimony is admissible in a competency hearing under subsection (1) of this section. State v. Martinez, 295 Neb. 1, 886 N.W.2d 256 (2016).

29-1912.

The State may disseminate discovery to a criminal defendant through his or her counsel. State v. Figures, 308 Neb. 801, 957 N.W.2d 161 (2021).

Under this section, whether a prosecutor's failure to disclose evidence results in prejudice depends on whether the information sought is material to the preparation of the defense, meaning that there is a strong indication that such information will play an important role in uncovering admissible evidence, aiding preparation of witnesses, corroborating testimony, or assisting impeachment or rebuttal. State v. Harris, 296 Neb. 317, 893 N.W.2d 440 (2017).

An expert's oral, unrecorded opinions do not fall within the scope of subdivision (1)(e) of this section. State v. Parnell, 294 Neb. 551, 883 N.W.2d 652 (2016).

The State did not fail to comply with subsection (1)(e) of this section when it did not provide the defendant with a chromatogram graphic printout of his blood test result during discovery, where chromatogram had to be interpreted by a forensic scientist to determine its validity, the defendant was provided with the laboratory result during discovery, and the scientist was questioned about the chromatogram during trial. State v. Hashman, 20 Neb. App. 1, 815 N.W.2d 658 (2012).

29-1913.

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

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

29-1917.

A district court's order authorizing a second deposition of a State witness who refused to answer questions during the first deposition was a sufficient remedy for noncompliance with discovery, where the authorization occurred approximately 4 months before trial was to begin. State v. Devers, 306 Neb. 429, 945 N.W.2d 470 (2020).

There is no obligation for the State to produce the victim or assist in locating the victim for purposes of a pretrial deposition by defense counsel. State v. Anderson, 305 Neb. 978, 943 N.W.2d 690 (2020).

29-1919.

Under the plain meaning of this section, if a party fails to comply with discovery and give notice of an intent to call a witness, the court may prohibit that witness from being called. State v. Sierra, 305 Neb. 249, 939 N.W.2d 808 (2020).

29-2001.

A defendant waived the right to be present at trial by voluntarily leaving the courtroom during witness testimony. State v. Figures, 308 Neb. 801, 957 N.W.2d 161 (2021).

29-2002.

A defendant appealing the denial of a motion to sever has the burden to show compelling, specific, and actual prejudice. State v. Benson, 305 Neb. 949, 943 N.W.2d 426 (2020).

Joined charges do not usually result in prejudice if the evidence is sufficiently simple and distinct for the jury to easily separate evidence of the charges during deliberations. State v. Benson, 305 Neb. 949, 943 N.W.2d 426 (2020).

The question of whether offenses were properly joined involves a two-stage analysis: (1) whether the offenses were sufficiently related to be joinable and (2) whether the joinder was prejudicial to the defendant. State v. Benson, 305 Neb. 949, 943 N.W.2d 426 (2020).

There is no error under either subsection (1) or (3) of this section if joinder was not prejudicial, and a denial of a motion to sever will be reversed only if clear prejudice and an abuse of discretion are shown. State v. Benson, 305 Neb. 949, 943 N.W.2d 426 (2020).

Joinder of murder and pandering charges was proper because the evidence was such that the jury could have easily separated evidence of the charges during deliberations. State v. Briggs, 303 Neb. 352, 929 N.W.2d 65 (2019).

While subsections (1) and (3) of this section present different questions, it is clear that there is no error under either subsection if joinder was not prejudicial. State v. Cotton, 299 Neb. 650, 910 N.W.2d 102 (2018).

29-2004.

A court may discharge a juror for cause after it learned that the defendant's affiliate attempted to talk to the juror during the trial and the juror provided conflicting testimony when questioned about the event. State v. Figures, 308 Neb. 801, 957 N.W.2d 161 (2021).

In a trial for first degree sexual assault, the trial court had discretion to discharge a juror following the close of evidence given the following facts: (1) the juror, on the first day of trial after the jury was sworn, alerted the court of his reluctance to serve on the jury given his upbringing and criminal history; (2) the court had questioned the juror and determined that the juror could remain impartial; (3) the court, after giving its instructions, sua sponte, raised concerns about the juror's lack of attentiveness during trial; and (4) the juror's criminal record, which the State proffered in support of its motion for discharge, indicated that the juror had misrepresented his criminal history in the juror qualification form. State v. Huff, 298 Neb. 522, 905 N.W.2d 59 (2017).

On the State's motion at the close of evidence to strike a seated juror for cause, in a prosecution for first degree sexual assault, the State had the burden to show that the challenged juror was biased, was engaged in misconduct, or was otherwise unable to continue to serve. State v. Huff, 298 Neb. 522, 905 N.W.2d 59 (2017).

This section, governing the discharge of a juror after the jury is sworn, and not section 29-2006, which governs the disqualification of a juror for cause before the jury is sworn, governed the State's motion to "strike" the juror for cause after trial began. State v. Huff, 298 Neb. 522, 905 N.W.2d 59 (2017).

When a defendant, through diligence, is able to discover a reason to challenge a juror, the objection to the juror must be made at the time of voir dire. State v. Huff, 298 Neb. 522, 905 N.W.2d 59 (2017).

29-2006.

Section 29-2004, governing the discharge of a juror after the jury is sworn, and not this section, which governs the disqualification of a juror for cause before the jury is sworn, governed the State's motion to "strike" the juror for cause after trial began. State v. Huff, 298 Neb. 522, 905 N.W.2d 59 (2017).

29-2011.02.

A court is not obligated under this section to notify a defendant when the State offers a witness immunity. State v. Lierman, 305 Neb. 289, 940 N.W.2d 529 (2020).

The language of this section, and the case law interpreting it, provides that because the Legislature has given courts the power to immunize a witness solely upon the request of the prosecutor, it is not a power the court can exercise upon the request of the defendant or upon its own initiative. State v. Lierman, 305 Neb. 289, 940 N.W.2d 529 (2020).

29-2022.

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

29-2101.

Evidence received at postconviction proceedings cannot be considered in determining a subsequent motion for new trial based on evidence obtained through the DNA Testing Act if the postconviction evidence was not presented at the defendant's former trial and is not newly discovered DNA or similar forensic testing evidence. State v. Duncan, 309 Neb. 455, 960 N.W.2d 576 (2021).

Evidence must have existed at trial for it to be uncovered after the trial. State v. Bartel, 308 Neb. 169, 953 N.W.2d 224 (2021).

Evidence of facts happening after trial ordinarily cannot be considered as newly discovered evidence on which to justify the granting of a new trial. State v. Bartel, 308 Neb. 169, 953 N.W.2d 224 (2021).

29-2102.

The constitutional right to trial by a fair and impartial jury that is affected by a stranger's presence in the jury room is a substantial right, so when an alternate juror is mistakenly allowed in the jury room during deliberations, without any safeguards in place under section 29-2004, a court has a mandatory duty to conduct an evidentiary hearing to determine the extent and nature of any communications by the alternate or whether the alternate's presence or communications materially influenced the jury. State v. Madren, 308 Neb. 443, 954 N.W.2d 881 (2021).

A de novo standard of review applies when an appellate court is reviewing a trial court's dismissal of a motion for new trial under this section without conducting an evidentiary hearing. State v. Cross, 297 Neb. 154, 900 N.W.2d 1 (2017).

29-2103.

An appellate court does not consider a motion for new trial to the extent that its grounds fail to conform to the statutory requirements of timeliness. State v. Bartel, 308 Neb. 169, 953 N.W.2d 224 (2021).

The law requires diligence on the part of clients and their attorneys, and the mere neglect of either will not entitle a party to relief on that ground. State v. Bartel, 308 Neb. 169, 953 N.W.2d 224 (2021).

"Unavoidably prevented" as used in subsection (3) of this section refers to circumstances beyond the control of the party filing the motion for new trial. State v. Bartel, 308 Neb. 169, 953 N.W.2d 224 (2021).

Where the record does not support a finding that a defendant was unavoidably prevented from timely filing a motion for new trial based on grounds set forth in subdivisions (1) through (4) or (7) of section 29-2101, such a filing made more than 10 days after the jury returned its verdict has no effect and may not be considered by an appellate court. State v. Avina-Murillo, 301 Neb. 185, 917 N.W.2d 865 (2018).

A former version of subsection (4) of this section, which required a defendant to move for a new trial because of newly discovered evidence within 3 years, did not violate the due process rights of a defendant who alleged the State failed to disclose favorable evidence it had received 5 years after his murder conviction. The defendant did

not claim that the favorable evidence was sufficiently compelling to show his actual innocence or that Nebraska's postconviction procedures were inadequate to protect his statutory postconviction rights, and a defendant has no substantive due process right to have the State disclose exculpatory evidence discovered after a final judgment. State v. Harris, 296 Neb. 317, 893 N.W.2d 440 (2017).

29-2204.

This section and section 29-2204.02(4) do not require a sentence for a Class IV felony to have a minimum term less than the maximum term. State v. Artis, 296 Neb. 172, 893 N.W.2d 421 (2017).

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

Minimum term of 30 months' imprisonment imposed by trial court on each of 10 counts of possession of child pornography exceeded minimum term of imprisonment provided by law, where minimum term could not exceed one-third of maximum term of 60 months' imprisonment. State v. Landera, 20 Neb. App. 24, 816 N.W.2d 20 (2012).

29-2204.02.

For purposes of the indeterminacy requirement in subsection (4) of this section, it matters not when the underlying offenses occurred in relation to each other or that some of the relevant charges were brought via charging documents; subsection (4) is broad enough that it theoretically could be read to impose an indeterminacy requirement upon a Class III, Class IIIA, or Class IV felony sentence imposed consecutively or concurrently with a Class I, IA, IB, IC, ID, II, or IIA felony sentence that is already in progress. What matters under subsection (4) is that the sentences for those offenses are imposed consecutively or concurrently to each other. State v. Starks, 308 Neb. 527, 955 N.W.2d 313 (2021).

It is plain error under subsection (4) of this section for a sentencing court to order determinate sentences for three Class IV felonies to be imposed consecutively with a Class IIA felony sentence. State v. Starks, 308 Neb. 527, 955 N.W.2d 313 (2021).

A sentence of imprisonment upon revocation from post-release supervision is a determinate sentence within the meaning of this section. State v. Galvan, 305 Neb. 513, 941 N.W.2d 183 (2020).

Where the district court sentenced a defendant for a Class II felony and imposed a concurrent sentence for a Class IV felony for offenses occurring in 2017, the court plainly erred by imposing a determinate sentence rather than an indeterminate sentence for the Class IV felony. State v. Guzman, 305 Neb. 376, 940 N.W.2d 552 (2020).

A determinate sentence, as used in subdivision (1)(a) of this section, is imposed when the defendant is sentenced to a single term of years. State v. Vanness, 300 Neb. 159, 912 N.W.2d 736 (2018).

A transfer from juvenile court to criminal court does not eliminate the possibility of disposition under the juvenile code. In re Interest of Steven S., 299 Neb. 447, 908 N.W.2d 391 (2018).

The trial court did not plainly err by failing to impose an indeterminate sentence where an information alleged that a Class IIIA felony occurred over a period of time both before and after August 30, 2015; the evidence about when the assaults occurred could cover dates before and after August 30; and the jury did not make a specific finding demonstrating that it found the offense was committed after August 30. State v. Mora, 298 Neb. 185, 903 N.W.2d 244 (2017).

The defendant's sentence of 2 years' imprisonment with a 12-month period of postrelease supervision for possession of a controlled substance was vacated pursuant to State v. Randolph, 186 Neb. 297, 183 N.W.2d 225 (1971), where the defendant was sentenced concurrently for two Class IV felonies and a Class W misdemeanor and where after sentencing, but while the matter was pending on appeal, 2016 Neb. Laws, L.B. 1094, struck section 29-2260(5) and added subsection (4) of this section, which precluded postrelease supervision. State v. Chacon, 296 Neb. 203, 894 N.W.2d 238 (2017).

A determinate sentence is imposed when the defendant is sentenced to a single term of years, such as a sentence of 2 years' imprisonment. In contrast, when imposing an indeterminate sentence, a sentencing court ordinarily articulates either a minimum term and maximum term or a range of time for which a defendant is to be incarcerated. State v. Artis, 296 Neb. 172, 893 N.W.2d 421 (2017).

In Nebraska, the fact that the minimum term and maximum term of a sentence are the same does not affect the sentence's status as an indeterminate sentence. State v. Artis, 296 Neb. 172, 893 N.W.2d 421 (2017).

Section 29-2204 and subsection (4) of this section do not require a sentence for a Class IV felony to have a minimum term less than the maximum term. State v. Artis, 296 Neb. 172, 893 N.W.2d 421 (2017).

A determination of whether there are substantial and compelling reasons under subdivision (2)(c) of this section is within the trial court's discretion and will not be reversed on appeal absent an abuse of discretion. State v. Baxter, 295 Neb. 496, 888 N.W.2d 726 (2017).

The court may fulfill the requirement of subsection (3) of this section to state its reasoning on the record by a combination of the sentencing hearing and sentencing order. State v. Baxter, 295 Neb. 496, 888 N.W.2d 726 (2017).

The court's determination of substantial and compelling reasons under subdivision (2)(c) of this section should be based on a review of the record, including the presentence investigation report and the record of the trial, and its determination must be supported by such record. State v. Baxter, 295 Neb. 496, 888 N.W.2d 726 (2017).

Under the nonretroactive provision of section 28-105(7), the changes made in this section to the penalties for Class IV felony convictions by 2015 Neb. Laws, L.B. 605, do not apply to any offense committed before August 30, 2015. State v. Benavides, 294 Neb. 902, 884 N.W.2d 923 (2016).

It is clear that the Legislature did not intend to apply this section retroactively. State v. Raatz, 294 Neb. 852, 885 N.W.2d 38 (2016).

A defendant's sentence on a Class IIIA felony needed to be an indeterminate sentence because the defendant was also sentenced on Class II felonies. State v. Wells, 28 Neb. App. 118, 940 N.W.2d 847 (2020).

A defendant's sentences on various misdemeanors needed to be indeterminate sentences pursuant to subsection (5) of this section, because the defendant was also sentenced on Class II felonies. State v. Wells, 28 Neb. App. 118, 940 N.W.2d 847 (2020).

If a defendant was previously subject to parole under preexisting sentences and subsequently sentenced in other cases either concurrently or consecutively to the prior sentences, subsection (4) of this section prevents the defendant from being subject to post-release supervision. State v. Lillard, 27 Neb. App. 824, 937 N.W.2d 1 (2019).

Subsection (4) of this section applies in a situation where sentences are imposed and the defendant is serving preexisting sentences. State v. Lillard, 27 Neb. App. 824, 937 N.W.2d 1 (2019).

29-2204.03.

Both this section and section 29-2261 give the court the discretion to order further evaluations of the defendant prior to sentencing when it deems such evaluations necessary for determining the sentence to be imposed; neither statute provides that a defendant can or should request the evaluations. Trial counsel cannot be deficient for failing to request evaluations that the court itself could have ordered, but in its discretion deemed unnecessary. State v. St. Cyr, 26 Neb. App. 61, 916 N.W.2d 753 (2018).

29-2221.

By its terms, subsection (1) of this section requires the triggering offense to be "a felony" before the habitual criminal statute will apply to the sentencing of the triggering offense. But in order to be one of the prior convictions that establishes habitual criminal status, this section does not require that the prior conviction was a "felony" per se; instead, it requires that the prior conviction resulted in a sentence of imprisonment for a term "of not less than one year." State v. Abejide, 293 Neb. 687, 879 N.W.2d 684 (2016).

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

29-2260.

This section does not require the trial court to articulate on the record that it has considered each sentencing factor, and it does not require the court to make specific findings as to the factors and the weight given them. State v. McCulley, 305 Neb. 139, 939 N.W.2d 373 (2020).

The defendant's sentence of 2 years' imprisonment with a 12-month period of postrelease supervision for possession of a controlled substance was vacated pursuant to State v. Randolph, 186 Neb. 297, 183 N.W.2d 225 (1971), where the defendant was sentenced concurrently for two Class IV felonies and a Class W misdemeanor and where after sentencing, but while the matter was pending on appeal, 2016 Neb. Laws, L.B. 1094, struck subsection (5) of this section and added section 29-2204.02(4), which precluded postrelease supervision. State v. Chacon, 296 Neb. 203, 894 N.W.2d 238 (2017).

Subsection (2) of this section gives the court discretion to withhold a sentence of imprisonment for an offender convicted of either a misdemeanor or a felony for which mandatory or mandatory minimum imprisonment is not specifically required. State v. McCain, 29 Neb. App. 981, 961 N.W.2d 576 (2021).

29-2261.

The presentence investigation and report shall include, when available, any submitted victim statements and an analysis of the circumstances attending the commission of the crime and the offender's history of delinquency or criminality, physical and mental condition, family situation and background, economic status, education, occupation, and personal habits. The presentence investigation and report may also include any other matters the probation officer deems relevant or the court directs to be included. State v. Schroeder, 305 Neb. 527, 941 N.W.2d 445 (2020).

It is "the better practice" for a sentencing court to issue a more direct advisement of the statutory right to a presentence investigation, conduct an explicit inquiry into the voluntariness of a defendant's waiver of that right, and make explicit findings with respect to a waiver. State v. Iddings, 304 Neb. 759, 936 N.W.2d 747 (2020).

Both section 29-2204.03 and this section give the court the discretion to order further evaluations of the defendant prior to sentencing when it deems such evaluations necessary for determining the sentence to be imposed; neither statute provides that a defendant can or should request the evaluations. Trial counsel cannot be deficient for failing to request evaluations that the court itself could have ordered, but in its discretion deemed unnecessary. State v. St. Cyr, 26 Neb. App. 61, 916 N.W.2d 753 (2018).

29-2262.

Custodial sanctions are distinct from jail time under subdivision (2)(b) of this section. State v. Kantaras, 294 Neb. 960, 885 N.W.2d 558 (2016).

Jail time under subdivision (2)(b) of this section is a predetermined, definite term of jail time up to the term authorized by the statute; that term may be served periodically, but it is not conditional. State v. Kantaras, 294 Neb. 960, 885 N.W.2d 558 (2016).

The general provisions of subsection (1) and subdivision (2)(r) of this section do not confer the power to impose jail time as part of sentences of probation; jail time as a condition of probation may be granted only under specific statutory authority. State v. Kantaras, 294 Neb. 960, 885 N.W.2d 558 (2016).

The amendment by 2015 Neb. Laws, L.B. 605, removing the provision of this section relating to jail time as a condition of probation for felony offenses did not implicitly repeal the provision in section 60-6,197.03(6) that required 60 days in jail as a condition of probation. State v. Thompson, 294 Neb. 197, 881 N.W.2d 609 (2016).

Individuals in the county or district court can be placed on probation with conditions related to the rehabilitation of the offender. State v. Comer, 26 Neb. App. 270, 918 N.W.2d 13 (2018).

29-2262.06.

When a court sentences a defendant to postrelease supervision, it may impose any conditions of postrelease supervision authorized by statute. State v. Dill, 300 Neb. 344, 913 N.W.2d 470 (2018).

Stale financial affidavits and earlier orders allowing a defendant to proceed in forma pauperis were insufficient to show the defendant's financial condition at the time he requested that the court waive payment of probation fees. State v. Jensen, 299 Neb. 791, 910 N.W.2d 155 (2018).

29-2263.

An order denying a motion to modify or eliminate a probation condition is a final, appealable order. State v. Paulsen, 304 Neb. 21, 932 N.W.2d 849 (2019).

Once the State invokes the revocation process under section 29-2268 and a court finds a violation of postrelease supervision, the court lacks the power to invoke the early discharge provisions of this section. State v. Kennedy, 299 Neb. 362, 908 N.W.2d 69 (2018).

This section authorizes a court to commute the terms of probation, but not the original sentence. State v. Irish, 298 Neb. 61, 902 N.W.2d 669 (2017).

Where a court is required to revoke a driver's license as part of a judgment of conviction, it is part of the offender's punishment for the crime, and is not considered a term of probation which can be altered under this section. State v. Irish, 298 Neb. 61, 902 N.W.2d 669 (2017).

29-2267.

Where a probationer allegedly committed a new felony—possession of methamphetamine—while already on probation for a felony, the allegation of a law violation was not a "substance abuse" violation for revocation of probation purposes and the State could therefore institute revocation proceedings without showing that the probationer had served at least 90 days of cumulative custodial sanctions during the current probation term. State v. Jedlicka, 305 Neb. 52, 938 N.W.2d 854 (2020).

Pursuant to subsection (1) of this section, the court shall not revoke probation except after a hearing upon proper notice where the violation of probation is established by clear and convincing evidence. State v. Phillips, 302 Neb. 686, 924 N.W.2d 699 (2019).

29-2268.

A court's authority to revoke a probationer and impose a term of imprisonment extends only to the single term of post-release supervision that the probationer is serving, provided that the probationer has not otherwise been ordered to serve multiple terms concurrently. State v. Galvan, 305 Neb. 513, 941 N.W.2d 183 (2020).

Terms of post-release supervision may be served consecutively. When a consecutive sentence is imposed, the second sentence begins only upon the termination of the prior term of imprisonment. A prisoner who receives multiple consecutive sentences does not serve all sentences simultaneously, but serves only one sentence at a time. State v. Galvan, 305 Neb. 513, 941 N.W.2d 183 (2020).

Because a court has discretion under subsection (2) of this section to impose, upon revocation, any term of imprisonment up to the remaining period of post-release supervision, an appellate court will not disturb that decision absent an abuse of discretion. State v. Phillips, 302 Neb. 686, 924 N.W.2d 699 (2019).

The Legislature has not demonstrated within this section that jail credit should be given for time served prior to revocation. State v. Phillips, 302 Neb. 686, 924 N.W.2d 699 (2019).

Time spent in jail prior to revocation is credited against a probationer's sentence of post-release supervision. State v. Phillips, 302 Neb. 686, 924 N.W.2d 699 (2019).

When calculating the "remaining period of post-release supervision" under subsection (2) of this section, courts must first identify the number of days the probationer was originally ordered to serve on post-release supervision. The court calculates the "remaining period of post-release supervision" by subtracting the number of days actually served from the number of days ordered to be served. State v. Phillips, 302 Neb. 686, 924 N.W.2d 699 (2019).

When determining the amount of time "remaining" on a period of post-release supervision, courts are not required to turn a blind eye to a probationer's absconsion from supervision. State v. Phillips, 302 Neb. 686, 924 N.W.2d 699 (2019).

When a court has revoked post-release supervision, the maximum term of imprisonment that can be imposed is governed exclusively by this section and does not depend on the maximum sentence of initial imprisonment authorized by the relevant statute. State v. Wal, 302 Neb. 308, 923 N.W.2d 367 (2019).

Once a district court finds a violation of postrelease supervision, it must proceed under this section. State v. Kennedy, 299 Neb. 362, 908 N.W.2d 69 (2018).

Termination of postrelease supervision as being unsatisfactory is not a revocation of postrelease supervision and is not statutorily authorized. State v. Kennedy, 299 Neb. 362, 908 N.W.2d 69 (2018).

29-2280.

It is plain error for a court to fail to specify in its written sentencing order whether the restitution is to be made immediately, in specified installments, or within a specified period of time. State v. Street, 306 Neb. 380, 945 N.W.2d 450 (2020).

Before restitution can properly be ordered, the trial court must consider (1) whether restitution should be ordered, (2) the amount of actual damages sustained by the victim of a crime, and (3) the amount of restitution a criminal defendant is capable of paying. State v. McCulley, 305 Neb. 139, 939 N.W.2d 373 (2020).

Restitution ordered by a court pursuant to this section is a criminal penalty imposed as a punishment for a crime and is part of the criminal sentence imposed by the sentencing court. State v. McCulley, 305 Neb. 139, 939 N.W.2d 373 (2020).

29-2281.

Actual damages do not require an assessment of the damaged property's prior fair market value when it can be repaired to its former condition. State v. Street, 306 Neb. 380, 945 N.W.2d 450 (2020).

The listed factors of this section are neither exhaustive nor mathematically applied, and the court's ultimate determination of whether restitution should be imposed is a matter of discretion. State v. McCulley, 305 Neb. 139, 939 N.W.2d 373 (2020).

This section does not require setting forth factors to be considered in determining whether to order restitution and does not require a court to specifically articulate that it has considered factors or make explicit findings, disapproving State v. St. Cyr, 26 Neb. App. 61, 916 N.W.2d 753 (2018), and State v. Mick, 19 Neb. App. 521, 808 N.W.2d 663 (2012). State v. McCulley, 305 Neb. 139, 939 N.W.2d 373 (2020).

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

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

29-2282.

Restitution will be upheld if calculated by use of reasonable methods; therefore, when the defendant does not present contradictory evidence, the court does not err in relying on a victim's competent estimates of loss. State v. Street, 306 Neb. 380, 945 N.W.2d 450 (2020).

The determination of whether return or repair is impossible, impractical, or inadequate is left to the sound discretion of the sentencing court and is not necessarily bound by concepts of fair market value. State v. Street, 306 Neb. 380, 945 N.W.2d 450 (2020).

This section warrants restitution where the offense results in damage, destruction, or loss of property. State v. McBride, 27 Neb. App. 219, 927 N.W.2d 842 (2019).

29-2302.

Factors to be considered in determining the reasonableness of a defendant's appeal bond following a misdemeanor conviction include the atrocity of the defendant's offenses, the probability of the defendant's appearance to serve his or her sentence following the conclusion of his or her appeal, the defendant's prior criminal history, and the nature of the other circumstances surrounding the case. State v. Kirby, 25 Neb. App. 10, 901 N.W.2d 704 (2017).

Reasonableness of the appeal bond amount is determined under the general discretion of the district court. State v. Kirby, 25 Neb. App. 10, 901 N.W.2d 704 (2017).

29-2306.

The order granting an application to proceed in forma pauperis is not a final, appealable order because it does not affect a substantial right. State v. Fredrickson, 306 Neb. 81, 943 N.W.2d 701 (2020).

The relevant date under this section is the date the defendant files the application, not the date on which the court grants the application. State v. Newcomer, 23 Neb. App. 761, 875 N.W.2d 914 (2016).

29-2308.

An appellate court will not disturb a sentence imposed within statutory limits unless the sentence was an abuse of discretion. State v. Starks, 308 Neb. 527, 955 N.W.2d 313 (2021).

29-2315.01.

When a defendant challenges a sentence imposed by the district court as excessive and the State believes the sentence to be erroneous but has not complied with this section or section 29-2321, the State may not assert such error via a cross-appeal. State v. Guzman, 305 Neb. 376, 940 N.W.2d 552 (2020).

The State does not have the ability to appeal an order finding indigency and appointing counsel prior to the issuance of a final order. State v. Fredrickson, 305 Neb. 165, 939 N.W.2d 385 (2020).

In cases brought as error proceedings under this section, the good faith exception to the exclusionary rule applies to warrantless blood draws conducted prior to the U.S. Supreme Court's decision in Birchfield v. North Dakota, 579 U.S. 438, 136 S. Ct. 2160, 195 L. Ed. 2d 560 (2016). State v. Hatfield, 300 Neb. 152, 912 N.W.2d 731 (2018).

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

The Nebraska Supreme Court has consistently maintained that strict compliance with this section is required to confer jurisdiction. State v. Coupens, 20 Neb. App. 485, 825 N.W.2d 808 (2013).

This section does not permit an appeal by the State from any interlocutory ruling of the trial court in a criminal proceeding. State v. Coupens, 20 Neb. App. 485, 825 N.W.2d 808 (2013).

This section grants the State the right to seek appellate review of adverse criminal rulings and specifies the special procedure by which to obtain such review. State v. Coupens, 20 Neb. App. 485, 825 N.W.2d 808 (2013).

29-2316.

Where a criminal matter is brought to a higher appellate court by an exception proceeding from the district court sitting as an appellate court, the higher appellate court may reverse the district court's order, because this section does not limit the relief the higher appellate court can order. State v. Hatfield, 300 Neb. 152, 912 N.W.2d 731 (2018).

When an exception proceeding is before the Nebraska Supreme Court or Court of Appeals from the district court where the trial took place in district court, this section restricts the scope of any ruling directed at the defendant and district court. But where the district court is sitting as an appellate court, the defendant was not placed in jeopardy in that court and the limitations of this section do not apply to dispositions or orders directed at the district court. State v. Thalken, 299 Neb. 857, 911 N.W.2d 562 (2018).

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

29-2317.

Reference to the county court in sections 29-2317 to 29-2319 also applies to the separate juvenile court. In re Interest of Lori S., 20 Neb. App. 152, 819 N.W.2d 736 (2012).

Sections 29-2317 to 29-2319 outline exception proceedings which allow prosecuting attorneys to take exception to any ruling or decision of the county court by presenting to the court a notice of intent to take an appeal to the district court. In re Interest of Lori S., 20 Neb. App. 152, 819 N.W.2d 736 (2012).

The language of this section requires the appeal of a county court judgment to the district court sitting as an appellate court. In re Interest of Lori S., 20 Neb. App. 152, 819 N.W.2d 736 (2012).

29-2321.

When a defendant challenges a sentence imposed by the district court as excessive and the State believes the sentence to be erroneous but has not complied with section 29-2315.01 or this section, the State may not assert such error via a cross-appeal. State v. Guzman, 305 Neb. 376, 940 N.W.2d 552 (2020).

While there is a temptation on a visceral level to conclude that anything less than incarceration depreciates the seriousness of crimes involving sexual assault of a child, it is the function of the sentencing judge, in the first instance, to evaluate the crime and the offender. State v. Gibson, 302 Neb. 833, 925 N.W.2d 678 (2019).

29-2407.

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

29-2412.

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

29-2519.

The death penalty is imposed for a conviction of murder in the first degree only in those instances when the aggravating circumstances existing in connection with the crime outweigh the mitigating circumstances. State v. Schroeder, 305 Neb. 527, 941 N.W.2d 445 (2020).

29-2521.

Because a sentencing panel is required to consider and weigh any mitigating circumstances in imposing a sentence of death, the introduction of evidence of the existence or nonexistence of these potential mitigators has probative value to the sentence, and as such, a sentencing panel has the discretion to hear evidence to address potential mitigating circumstances regardless of whether the defendant presents evidence on that issue. State v. Schroeder, 305 Neb. 527, 941 N.W.2d 445 (2020).

The sentencing panel could consider a defendant's no contest plea and the factual basis underlying it, but it could not use it as an admission to aggravating circumstances for sentencing purposes. State v. Jenkins, 303 Neb. 676, 931 N.W.2d 851 (2019).

29-2522.

A court's proportionality review spans all previous cases in which a sentence of death is imposed and is not dependent on which cases are put forward by the parties. The proportionality review does not require that a court "color match" cases precisely, and instead, the question is simply whether the cases being compared are sufficiently similar, considering both the crime and the defendant, to provide the court with a useful frame of reference for evaluating the sentence in this case. State v. Schroeder, 305 Neb. 527, 941 N.W.2d 445 (2020).

29-2523.

Mitigating circumstances involve, in part, circumstances surrounding the underlying crime and include pressure or influences which may have weighed on the defendant, potential influence on the defendant of extreme mental or emotional disturbance at the time of the offense, potential victim participation or consent to the act, the defendant's capacity to appreciate the wrongfulness of the act at the time of the offense, and any mental illness, defect, or intoxication which may have contributed to the offense. State v. Schroeder, 305 Neb. 527, 941 N.W.2d 445 (2020).

29-2801.

After the court's jurisdiction has been invoked by a petition for habeas corpus seeking the custody of children, the children become wards of the court and their welfare lies in the hands of the court. Maria T. v. Jeremy S., 300 Neb. 563, 915 N.W.2d 441 (2018).

Courts are cautioned in habeas proceedings to follow the traditional procedure illustrated by the habeas corpus statutes rather than make up their own procedure. Maria T. v. Jeremy S., 300 Neb. 563, 915 N.W.2d 441 (2018).

Habeas corpus is not a proper remedy to challenge a petitioner's detention pursuant to a final conviction and sentence on the basis that the statute underlying the conviction is unconstitutional. Sanders v. Frakes, 295 Neb. 374, 888 N.W.2d 514 (2016).

The State cannot collaterally attack in a habeas action a prior sentence that the court erroneously failed to enhance under the habitual criminal statutes. Meyer v. Frakes, 294 Neb. 668, 884 N.W.2d 131 (2016).

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

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

The law-of-the-case doctrine applies to issues raised in a petition for a writ of habeas corpus if that same issue was raised in the appellate court on direct appeal. Gray v. Kenney, 22 Neb. App. 739, 860 N.W.2d 214 (2015).

29-2823.

The dismissal of a habeas corpus petition in the same action as a petition in error may be reviewed on appeal in the same manner as a civil case. Tyrrell v. Frakes, 309 Neb. 85, 958 N.W.2d 673 (2021).

29-2824.

No prepayment of fees is necessary in order to file a petition for a writ of habeas corpus based upon an issue of custody in a criminal case. Buggs v. Frakes, 298 Neb. 432, 904 N.W.2d 664 (2017).

29-3001.

A motion for postconviction relief cannot be used to secure review of issues that were known to the defendant and which were or could have been litigated on direct appeal. State v. Malone, 308 Neb. 929, 957 N.W.2d 892 (2021).

In the absence of allegations that would render the judgment void or voidable, the proper course is to overrule a motion for postconviction relief without an evidentiary hearing for failure to state a claim. State v. Malone, 308 Neb. 929, 957 N.W.2d 892 (2021).

Postconviction relief is a very narrow category of relief and is not intended to secure a routine review for any defendant dissatisfied with his or her sentence. State v. Malone, 308 Neb. 929, 957 N.W.2d 892 (2021).

When a motion for postconviction relief is filed, an evidentiary hearing is not required if (1) the motion does not contain factual allegations of a violation or infringement of the prisoner's constitutional rights, (2) the motion alleges only conclusions of fact or law, or (3) the record affirmatively shows that the prisoner is entitled to no relief. State v. Malone, 308 Neb. 929, 957 N.W.2d 892 (2021).

In a postconviction proceeding, an evidentiary hearing is not required when (1) the motion does not contain factual allegations which, if proved, constitute an infringement of the movant's constitutional rights, rendering the judgment void or voidable; (2) the motion alleges only conclusions of fact or law without supporting facts; or (3) the records and files affirmatively show that the defendant is entitled to no relief. State v. Stelly, 308 Neb. 636, 955 N.W.2d 729 (2021).

Hurst v. Florida, 577 U.S. 92, 136 S. Ct. 616, 193 L. Ed. 2d 504 (2016), did not announce a new rule of law and thus cannot trigger the 1-year statute of limitations. State v. Hessler, 305 Neb. 451, 940 N.W.2d 836 (2020).

Pursuant to subsection (4) of this section, a 1-year time period for filing a verified motion for postconviction relief was not triggered by a Supreme Court case which merely applied previously recognized constitutional requirements in sentencing of capital defendants. State v. Mata, 304 Neb. 326, 934 N.W.2d 475 (2019).

The conclusion of a direct appeal occurs when a Nebraska appellate court issues the mandate in the direct appeal. State v. Koch, 304 Neb. 133, 933 N.W.2d 585 (2019).

ANNOTATIONS

Where none of the triggering events applied to extend the time for filing a second motion for postconviction relief, the motion was barred by the 1-year time limit. State v. Edwards, 301 Neb. 579, 919 N.W.2d 530 (2018).

The decision in *Hurst v. Florida*, 577 U.S. 92, 136 S. Ct. 616, 193 L. Ed. 2d 504 (2016), did not extend the time for filing a postconviction motion, because it did not announce a newly recognized right that has been made applicable retroactively to cases on postconviction collateral review. State v. Lotter, 301 Neb. 125, 917 N.W.2d 850 (2018).

A court looks to the allegations of the verified-postconviction motion and the files and records of the case to determine which of the triggering events applies to the determination of timeliness. State v. Torres, 300 Neb. 694, 915 N.W.2d 596 (2018).

The "time for filing a direct appeal" of subdivision (4)(a) of this section does not include time for filing a writ of certiori. If the timeliness of a postconviction motion is challenged, an inmate must raise all applicable arguments in support of timeliness to the district court to preserve them for appellate review. State v. Conn, 300 Neb. 391, 914 N.W.2d 440 (2018).

Applying the postconviction time limits to inmates whose crimes occurred prior to the enactment of the time limits does not result in ex post facto punishment. State v. Amaya, 298 Neb. 70, 902 N.W.2d 675 (2017).

If, as part of its preliminary review, a trial court finds a postconviction motion affirmatively shows it is time barred, the court is permitted, but not obligated, to sua sponte consider and rule upon the timeliness of the motion. State v. Amaya, 298 Neb. 70, 902 N.W.2d 675 (2017).

Ineffective assistance of postconviction counsel is not an impediment created by state action, because there is no constitutional right to effective assistance of counsel in a postconviction proceeding. State v. Amaya, 298 Neb. 70, 902 N.W.2d 675 (2017).

The 1-year statute of limitations for postconviction actions applies to all verified motions for postconviction relief, including successive motions. State v. Amaya, 298 Neb. 70, 902 N.W.2d 675 (2017).

After a criminal case is closed, there may be ethical duties that require prosecutors to take action upon learning of evidence that creates a reasonable likelihood the defendant did not commit the crime. But Nebraska's postconviction statutes provide relief only for constitutional violations that render a conviction void or voidable. The prosecution's disclosure duties under Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963), do not apply after a defendant has been convicted in a fair trial and the presumption of innocence no longer applies. State v. Harris, 296 Neb. 317, 893 N.W.2d 440 (2017).

Civil pleading rules do not apply to postconviction proceedings. State v. Robertson, 294 Neb. 29, 881 N.W.2d 864 (2016).

A court decision that announced a new rule but did not recognize a new constitutional claim is not a triggering event under subdivision (4)(d) of this section, nor were later cases applying that court decision. State v. Harrison, 293 Neb. 1000, 881 N.W.2d 860 (2016).

The 1-year limitation period under subsection (4) of this section shall run from the date on which the constitutional claim asserted was initially recognized, and not from the filing date of the opinion determining that the recognition the constitutional claim asserted applies retroactively. State v. Goynes, 293 Neb. 288, 876 N.W.2d 912 (2016).

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

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

Under subdivision (4)(a) of this section, the claims raised in an amended motion for postconviction relief which is filed outside the 1-year statute of limitations must be based on the same set of facts as the claims contained in the original motion in order to relate back to the filing of the original motion. State v. Liner, 26 Neb. App. 303, 917 N.W.2d 194 (2018).

The rule that when counsel is court appointed, the defendant does not have a constitutional right to counsel of his or her choice, is equally applicable when counsel is appointed in postconviction proceedings. State v. Davis, 23 Neb. App. 536, 875 N.W.2d 450 (2016).

29-3002.

An order overruling a motion for postconviction relief as to a claim is a "final judgment" as to such claim. State v. Lotter, 301 Neb. 125, 917 N.W.2d 850 (2018).

An order ruling on a motion filed in a pending postconviction case, seeking to amend the postconviction motion to assert additional claims, is not a final judgment and is not appealable. State v. Lotter, 301 Neb. 125, 917 N.W.2d 850 (2018).

29-3003.

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

29-3004.

Although appointment of counsel in postconviction cases is discretionary, this section provides that once counsel has been appointed and appointed counsel has made application to the court, the court "shall" fix reasonable expenses and fees. State v. Rice, 295 Neb. 241, 888 N.W.2d 159 (2016).

Court-appointed counsel in a postconviction proceeding may appeal to the appellate courts from an order determining expenses and fees allowed under this section. Such an appeal is a proceeding separate from the underlying postconviction proceeding. State v. Rice, 295 Neb. 241, 888 N.W.2d 159 (2016).

To determine reasonable expenses and fees under this section, a court must consider several factors: the nature of the litigation, the time and labor required, the novelty and difficulty of the questions raised, the skill required to properly conduct the case, the responsibility assumed, the care and diligence exhibited, the result of the suit, the character and standing of the attorney, and the customary charges of the bar for similar services. State v. Rice, 295 Neb. 241, 888 N.W.2d 159 (2016).

The rule that when counsel is court appointed, the defendant does not have a constitutional right to counsel of his or her choice, is equally applicable when counsel is appointed in postconviction proceedings. State v. Davis, 23 Neb. App. 536, 875 N.W.2d 450 (2016).

29-3523.

A county court lacked jurisdiction over the defendant's motion to seal records in a criminal action filed years after her case had been dismissed. The applicable statute did not authorize filing a motion to make her criminal history record information nonpublic, but, rather, required a person to bring an action for such relief, disapproving State v. Blair, 17 Neb. App. 611, 767 N.W.2d 143 (2009). State v. Coble, 299 Neb. 434, 908 N.W.2d 646 (2018).

A county court's order overruling the defendant's motion to seal records, filed years after her case had been dismissed, was a final, appealable order, because the order ruled on a postjudgment motion and affected a substantial right. The right invoked was the statutory right to remove the record of the defendant's citation from the public record, no mere technical right. State v. Coble, 299 Neb. 434, 908 N.W.2d 646 (2018).

An order on a motion seeking to remove the record of a criminal citation from the public record under this section affects a substantial right for purposes of section 25-1902. State v. Coble, 299 Neb. 434, 908 N.W.2d 646 (2018).

An order regarding the statutory right to remove criminal record history information from the public record affects a substantial right for purposes of determining whether it is a final, appealable order. State v. Coble, 299 Neb. 434, 908 N.W.2d 646 (2018).

Section 29-3528 authorizes an aggrieved individual to bring an action, not to file a motion in the criminal case the record of which he or she seeks to seal pursuant to this section. An "action" is a distinct and separate court proceeding, governed by separate pleadings and requiring separate process. State v. Coble, 299 Neb. 434, 908 N.W.2d 646 (2018).

This section does not authorize the filing of a motion to make criminal history record information nonpublic. State v. Coble, 299 Neb. 434, 908 N.W.2d 646 (2018).

This section generally protects certain criminal history record information and prohibits, subject to exceptions, the dissemination of this information. State v. Coble, 299 Neb. 434, 908 N.W.2d 646 (2018).

29-3528.

This section does not either expressly or by overwhelming implication waive sovereign immunity for actions brought against a state agency seeking compliance with the Criminal History Information Act. State ex rel. Rhiley v. Nebraska State Patrol, 301 Neb. 241, 917 N.W.2d 903 (2018).

This section authorizes an aggrieved individual to bring an action, not to file a motion in the criminal case the record of which he or she seeks to seal pursuant to section 29-3523. An "action" is a distinct and separate court proceeding, governed by separate pleadings and requiring separate process. State v. Coble, 299 Neb. 434, 908 N.W.2d 646 (2018).

This section provides a procedure for enforcing the privacy protections of the Security, Privacy, and Dissemination of Criminal History Information Act (including section 29-3523). State v. Coble, 299 Neb. 434, 908 N.W.2d 646 (2018).

29-3805.

A Nebraska prisoner sought relief under two different speedy trial statutes, but only this section, governing intrastate detainers, applied. State v. Kolbjornsen, 295 Neb. 231, 888 N.W.2d 153 (2016).

Good cause means a substantial reason, one that affords a legal excuse, and it is a factual question dealt with on a case-by-case basis. State v. Kolbjornsen, 295 Neb. 231, 888 N.W.2d 153 (2016).

Under some circumstances, courtroom unavailability may constitute good cause to continue a trial. State v. Kolbjornsen, 295 Neb. 231, 888 N.W.2d 153 (2016).

29-3908.

An order finding a defendant to be indigent and appointing appellate counsel at the county's expense did not affect a substantial right of the parties and was not a final order for purposes of appeal, where the order did not obligate the county to pay any specific amount or set a deadline for payment, such determinations were to be the subject of future proceedings addressing the question of reasonable attorney fees, and the State had the ability to challenge the findings of indigency and recoup any subsequently expended funds from the defendant. State v. Fredrickson, 305 Neb. 165, 939 N.W.2d 385 (2020).

29-4001.01.

Following the 2009 amendments to the Sex Offender Registration Act, a sentencing court has the authority to find that a defendant committed an aggravated offense as defined in subdivision (1) of this section. State v. Wilson, 306 Neb. 875, 947 N.W.2d 704 (2020).

When a defendant pleads to an offense, such as first degree sexual assault pursuant to section 28-319, where the term "aggravated offense" is not a specifically included element of the offense, in order for lifetime community supervision to apply, a jury would need to find that the defendant had committed an aggravated offense, or the defendant must plead separately to the commission of an aggravated offense. State v. Nelson, 27 Neb. App. 748, 936 N.W.2d 32 (2019).

To constitute "direct genital touching" for purposes of finding an aggravated offense under this section, there must be evidence that the actor touched the victim's genitals under the victim's clothing. State v. Kresha, 25 Neb. App. 543, 909 N.W.2d 93 (2018).

29-4003.

A sex offender registrant's actual registration under another jurisdiction's law is conclusive evidence that the registrant was required to register within the meaning of subdivision (1)(a)(iv) of this section. State v. Clemens, 300 Neb. 601, 915 N.W.2d 550 (2018).

Under subdivision (1)(a)(iv) of this section, whether one is "required to register as a sex offender" in another jurisdiction is determined under the laws of the other jurisdiction rather than under Nebraska law. Subdivision (1)(a)(iv) of this section adds no additional requirement that registration in the other jurisdiction must be based on

a "conviction" or an offense that would have required the person to register in Nebraska if the offense had been committed in Nebraska. State v. Clemens, 300 Neb. 601, 915 N.W.2d 550 (2018).

A finding under subdivision (1)(b)(i)(B) of this section must be made during the proceedings on the underlying conviction or plea and is a judgment on the issue of the Sex Offender Registration Act's application to the defendant, which must be appealed at the end of the proceeding. State v. Ratumaimuri, 299 Neb. 887, 911 N.W.2d 270 (2018).

29-4005.

Following the 2009 amendments to the Sex Offender Registration Act, a sentencing court has the authority to find that a defendant committed an aggravated offense as defined in section 29-4001.01 and to inform the defendant that he or she is thus required to register for life under subdivision (1)(b)(iii) of this section. State v. Wilson, 306 Neb. 875, 947 N.W.2d 704 (2020).

29-4006.

In carrying out its notification obligation under subsection (7) of this section, the Nebraska State Patrol cannot make a different determination regarding an offender's registration duration after a sentencing court finds an aggravated offense as defined in section 29-4001.01. State v. Wilson, 306 Neb. 875, 947 N.W.2d 704 (2020).

29-4007.

Following the 2009 amendments to the Sex Offender Registration Act, a sentencing court has the authority to find that a defendant committed an aggravated offense as defined in section 29-4001.01 and to inform the defendant that he or she is thus required to register for life under section 29-4005. State v. Wilson, 306 Neb. 875, 947 N.W.2d 704 (2020).

29-4008.

The phrase "knowingly and willfully" in this section applies only to the furnishing of false and misleading information and not to the failure to update information. State v. Clark, 22 Neb. App. 124, 849 N.W.2d 151 (2014).

29-4106.

The requirement for a convicted felon to provide a DNA sample pursuant to subdivision (1)(a) of this section exists once the convicted felon begins serving his or her sentence. State v. Weathers, 304 Neb. 402, 935 N.W.2d 185 (2019).

This section inherently authorizes the use of reasonable force to collect a DNA sample from a convicted felon. State v. Weathers, 304 Neb. 402, 935 N.W.2d 185 (2019).

29-4116.

Pursuant to the DNA Testing Act, a person in custody takes the first step toward obtaining possible relief by filing a motion in the court that entered the judgment requesting forensic DNA testing of biological material. State v. Hale, 306 Neb. 725, 947 N.W.2d 313 (2020).

The DNA Testing Act is a limited remedy providing inmates an opportunity to obtain DNA testing in order to establish innocence after a conviction. State v. Hale, 306 Neb. 725, 947 N.W.2d 313 (2020).

The DNA Testing Act does not apply to DNA testing of the defendant's person for the purpose of determining the defendant's metabolism of prescription medication. Furthermore, new evidence concerning a defendant's metabolism of prescription drugs, when such evidence has no bearing on identity, is not exculpatory under the DNA Testing Act. State v. Robbins, 297 Neb. 503, 900 N.W.2d 745 (2017).

29-4117.

The DNA Testing Act is a limited remedy providing inmates an opportunity to obtain DNA testing in order to establish innocence after a conviction. State v. Myers, 304 Neb. 789, 937 N.W.2d 181 (2020).

29-4120.

A court is not required to order DNA testing under this section if such testing would not produce exculpatory evidence. State v. Hale, 306 Neb. 725, 947 N.W.2d 313 (2020).

If the criteria in subsection (1) of this section are met, and the reviewing court finds that testing may produce noncumulative, exculpatory evidence relevant to the claim that the person was wrongfully convicted or sentenced, under subsection (5) of this section, the court must order DNA testing. State v. Hale, 306 Neb. 725, 947 N.W.2d 313 (2020).

The threshold showing required under subsection (5) of this section is relatively undemanding and will generally preclude testing only where the evidence at issue would have no bearing on the guilt or culpability of the movant. State v. Hale, 306 Neb. 725, 947 N.W.2d 313 (2020).

Under subsection (5) of this section, the court has discretion to either consider the motion on affidavits or hold a hearing. State v. Hale, 306 Neb. 725, 947 N.W.2d 313 (2020).

The statutory requirement that requested DNA testing may produce noncumulative, exculpatory evidence relevant to a movant's claim that he or she was wrongfully convicted or sentenced is relatively undemanding for the movant and will generally preclude testing only where the evidence at issue would have no bearing on the guilt or culpability of the movant. State v. Ildefonso, 304 Neb. 711, 936 N.W.2d 348 (2019).

Where a prisoner sought DNA testing to corroborate an admittedly fabricated story and where testing results would be inconclusive at best, the prisoner failed to meet his burden to show that DNA testing may produce noncumulative, exculpatory evidence relevant to his claim that he was wrongfully convicted. State v. Ildefonso, 304 Neb. 711, 936 N.W.2d 348 (2019).

The showing that must be made to obtain DNA testing presents a relatively low threshold; in determining whether to allow such testing, consideration of the higher legal standards applicable to setting aside a judgment or requiring a new trial after testing has been performed is inappropriate. State v. Myers, 301 Neb. 756, 919 N.W.2d 893 (2018).

Pursuant to subsection (5) of this section, in cases of successive motions for DNA testing, the district court must make a new determination of whether the biological material has been retained under circumstances likely to safeguard the integrity of its original physical composition, but such determination shall be limited to a review of the evidence occurring since the last motion for DNA testing. State v. Pratt, 20 Neb. App. 434, 824 N.W.2d 393 (2013).

Second, or successive, motions for DNA testing are permissible pursuant to the DNA Testing Act, specifically subsection (1)(c) of this section; however, res judicata principles would operate to bar a successive motion for DNA testing if the exact same issue was raised in both motions. State v. Pratt, 20 Neb. App. 434, 824 N.W.2d 393 (2013).

When a defendant files successive motions for DNA testing pursuant to the DNA Testing Act, specifically subsection (5) of this section, a court is required to first consider whether the DNA testing sought was effectively not available at the time of the trial; if it was not, the court must then consider whether the DNA testing was effectively not available at the time the previous DNA testing was sought by the defendant. State v. Pratt, 20 Neb. App. 434, 824 N.W.2d 393 (2013).

29-4122.

Decisions regarding appointment of counsel under the DNA Testing Act are reviewed for an abuse of discretion. State v. Myers, 304 Neb. 789, 937 N.W.2d 181 (2020).

29-4123.

Resentencing, absent a successful motion for new trial under this section, is not a form of relief available under the DNA Testing Act. State v. Amaya, 305 Neb. 36, 938 N.W.2d 346 (2020).

Withdrawal of a guilty or no contest plea is not an available remedy under the DNA Testing Act. State v. Amaya, 305 Neb. 36, 938 N.W.2d 346 (2020).

29-4603.

Actual innocence under the Wrongful Conviction and Imprisonment Act is akin to factual innocence, while a self-defense claim is relevant to a claim of legal innocence. Marie v. State, 302 Neb. 217, 922 N.W.2d 733 (2019).

Claim preclusion is inapplicable in cases under the Wrongful Conviction and Imprisonment Act. Marie v. State, 302 Neb. 217, 922 N.W.2d 733 (2019).

A defendant alleging a wrongful conviction claim pursuant to this section must plead more than lack of intent to establish "actual innocence of the crime." Nadeem v. State, 298 Neb. 329, 904 N.W.2d 244 (2017).

30-809.

A wrongful death action and a survival action are two distinct causes of action which may be brought by a decedent's personal representative. Although they are frequently joined in a single action, they are conceptually separate. In re Estate of McConnell, 28 Neb. App. 303, 943 N.W.2d 722 (2020).

30-810.

Because of the binding effect of a federal court judgment, Nebraska's wrongful death statute did not apply and the county court properly ordered distribution pursuant to the federal court judgment that applied North Carolina law. In re Estate of Helms, 302 Neb. 357, 923 N.W.2d 423 (2019).

This section confers exclusive jurisdiction to the county court to approve wrongful death settlements and discretionary jurisdiction to distribute the proceeds of wrongful death claims. The beneficiaries of a wrongful death action are not entitled to be parties to the wrongful death proceeds distribution proceedings. In re Estate of Evertson, 295 Neb. 301, 889 N.W.2d 73 (2016).

This section is silent on subrogation. Accordingly, under section 48-118.04, proceedings for the fair and equitable distribution of wrongful death action proceeds subject to subrogation in workers' compensation cases must be brought in the district court. In re Estate of Evertson, 295 Neb. 301, 889 N.W.2d 73 (2016).

This section is silent on wrongful death actions. Accordingly, under section 48-118.01, wrongful death actions must be brought in the district court. In re Estate of Evertson, 295 Neb. 301, 889 N.W.2d 73 (2016).

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

A wrongful death action and a survival action are two distinct causes of action which may be brought by a decedent's personal representative. Although they are frequently joined in a single action, they are conceptually separate. In re Estate of McConnell, 28 Neb. App. 303, 943 N.W.2d 722 (2020).

A wrongful death action is brought on behalf of the widow or widower and next of kin for damages they have sustained as a result of the decedent's death. Such damages include the pecuniary value of the loss of the decedent's support, society, comfort, and companionship. In re Estate of McConnell, 28 Neb. App. 303, 943 N.W.2d 722 (2020).

The next of kin may recover in a wrongful death action only those losses sustained after the injured party's death by reason of being deprived of what the next of kin would have received from the injured party from the date of his or her death, had he or she lived out a full life expectancy. In re Estate of McConnell, 28 Neb. App. 303, 943 N.W.2d 722 (2020).

The pecuniary value of the loss of the decedent's support, society, comfort, and companionship does not require evidence of the dollar value; that is a matter left to the sound discretion of the fact finder. In re Estate of McConnell, 28 Neb. App. 303, 943 N.W.2d 722 (2020).

The proceeds from a wrongful death action are not the property of a decedent's estate and are therefore not contemplated as a property right waived in a premarital agreement unless the language of the premarital agreement specifically waives such a right. In re Estate of McConnell, 28 Neb. App. 303, 943 N.W.2d 722 (2020).

Where a husband and a wife had no meaningful relationship at the time of the husband's death and a divorce was pending, the wife was not entitled to recover in a wrongful death action based on the loss of her deceased husband's society, love, affection, care, attention, companionship, comfort, or protection. In re Estate of McConnell, 28 Neb. App. 303, 943 N.W.2d 722 (2020).

Relatives absent from a decedent's life may suffer little, or no, pecuniary loss from the death and not be entitled to share in the damages recovered for a wrongful death. In re Estate of Brown-Elliott, 27 Neb. App. 196, 930 N.W.2d 51 (2019).

A wrongful death action brought in the name of a 6-year-old child's mother, as representative of the child's estate, was brought for the exclusive benefit of the child's next of kin, and thus, the child's father, as next of kin and beneficiary of the child's estate, was properly included in the court's instruction to the jury regarding the allocation of percentages of contributory negligence, even though the father was not brought into the action either as a claimant within the meaning of the statute that governed the defense of contributory negligence or as a third-party defendant. Curtis v. States Family Practice, 20 Neb. App. 234, 823 N.W.2d 224 (2012).

30-1601.

The parents of an adult incapacitated ward who appeared before county court as persons interested in his welfare and objected to the guardian's motion seeking discharge had standing to appeal from an order of discharge. In re Guardianship of Nicholas H., 309 Neb. 1, 958 N.W.2d 661 (2021).

An order ending a discrete phase of probate proceedings is a final, appealable order, but one that is merely preliminary to such an order is not. In re Estate of Larson, 308 Neb. 240, 953 N.W.2d 535 (2021).

An heir to a decedent is an interested person to a probate proceeding and may take an appeal pursuant to subsection (2) of this section from a final judgment or final order by which he or she is affected. In re Estate of Brinkman, 308 Neb. 117, 953 N.W.2d 1 (2021).

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

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

30-2211.

The county courts have the power to construe wills. Brinkman v. Brinkman, 302 Neb. 315, 923 N.W.2d 380 (2019).

30-2303.

Grandchildren are "issue of parents" under subsection (3) of this section according to the definition of "issue of a person" found in section 30-2209(23). In re Estate of Evans, 20 Neb. App. 602, 827 N.W.2d 314 (2013).

Modern per stirpes distribution begins division of shares of the estate at the first generation where there is living issue. In re Estate of Evans, 20 Neb. App. 602, 827 N.W.2d 314 (2013).

30-2306.

There must be at least one survivor in a degree of kinship to apply the phrase "by right of representation." In re Estate of Evans, 20 Neb. App. 602, 827 N.W.2d 314 (2013).

When an estate is divided "by representation" as provided for in this section into as many shares as there are surviving heirs in the nearest degree of kinship, the court looks first to the decedent's siblings, then to the decedent's siblings' children, and on down the generational line until reaching a generation containing surviving heirs. In re Estate of Evans, 20 Neb. App. 602, 827 N.W.2d 314 (2013).

30-2314.

The signature of a testator's surviving spouse on a deed was evidence of a consent to transfer within the meaning of this section. In re Estate of Alberts, 293 Neb. 1, 875 N.W.2d 427 (2016).

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

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

30-2315.

Under the plain language of this section, the surrounding facts and circumstances should be taken in consideration by the court in order to determine whether to authorize the filing for the elective share in the case of a protected person. In re Guardianship & Conservatorship of Kaiser, 295 Neb. 532, 891 N.W.2d 84 (2017).

30-2316.

A surviving spouse must prove both that the execution of the waiver was not voluntary and that the waiver was unconscionable when executed to prove a waiver he or she signed is unenforceable. In re Estate of Psota, 297 Neb. 570, 900 N.W.2d 790 (2017).

Subsection (d) of this section contemplates the waiving of the spouse's rights of inheritance only. Devney v. Devney, 295 Neb. 15, 886 N.W.2d 61 (2016).

This section's authorization of postnuptial estate agreements should be strictly construed, because all postnuptial agreements were void at common law. Devney v. Devney, 295 Neb. 15, 886 N.W.2d 61 (2016).

30-2327.

A document purporting to be a will, which is otherwise sufficient, will satisfy the "writing" requirement of this section, whether it is completely handwritten; partly written in ink and partly in pencil; partly typewritten and partly printed; partly printed, partly typewritten, and partly written; or on a printed form, as well as other combinations of these forms and comparable permanent techniques of writing which substantively evidence testamentary intent. In re Estate of Pluhacek, 296 Neb. 528, 894 N.W.2d 325 (2017).

There is no requirement under this section that the acknowledgment of a testator's signature on a will be duly sworn or confirmed by oath or affirmation; rather, the two witnesses must witness either the signing of the will or the testator's acknowledgment of the signature. In re Estate of Loftus, 26 Neb. App. 439, 920 N.W.2d 718 (2018).

30-2328.

A document which did not contain sufficient material provisions expressing testamentary and donative intent within the document itself could not be legally recognized as a valid holographic will. Absent a latent ambiguity, extrinsic evidence could not be considered to aid in that determination. In re Estate of Tiedeman, 25 Neb. App. 722, 912 N.W.2d 816 (2018).

A holographic will must contain sufficient material provisions, meaning words which express donative and testamentary intent. Donative intent relates to words reflecting specific bequests to particular beneficiaries, and testamentary intent concerns whether the document was intended to be a will. In re Estate of Tiedeman, 25 Neb. App. 722, 912 N.W.2d 816 (2018).

30-2341.

The intention of a testator as expressed in her will controls the legal effect of her dispositions. In re Estate of Akerson, 309 Neb. 470, 960 N.W.2d 719 (2021).

The cardinal rule in construing a will is to ascertain and effectuate the testator's intent if such intent is not contrary to the law. In re Estate of Barger, 303 Neb. 817, 931 N.W.2d 660 (2019).

30-2342.01.

Pursuant to subsection (a) of this section, no gift or devise for charitable or benevolent purposes shall be invalid or fail by reason that it is impossible to achieve. In re Estate of Akerson, 309 Neb. 470, 960 N.W.2d 719 (2021).

Pursuant to subsection (b) of this section, the court may determine and order an administration or distribution of the gift or devise in a manner as consistent as possible with the intent expressed in the document. In re Estate of Akerson, 309 Neb. 470, 960 N.W.2d 719 (2021).

30-2346.

When a conservator or guardian, not the testator, sells specifically devised property during the testator's lifetime, no ademption occurs. The proceeds of the sale are not included in the testator's residuary estate, but, rather, are given to the specific devisee to honor the specific devise. In re Guardianship & Conservatorship of Mueller, 23 Neb. App. 430, 872 N.W.2d 906 (2015).

30-2350.

Ademption by satisfaction is provided only for the devisees of a will, and if a devise is made by a will to a trust or trustee, the trust or trustee is the devisee and the beneficiaries of the trust are not devisees and ademption does not apply. In re Estate of Radford, 304 Neb. 205, 933 N.W.2d 595 (2019).

30-2401.

In Nebraska, title to both real and personal property passes immediately upon death to the decedent's devisees or heirs, subject to administration, allowances, and a surviving spouse's elective share. In re Estate of Akerson, 309 Neb. 470, 960 N.W.2d 719 (2021).

30-2405.

This section was designed to give probate courts of limited jurisdiction broad concurrent jurisdiction with courts of general jurisdiction. Eagle Partners v. Rook, 301 Neb. 947, 921 N.W.2d 98 (2018).

30-2408.

The exception to the 3-year statute of limitations in subsection (4) of this section is not applicable when any prior formal or informal proceeding for probate, whether completed or not, has occurred. In re Estate of Fuchs, 297 Neb. 667, 900 N.W.2d 896 (2017).

The statute of limitations in this section is self-executing and ordinarily begins to run upon the decedent's death. In re Estate of Fuchs, 297 Neb. 667, 900 N.W.2d 896 (2017).

30-2410.

Commencement of a probate case in Nebraska does not, in and of itself, preclude a decedent from having been domiciled in a different state, because venue is proper in any county in Nebraska where property of the decedent was located at the time of his or her death. In re Estate of Helms, 302 Neb. 357, 923 N.W.2d 423 (2019).

30-2425.

Without additional facts indicating otherwise, an order appointing a special administrator pursuant to this section is not a final order. In re Estate of Abbott-Ochsner, 299 Neb. 596, 910 N.W.2d 504 (2018).

30-2429.01.

A district court's jurisdiction to hear a will contest pursuant to this section is limited to determining validity. Bohling v. Bohling, 309 Neb. 625, 962 N.W.2d 224 (2021).

30-2431.

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

30-2454.

In order to remove a personal representative for cause, an interested person must file a petition for removal; an oral request at a hearing is insufficient for removal. In re Estate of Evans, 20 Neb. App. 602, 827 N.W.2d 314 (2013).

In the absence of a petition for removal of the personal representative and notice and hearing thereupon, the court cannot remove a personal representative. In re Estate of Evans, 20 Neb. App. 602, 827 N.W.2d 314 (2013).

Under subsection (b) of this section, the county court did not err in removing a personal representative who did not file inventory within the time period described in this section, failed to keep the remaining heirs appraised of the status of the inventory despite several requests for information, may have had a conflict of interest with the estate, failed to obtain an appraisal for the home despite requests from other heirs to do so, and claimed ownership of joint bank accounts which may have contained comingled funds. In re Estate of Webb, 20 Neb. App. 12, 817 N.W.2d 304 (2012).

30-2473.

A motion to surcharge a personal representative is properly brought within the probate proceeding, because the facts underlying such motions ultimately concern the probate of the decedent's will and the distribution of the decedent's property. In re Estate of Graham, 301 Neb. 594, 919 N.W.2d 714 (2018).

30-2482.

Under the Nebraska Probate Code, the Legislature has not expressly provided that a county is responsible for personal representative compensation. Therefore, a court lacks the authority to order a county to pay for a personal representative's fees and expenses. In re Estate of Hutton, 306 Neb. 579, 946 N.W.2d 669 (2020).

Section 30-2405 and this section are part of a scheme to give jurisdiction for the enforcement of probate claims to the county court, and that jurisdiction is concurrent with the jurisdiction of the district court to enforce such claims. Eagle Partners v. Rook, 301 Neb. 947, 921 N.W.2d 98 (2018).

The language of this section does not preclude using the probate claims procedure established in sections 30-2483 through 30-2498. Eagle Partners v. Rook, 301 Neb. 947, 921 N.W.2d 98 (2018).

30-2485.

Because the Nebraska Probate Code requires that all claims, whether absolute or contingent, be presented within certain time periods or be barred against the estate, a contingency's unfulfilled status does not automatically defeat a claim. In re Estate of Ryan, 302 Neb. 821, 925 N.W.2d 336 (2019).

A court cannot extend the time for filing a claim that arose after death. In re Estate of Karmazin, 299 Neb. 315, 908 N.W.2d 381 (2018).

Although identifying the amount of a claim is not statutorily required, doing so advances the purpose of this section. In re Estate of Karmazin, 299 Neb. 315, 908 N.W.2d 381 (2018).

A claimant who has a claim for the proceeds of a decedent's liability insurance under subsection (c)(2) of this section is entitled to have the estate reopened for the limited purpose of service of process in the civil action filed to establish liability and liability insurance coverage. Estate of Hansen v. Bergmeier, 20 Neb. App. 458, 825 N.W.2d 224 (2013).

Before suit can be filed, a closed estate, with a discharged personal representative, must be reopened and a personal representative appointed (or reappointed) even when seeking only liability insurance proceeds. Estate of Hansen v. Bergmeier, 20 Neb. App. 458, 825 N.W.2d 224 (2013).

The time limits under this section for presentation of claims are not applicable when the recovery sought is solely limited to the extent of insurance protection. Estate of Hansen v. Bergmeier, 20 Neb. App. 458, 825 N.W.2d 224 (2013).

This section does not allow the institution of proceedings against a discharged personal representative while the estate is closed. Estate of Hansen v. Bergmeier, 20 Neb. App. 458, 825 N.W.2d 224 (2013).

30-2486.

Although identifying the amount of a claim is not statutorily required, doing so advances the purpose of section 30-2485. In re Estate of Karmazin, 299 Neb. 315, 908 N.W.2d 381 (2018).

The Nebraska Probate Code provides two methods of presenting a claim against a decedent's estate: A claim can be presented by filing a written statement thereof with the clerk of the probate court or by commencing a proceeding against the personal representative in any court which has jurisdiction. Estate of Hansen v. Bergmeier, 20 Neb. App. 458, 825 N.W.2d 224 (2013).

30-2494.

This section allows for the enforcement of judgment liens existing at the time of death in other proceedings outside the probate proceedings. In re Estate of Stretesky, 29 Neb. App. 338, 955 N.W.2d 1 (2021).

30-24,103.

A no contest clause is unenforceable if probable cause exists for instituting proceedings. In re Estate of Barger, 303 Neb. 817, 931 N.W.2d 660 (2019).

30-2608.

A party seeking to establish guardianship must file a petition in county court. In re Interest of Brianna B., 21 Neb. App. 657, 842 N.W.2d 191 (2014).

30-2616.

A biological mother's failure to accept responsibility for her past misconduct indicated present unfitness. In re Guardianship of K.R., 304 Neb. 1, 932 N.W.2d 737 (2019).

Where the rights of a biological or adoptive parent are not at issue, the standard for removal of a guardian of a minor under this section is the best interests of the ward, and the burden of proof is on the moving party to establish that terminating the guardianship is in the best interests of the ward. In re Guardianship of Issaabela R., 27 Neb. App. 353, 932 N.W.2d 749 (2019).

This section governs resignation or removal proceedings in cases involving guardians of minors. In re Guardianship of Aimee S., 26 Neb. App. 380, 920 N.W.2d 18 (2018).

This section provides that a person may petition for removal of a guardian on the ground that removal would be in the best interests of the ward. In re Guardianship of Aimee S., 26 Neb. App. 380, 920 N.W.2d 18 (2018).

This section relates to the removal of a guardian when the protected person is a juvenile. In re Guardianship of Aimee S., 26 Neb. App. 380, 920 N.W.2d 18 (2018).

30-2619.

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

30-2620.

Only after a written acceptance is filed and the guardian submits to the personal jurisdiction of the court will letters of guardianship be issued by the court. As such, one appointed who does not wish to serve as a guardian may simply refuse to accept the appointment. In re Guardianship of Nicholas H., 309 Neb. 1, 958 N.W.2d 661 (2021).

30-2620.01.

In a guardianship proceeding for a minor, no statute or recognized uniform course of procedure permits a court to assess the fees of an appointed person against a ward's estate, a county, or a petitioner. In re Guardianship & Conservatorship of J.F., 307 Neb. 452, 949 N.W.2d 496 (2020).

30-2626.

Subsection (e) of this section provides that the temporary guardianship shall terminate after 90 days or earlier if the court deems the circumstances leading to the order for temporary guardianship no longer exist or if a proper order for a permanent guardianship is entered. In re Guardianship & Conservatorship of Forster, 22 Neb. App. 478, 856 N.W.2d 134 (2014).

30-2627.

Subsection (a) of this section provides that any competent person may be appointed guardian of a person alleged to be incapacitated and that nothing in this subsection prevents spouses, adult children, parents, or relatives of the person alleged to be incapacitated from serving in that capacity. In re Guardianship of Aimee S., 26 Neb. App. 380, 920 N.W.2d 18 (2018).

Subsection (b) of this section provides that persons who are not disqualified by subsection (a) of this section and who exhibit the ability to exercise the powers to be assigned by the court have priority in the order listed. In re Guardianship of Aimee S., 26 Neb. App. 380, 920 N.W.2d 18 (2018).

Subsection (b)(4) of this section allows a parent to serve as a guardian. In re Guardianship of Aimee S., 26 Neb. App. 380, 920 N.W.2d 18 (2018).

30-2628.

Pursuant to subsection (c) of this section, if a guardian has been appointed and an attorney in fact has been designated and authorized under a valid power of attorney for health care, the attorney in fact's authority to make health care decisions supersedes the guardian's authority to make such decisions. In re Guardianship & Conservatorship of Mueller, 23 Neb. App. 430, 872 N.W.2d 906 (2015).

Subsection (c) of this section does not preclude a court from considering a ward's best interests and revoking or setting aside a health care power of attorney in favor of a guardianship when the facts support such action. In re Guardianship & Conservatorship of Mueller, 23 Neb. App. 430, 872 N.W.2d 906 (2015).

30-2633.

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

30-2643.

In a conservatorship proceeding for a protected person, the court is statutorily authorized to assess the fees of an appointed person to the estate of the protected person if the protected person possesses an estate or, if not, to the county in which the proceedings are brought or the petitioner. In re Guardianship & Conservatorship of J.F., 307 Neb. 452, 949 N.W.2d 496 (2020).

30-2645.

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

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

30-2722.

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

30-2726.

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

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

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

30-3420.

Subsection (5) of this section does not preclude a court from considering a ward's best interests and revoking or setting aside a health care power of attorney in favor of a guardianship when the facts support such action. In re Guardianship & Conservatorship of Mueller, 23 Neb. App. 430, 872 N.W.2d 906 (2015).

Unless the power of attorney provides otherwise, a valid power of attorney for health care supersedes any guardianship or conservatorship proceedings to the extent the proceedings involve the right to make health care decisions for the protected person. In re Guardianship & Conservatorship of Mueller, 23 Neb. App. 430, 872 N.W.2d 906 (2015).

30-3801.

The Nebraska Uniform Trust Code statutes are derived from the Restatement (Third) of Trusts. In re William R. Zutavern Revocable Trust, 309 Neb. 542, 961 N.W.2d 807 (2021).

30-3803.

"Beneficiary" is defined as a person or class of persons that has a present or future beneficial interest in a trust, vested or contingent. The fact that a member of the class may ultimately take nothing does not prevent that beneficiary from maintaining suit; each of the beneficiaries of such a trust is in this position, for if none could sue, the trustee might commit a breach of trust with impunity. In re William R. Zutavern Revocable Trust, 309 Neb. 542, 961 N.W.2d 807 (2021).

Where a trust agreement provided limited testamentary power to appoint trust property to or for the benefit of joint descendants, the power of appointment was neither a general power of appointment nor a power of withdrawal. In re Conservatorship of Abbott, 295 Neb. 510, 890 N.W.2d 469 (2017).

30-3805.

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

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

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

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

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

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

30-3811.

A nonjudicial settlement agreement is valid only to the extent it does not violate a material purpose of the trust. A spendthrift provision in the terms of the trust is presumed to constitute a material purpose of the trust. In re Trust Created by McGregor, 308 Neb. 405, 954 N.W.2d 612 (2021).

Changes made to an irrevocable trust by a nonjudicial settlement agreement between the surviving spouse and her two children, which provided for distribution of the trust's assets upon the spouse's death free of trust, violated a "material purpose" of the trust established by its spendthrift provisions, and thus made the agreement invalid. In re Trust Created by McGregor, 308 Neb. 405, 954 N.W.2d 612 (2021).

If the continuance of a trust is necessary to carry out a material purpose of the trust, the beneficiaries cannot compel its termination. In re Trust Created by McGregor, 308 Neb. 405, 954 N.W.2d 612 (2021).

The material purposes of a trust are subject to the settlor's discretion, to the extent that its purposes are lawful, are not contrary to public policy, are possible to achieve, and are for the benefit of its beneficiaries. In re Trust Created by McGregor, 308 Neb. 405, 954 N.W.2d 612 (2021).

30-3825.

Under section 30-3837(b), the party seeking a modification of a trust must affirmatively demonstrate that all beneficiaries have consented to the modification. The issue of consent for unknown beneficiaries must be resolved pursuant to this section and section 30-3826. In re Trust of Shire, 299 Neb. 25, 907 N.W.2d 263 (2018).

30-3826.

Under section 30-3837(b), the party seeking a modification of a trust must affirmatively demonstrate that all beneficiaries have consented to the modification. The issue of consent for unknown beneficiaries must be resolved pursuant to section 30-3825 and this section. In re Trust of Shire, 299 Neb. 25, 907 N.W.2d 263 (2018).

30-3828.

A beneficiary must be "definite." A class of beneficiaries is not indefinite merely because it consists of a changing or shifting group, the number of whose members may increase or decrease. Typical examples of definite classes for trust beneficiaries are "children" or "grandchildren," the "issue" or "descendants," or the "heirs" or "next of kin" of a designated person. In re William R. Zutavern Revocable Trust, 309 Neb. 542, 961 N.W.2d 807 (2021).

30-3836.

A trust may expire or terminate by its own terms, thereby triggering the period for winding up the trust; the winding-up period continues to exist until the trust is fully terminated by distribution of the trust property. In re Trust Created by Augustin, 27 Neb. App. 593, 935 N.W.2d 493 (2019).

If a trustee knows or should know of circumstances that justify judicial action to modify an administrative or distributive provision of a trust because of circumstances not anticipated by the settlor, the trustee has a duty to petition the court for appropriate modification of, or deviation from, the terms of the trust. The possible imposition of such a duty on a trustee further supports permitting a trustee to seek modification under section 30-3838 even in those instances where a trust may have terminated or expired by its own terms, but the winding up and distribution of trust property is still pending. In re Trust Created by Augustin, 27 Neb. App. 593, 935 N.W.2d 493 (2019).

If the trustees fail to distribute the property once the purpose of the trust was fulfilled, a court can enter an order fully terminating the trust with directions to distribute the trust property in accordance with the terms of the trust or, if appropriate, enter an order modifying (or reforming) the trust terms. In re Trust Created by Augustin, 27 Neb. App. 593, 935 N.W.2d 493 (2019).

Regardless of how a trust may terminate, subsection (b) of this section authorizes a trustee or beneficiary to commence a proceeding to approve or disapprove a proposed modification or termination under sections 30-3837 to 30-3842. In re Trust Created by Augustin, 27 Neb. App. 593, 935 N.W.2d 493 (2019).

The Nebraska Uniform Trust Code allows a beneficiary or trustee to petition a county court to consider modification or termination of a trust which has expired or terminated pursuant to its own terms but remains in the winding-up period, including the possible modification of, or deviation from, dispositive terms. In re Trust Created by Augustin, 27 Neb. App. 593, 935 N.W.2d 493 (2019).

The Nebraska Uniform Trust Code provides statutory options for a trustee to seek a modification of the trust during the winding-up period following the expiration or termination of a trust by its own terms. In re Trust Created by Augustin, 27 Neb. App. 593, 935 N.W.2d 493 (2019).

30-3837.

Under subsection (b) of this section, the party seeking a modification of a trust must affirmatively demonstrate that all beneficiaries have consented to the modification. The issue of consent for unknown beneficiaries must be resolved pursuant to sections 30-3825 and 30-3826. In re Trust of Shire, 299 Neb. 25, 907 N.W.2d 263 (2018).

Under subsection (e) of this section, there must be a showing that the interests of nonconsenting beneficiaries will be adequately protected by a modification. For the interests of nonconsenting beneficiaries to be adequately protected, the court must determine that modification will not affect those interests and impose safeguards to prevent them from being affected, when deemed necessary. In re Trust of Shire, 299 Neb. 25, 907 N.W.2d 263 (2018).

Although subsection (e) of this section authorizes a court to modify a trust without the consent of all beneficiaries, it can only do so if the modification is not inconsistent with a material purpose of the trust and any nonconsenting beneficiary would be adequately protected. In re Trust Created by Augustin, 27 Neb. App. 593, 935 N.W.2d 493 (2019).

While this section refers to a noncharitable irrevocable trust, and the trusts at issue here were revocable when made, this section's application is nevertheless appropriate because of the death of the last surviving grantor/settlor. A trust which is revocable when made remains revocable during the settlor's lifetime; however, a revocable trust necessarily becomes irrevocable upon the settlor's death. In re Trust Created by Augustin, 27 Neb. App. 593, 935 N.W.2d 493 (2019).

30-3838.

If a trustee knows or should know of circumstances that justify judicial action to modify an administrative or distributive provision of a trust because of circumstances not anticipated by the settlor, the trustee has a duty to petition the court for appropriate modification of, or deviation from, the terms of the trust. The possible imposition of such a duty on a trustee further supports permitting a trustee to seek modification under this section even in those instances where a trust may have terminated or expired by its own terms, but the winding up and distribution of trust property is still pending. In re Trust Created by Augustin, 27 Neb. App. 593, 935 N.W.2d 493 (2019).

This section broadens the court's ability to apply equitable deviation to modify a trust. The application of equitable deviation allows a court to modify the dispositive provisions of a trust, as well as its administrative terms. The purpose of equitable deviation is not to disregard the settlor's intent but to modify inopportune details to effectuate better the settlor's broader purpose. In re Trust Created by Augustin, 27 Neb. App. 593, 935 N.W.2d 493 (2019).

30-3841.

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

30-3855.

This section does not dictate who may petition for the removal of a trustee, but, rather, describes to whom fiduciary duties are owed. In re Conservatorship of Abbott, 295 Neb. 510, 890 N.W.2d 469 (2017).

Where a trust agreement provided for the discretionary payment of trust principal to beneficiaries for their health, maintenance, support, and education, the beneficiaries had enforceable, present interests in the trust and the trustee owed fiduciary duties to the beneficiaries. In re Conservatorship of Abbott, 295 Neb. 510, 890 N.W.2d 469 (2017).

Where a trust agreement provided limited testamentary power to appoint trust property to or for the benefit of joint descendants, the power of appointment was neither a general power of appointment nor a power of withdrawal. In re Conservatorship of Abbott, 295 Neb. 510, 890 N.W.2d 469 (2017).

Pursuant to this section, the rights of the beneficiaries of a revocable trust are subject to the continued control of the settlor. In re Trust Created by Haberman, 24 Neb. App. 359, 886 N.W.2d 829 (2016).

30-3859.

A trustee is liable for the action of another trustee if he joins in the action, fails to prevent the cotrustee from committing a serious breach of trust, or fails to compel the cotrustee to redress a serious breach of trust. In re Conservatorship of Abbott, 295 Neb. 510, 890 N.W.2d 469 (2017).

Where one cotrustee also acts as a power of attorney for a second cotrustee in managing trust affairs, that cotrustee is considered to join in all actions of the second cotrustee and may owe certain fiduciary duties as a result. In re Conservatorship of Abbott, 295 Neb. 510, 890 N.W.2d 469 (2017).

30-3862.

The petitioners qualified as beneficiaries under the Nebraska Uniform Trust Code, because a family trust granted them a contingent future beneficial interest. In re William R. Zutavern Revocable Trust, 309 Neb. 542, 961 N.W.2d 807 (2021).

Removal of bank as trustee was inconsistent with material purpose of trust, where bank was selected because settlor wanted a trustee that was independent, and settlor did not want trustee that was a part of settlor's family. In re Trust Created by Fenske, 303 Neb. 430, 930 N.W.2d 43 (2019).

Where two trusts share the same beneficiaries, trustee, and trust instrument and removal of the trustee for breach of fiduciary duty was appropriate for one of the trusts, a county court has the power in equity to determine if it is in the best interests of the beneficiaries to remove the trustee of the second trust. In re Conservatorship of Abbott, 295 Neb. 510, 890 N.W.2d 469 (2017).

30-3866.

Upon acceptance of a trusteeship, a trustee has a duty to administer the trust in good faith, in accordance with its terms and purposes and the interests of the beneficiaries, and in accordance with the Nebraska Uniform Trust Code. In re William R. Zutavern Revocable Trust, 309 Neb. 542, 961 N.W.2d 807 (2021).

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

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

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

30-3875.

To further help prevent conflicts of interests, trustees are required to keep adequate records of the trust administration and to keep trust property separate from the trustee's property. In re Estate of Robb, 21 Neb. App. 429, 839 N.W.2d 368 (2013).

30-3878.

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

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

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

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

30-3880.

A trustee may exercise powers conferred by the Nebraska Uniform Trust Code, except as limited by the terms of the trust. In re William R. Zutavern Revocable Trust, 309 Neb. 542, 961 N.W.2d 807 (2021).

All powers of a trustee, whether express or implied, are held in a fiduciary capacity, and their exercise or nonexercise is subject to the fiduciary duties of trusteeship. In re William R. Zutavern Revocable Trust, 309 Neb. 542, 961 N.W.2d 807 (2021).

30-3881.

Pursuant to subsection (26) of this section, after the termination of a trust, the trustees continue to have a nonbeneficial interest in the trust for timely winding it up and distributing its assets; but their powers are limited to those that are reasonable and appropriate to the expeditious distribution of the trust property and preserving the trust property pending the winding up and distribution of that property. In re Estate of Barger, 303 Neb. 817, 931 N.W.2d 660 (2019).

30-3882.

Pursuant to subsection (b) of this section, after a trust has been terminated, a trustee must expeditiously exercise the powers appropriate to wind up the administration of the trust and distribute the trust property to the persons entitled to it. In re Estate of Barger, 303 Neb. 817, 931 N.W.2d 660 (2019).

30-3890.

When a trustee unduly delays distributions from a trust, the trustee has breached a duty of care owed to a beneficiary, and the violation of that duty is a breach of trust. In re Trust Created by Augustin, 27 Neb. App. 593, 935 N.W.2d 493 (2019).

Under subsection (b) of this section, the court has various options available to remedy a violation by a trustee of a duty the trustee owes to a beneficiary. In re Louise v. Steinhoefel Trust, 22 Neb. App. 293, 854 N.W.2d 792 (2014).

30-3897.

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

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

30-38,101.

The trial court did not err in dismissing claims for a constructive trust against a purchaser, because the purchaser dealt in good faith with the trustees and had no reason to believe they participated in a breach of trust. Junker v. Carlson, 300 Neb. 423, 915 N.W.2d 542 (2018).

30-4014.

An agent under a power of attorney is in a fiduciary relationship with his or her principal. In re Estate of Adelung, 306 Neb. 646, 947 N.W.2d 269 (2020).

30-4015.

An exoneration clause in a power of attorney will not relieve an agent of liability where the agent's attorney drafted the document and the agent did not prove that the clause was fair and adequately communicated to the principal. In re Estate of Adelung, 306 Neb. 646, 947 N.W.2d 269 (2020).

30-4016.

Subsection (1)(e) of this section pertains to a "presumptive heir," which necessarily relates to a decedent's blood relatives. In re Trust of Cook, 28 Neb. App. 624, 947 N.W.2d 870 (2020).

30-4024.

Under subsection (2) of this section, for an agent who is not the ancestor, spouse, or issue of the principal to use the power of attorney to create in himself or herself an interest in the principal's property, the agent must have express authority from the principal in the power of attorney. Cisneros v. Graham, 294 Neb. 83, 881 N.W.2d 878 (2016).

30-4040.

The Nebraska Uniform Power of Attorney Act limits gifts made via a general grant of authority. In re Estate of Adelung, 306 Neb. 646, 947 N.W.2d 269 (2020).

30-4045.

The Nebraska Uniform Power of Attorney Act does not apply retroactively to an agent's actions prior to January 1, 2013. In re Estate of Adelung, 306 Neb. 646, 947 N.W.2d 269 (2020).

The provision of the Nebraska Uniform Power of Attorney Act governing retroactivity should be construed similarly to section 30-38,110, the comparable provision of the Nebraska Uniform Trust Code. In re Estate of Adelung, 306 Neb. 646, 947 N.W.2d 269 (2020).

30-4117.

Once the Office of the Public Guardian has been appointed by the court, it may be discharged on the ground its services are no longer necessary only when it shows (1) the ward is no longer incapacitated and in need of a guardian or (2) it has located a successor guardian who is qualified, available, and willing to become a guardian. In re Guardianship of Nicholas H., 309 Neb. 1, 958 N.W.2d 661 (2021).

31-224.

In this section, the phrase "at least" prior to "once a year" indicates that a landowner may have a duty to clear the ditch more than once during the specified period of March 1 to April 15, if the flow of water again becomes obstructed during this period. Barthel v. Liermann, 21 Neb. App. 730, 842 N.W.2d 624 (2014).

There is nothing in this section that can be interpreted to require a landowner to clean a drainage ditch outside the March 1 to April 15 period if the flow of water becomes obstructed at any other time during the year. Barthel v. Liermann, 21 Neb. App. 730, 842 N.W.2d 624 (2014).

This section imposes a duty upon a landowner to clean a drainage ditch once a year, between March 1 and April 15. Barthel v. Liermann, 21 Neb. App. 730, 842 N.W.2d 624 (2014).

31-730.

A sanitary and improvement district is a legislative creature, a political subdivision of the State of Nebraska. SID No. 67 v. State, 309 Neb. 600, 961 N.W.2d 796 (2021).

A sanitary and improvement district is not a "person" having "private property" for purposes of bringing a takings claim. SID No. 67 v. State, 309 Neb. 600, 961 N.W.2d 796 (2021).

Once formed, a sanitary and improvement district has no inherent authority to hold an interest in property; it, unlike a "person," can exercise only those powers expressly granted to it by statute or necessarily implied to carry out its expressed powers. SID No. 67 v. State, 309 Neb. 600, 961 N.W.2d 796 (2021).

Statutes prescribe sanitary and improvement districts' formation as a public corporation of this state. SID No. 67

v. State, 309 Neb. 600, 961 N.W.2d 796 (2021).

32-201.

The Nebraska Supreme Court can direct the legal removal of a petition from the ballot even if it cannot direct its physical removal. Chaney v. Evnen, 307 Neb. 512, 949 N.W.2d 761 (2020).

32-612.

A person who has no "political party affiliation" cannot change his or her "political party affiliation." Davis v. Gale, 299 Neb. 377, 908 N.W.2d 618 (2018).

The phrase "political party affiliation" is a term of art specifically referencing an existing relationship with one of Nebraska's established political parties. Nonpartisan has no relationship with any of Nebraska's established political parties and thus has no "political party affiliation" as that phrase is used in the Election Act. Davis v. Gale, 299 Neb. 377, 908 N.W.2d 618 (2018).

32-628.

Under subsection (3) of this section, petition circulators are not required to read the object statement of the petition to signatories verbatim. Chaney v. Evnen, 307 Neb. 512, 949 N.W.2d 761 (2020).

32-1405.

A non-named person or entity's motivation to decline to be a named sponsor is irrelevant to the question of who must be listed as a sponsor of an initiative or referendum petition. Christensen v. Gale, 301 Neb. 19, 917 N.W.2d 145 (2018).

Defining sponsors who must be disclosed on an initiative or referendum petition as those who assume responsibility for the petition process serves the dual purposes of informing the public of (1) who may be held responsible for the petition, exposing themselves to potential criminal charges if information is falsified, and (2) who stands ready to accept responsibility to facilitate the referendum's inclusion on the ballot and defend the referendum process if challenged. Christensen v. Gale, 301 Neb. 19, 917 N.W.2d 145 (2018).

In the context of the statutory requirement that an initiative or referendum petition contain a sworn statement containing the names and street addresses of every person or entity sponsoring the petition, "sponsoring the petition" means assuming responsibility for the initiative or referendum petition process. Christensen v. Gale, 301 Neb. 19, 917 N.W.2d 145 (2018).

Limiting the category of "sponsors," in the context of the sponsor-disclosure requirement for initiative or referendum petitions, to those persons or entities who have specifically agreed to be responsible for the petition process and serve in the capacities the statutes require of sponsors, lends clarity and simplicity to the petition process, thereby facilitating and preserving its exercise. Christensen v. Gale, 301 Neb. 19, 917 N.W.2d 145 (2018).

"[S]ponsoring the petition" in the context of subsection (1) of this section means assuming responsibility for the initiative or referendum petition process. Hargesheimer v. Gale, 294 Neb. 123, 881 N.W.2d 589 (2016).

32-1410.

Pursuant to subsection (3) of this section, the district court for Lancaster County is authorized to review only the ballot title and lacks jurisdiction to alter the explanatory statement. Thomas v. Peterson, 307 Neb. 89, 948 N.W.2d 698 (2020).

Subsection (3) of this section begins with the presumption that the ballot title prepared by the Attorney General is valid, and it places the burden upon the dissatisfied party to dispel this presumption. A deferential standard is to be applied to a ballot title prepared by the Attorney General. A dissatisfied person must prove by the greater weight of the evidence that the ballot title is insufficient or unfair. Thomas v. Peterson, 307 Neb. 89, 948 N.W.2d 698 (2020).

The word "insufficient" means "inadequate; especially lacking adequate power, capacity, or competence." The word "unfair" means to be "marked by injustice, partiality, or deception." Thomas v. Peterson, 307 Neb. 89, 948 N.W.2d 698 (2020).

Whether a ballot title is insufficient or unfair is a question of law. Thomas v. Peterson, 307 Neb. 89, 948 N.W.2d 698 (2020).

32-1412.

The Nebraska Supreme Court can direct the legal removal of a petition from the ballot even if it cannot direct its physical removal. Chaney v. Evnen, 307 Neb. 512, 949 N.W.2d 761 (2020).

33-103.

A trial court's order requiring a habeas petitioner to pay, in advance, fees to docket an appeal from the denial of a petition, did not comply with the statute requiring payment of fees in advance, except in habeas corpus proceedings, and the appellate rule that fees in habeas corpus proceedings be collected at the conclusion of the proceeding. Jones v. Nebraska Dept. of Corr. Servs., 21 Neb. App. 206, 838 N.W.2d 51 (2013).

33-125.

A county court does not lack subject matter jurisdiction of an original proceeding on the basis that no filing fee was assessed and paid. In re Estate of Adelung, 306 Neb. 646, 947 N.W.2d 269 (2020).

34-301.

An action to ascertain and permanently establish corners and boundaries of land under this section is an equity action. Curry v. Furby, 20 Neb. App. 736, 832 N.W.2d 880 (2013).

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

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

36-103.

An exception is outside of this section, but a reservation must comply with this section. Walters v. Sporer, 298 Neb. 536, 905 N.W.2d 70 (2017).

The acceptance of a deed operates to satisfy the requirement that a contract creating an interest in land must be signed by the party to be charged therewith. Walters v. Sporer, 298 Neb. 536, 905 N.W.2d 70 (2017).

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

It is the general rule that an oral agreement for the transfer of title to real estate is voidable under the statute of frauds. Ficke v. Wolken, 22 Neb. App. 587, 858 N.W.2d 249 (2014).

36-105.

Where the owner of one property sought to bind a purchaser of another property to the terms of a 50-year lease agreement entered into between different parties, the owner's breach of contract claim was barred by the statute of frauds because there was no privity of contract or an express assumption of the lease. Brick Development v. CNBT II, 301 Neb. 279, 918 N.W.2d 824 (2018).

It is the general rule that an oral agreement for the transfer of title to real estate is voidable under the statute of frauds. Ficke v. Wolken, 22 Neb. App. 587, 858 N.W.2d 249 (2014).

36-702.

A blanket security agreement does not convey an asset under the Uniform Fraudulent Transfer Act if everything subject to ownership that is described as collateral therein is fully encumbered by other creditors with superior claims at the time of the alleged transfer. Korth v. Luther, 304 Neb. 450, 935 N.W.2d 220 (2019).

A security agreement by the debtor in favor of an alleged transferee is not the "asset" itself. Korth v. Luther, 304 Neb. 450, 935 N.W.2d 220 (2019).

Creditors are not entitled to avoid as fraudulent a conveyance of property to which the debtor had no title at all or no such title as they could have subjected to payment of their claims. Korth v. Luther, 304 Neb. 450, 935 N.W.2d 220 (2019).

Liens and encumbrances do not exist independently of the interests they attach to, and the reference in subsection (12) of this section to liens or other encumbrances does not modify the express requirement that there be an "asset" before there can be a "transfer." Korth v. Luther, 304 Neb. 450, 935 N.W.2d 220 (2019).

Where the focus of a fraudulent transfer action is a security agreement by the debtor in favor of the alleged transferee, the question is what identifiable and legitimate claim of entitlement the debtor had, in which the debtor transferred an interest via the security agreement. Korth v. Luther, 304 Neb. 450, 935 N.W.2d 220 (2019).

Whether there is a subject of ownership constituting property that can be an asset depends on a legitimate and identifiable claim of entitlement. Korth v. Luther, 304 Neb. 450, 935 N.W.2d 220 (2019).

37-522.

A conviction for violating an Oklahoma statute prohibiting the transportation of a loaded pistol, rifle, or shotgun in a landborne motor vehicle over a public highway was sufficiently similar to this section to justify the denial of a concealed handgun permit application under section 69-2433(8). Shurigar v. Nebraska State Patrol, 293 Neb. 606, 879 N.W.2d 25 (2016).

37-729.

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

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

37-730.

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

38-805.

A chiropractor's opinion that a patient suffered traumatic brain injury was not admissible because the diagnostic methods used to reach the diagnosis fell outside the scope of statutorily defined chiropractic practice. Yagodinski v. Sutton, 309 Neb. 179, 959 N.W.2d 541 (2021).

38-2137.

A mental health practitioner is not liable for failing to warn of a patient's threatened violent behavior where the patient communicated a serious threat of physical violence to persons at random in a city with 300,000 or more inhabitants. Holloway v. State, 293 Neb. 12, 875 N.W.2d 435 (2016).

38-3132.

A psychologist is not liable for failing to warn of a patient's threatened violent behavior where the patient communicated a serious threat of physical violence to persons at random in a city with 300,000 or more inhabitants. Holloway v. State, 293 Neb. 12, 875 N.W.2d 435 (2016).

39-301.

A public road includes the entire area within the county's right-of-way. County of Cedar v. Thelen, 305 Neb. 351, 940 N.W.2d 521 (2020).

It is in the interest of the public to prevent obstructions of the public roads, both for their maintenance and more direct safety, and the mere fact that the Legislature has enacted a criminal law addressing the subject does not mean that the subject matter is preempted. County of Cedar v. Thelen, 305 Neb. 351, 940 N.W.2d 521 (2020).

39-1327.

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

39-1801.

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

40-104.

Transfer on death deeds are not subject to the requirements of this section, because they are not encumbrances or conveyances of the homestead by a married person. Chambers v. Brinkenberg, 309 Neb. 888, 963 N.W.2d 37 (2021).

Issue preclusion and judicial estoppel may supply the statutory requirements set forth in this section for encumbrances of a homestead. Jordan v. LSF8 Master Participation Trust, 300 Neb. 523, 915 N.W.2d 399 (2018).

A valid acknowledgment of both spouses must appear on the face of an instrument purporting to convey or encumber the homestead of a married person or the instrument is void. Mutual of Omaha Bank v. Watson, 297 Neb. 479, 900 N.W.2d 545 (2017).

An acknowledgment is essential when conveying a homestead. An instrument purporting to convey or encumber the homestead of a married person is void if it is not executed and acknowledged by both the husband and the wife. Mutual of Omaha Bank v. Watson, 297 Neb. 479, 900 N.W.2d 545 (2017).

In cases where a contract of sale, deed of conveyance, or encumbrance of a homestead was found void for failing to comply with execution requirements, the homestead right already existed. But when a purchaser must obtain a purchase-money mortgage to acquire real property, the purchaser cannot show a present right of occupancy or possession until after he or she gives the lender the security interest. Accordingly, it is the general rule that restrictions on the encumbrance of a homestead without a spouse's consent or signature do not invalidate a security interest in the property that a purchaser concurrently gives for its purchase price. Mutual of Omaha Bank v. Watson, 297 Neb. 479, 900 N.W.2d 545 (2017).

42-347.

Subdivision (3) of this section, which provides that to dissolve a marriage, a court need only find it is irretrievably broken, does not violate the procedural due process provisions of the U.S. and Nebraska Constitutions. Dycus v. Dycus, 307 Neb. 426, 949 N.W.2d 357 (2020).

42-349.

Domicile is obtained only through a person's physical presence, accompanied by the present intention to remain indefinitely at a location or site, or by the present intention to make a location or site the person's permanent or fixed home. The absence of either presence or intention thwarts the establishment of domicile. Lasu v. Lasu, 28 Neb. App. 478, 944 N.W.2d 773 (2020).

In order to effect a change of domicile, there must not only be a change of residence, but an intention to permanently abandon the former home. The mere residing at a different place, although evidence of a change, is, however long continued, per se insufficient. A brief move to another location to see if living with one's spouse will succeed may not indicate present intent to change one's domicile. Lasu v. Lasu, 28 Neb. App. 478, 944 N.W.2d 773 (2020).

Once established, domicile continues until a new domicile is perfected. Lasu v. Lasu, 28 Neb. App. 478, 944 N.W.2d 773 (2020).

The language of this section requiring an "actual residence in this state" means that one party is required to have a bona fide domicile in Nebraska for 1 year before commencement of a dissolution action. Lasu v. Lasu, 28 Neb. App. 478, 944 N.W.2d 773 (2020).

A plaintiff satisfied Nebraska's residency requirement to obtain a divorce where he alleged in the complaint that he had lived in Nebraska for more than 1 year with the intent of making this state a permanent home. Metzler v. Metzler, 25 Neb. App. 757, 913 N.W.2d 733 (2018).

The language of this section requiring an "actual residence in this state" means that one party is required to have a bona fide domicile in Nebraska for 1 year before commencement of a dissolution action. Metzler v. Metzler, 25 Neb. App. 757, 913 N.W.2d 733 (2018).

In order to maintain an action for divorce in Nebraska, one of the parties must have had actual residence in this state with a bona fide intention of making this state his or her permanent home for at least 1 year prior to the filing of the complaint. Catlett v. Catlett, 23 Neb. App. 136, 869 N.W.2d 368 (2015).

The requirement that one party have "actual residence in this state" means that one party must have a "bona fide domicile" in the state for 1 year before the commencement of a dissolution action. Catlett v. Catlett, 23 Neb. App. 136, 869 N.W.2d 368 (2015).

42-351.

The court had continuing jurisdiction to provide for orders regarding parenting time or other access where, following the filing of a notice of appeal, the court held further hearings but did not make new determinations about the identical issues being appealed; rather, the court entered a purge order setting forth terms to be complied with in order to gain release from jail. Yori v. Helms, 307 Neb. 375, 949 N.W.2d 325 (2020).

Pursuant to subsection (2) of this section, a trial court may retain jurisdiction to provide for an order concerning custody and parenting time even while an appeal is pending; however, a court does not retain authority to hear and determine anew the very issues then pending on appeal and to enter permanent orders addressing these issues during the appeal process. Becher v. Becher, 302 Neb. 720, 925 N.W.2d 67 (2019).

The trial court was not divested of jurisdiction to enter an order modifying child custody where orders that were pending on appeal did not address custody. Burns v. Burns, 293 Neb. 633, 879 N.W.2d 375 (2016).

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

A district court had subject matter jurisdiction to adjudicate a husband's divorce because his complaint for dissolution of marriage fell within the court's jurisdiction, even though there were no marital assets in Nebraska. Metzler v. Metzler, 25 Neb. App. 757, 913 N.W.2d 733 (2018).

Generally, once an appeal has been perfected, the trial court no longer has jurisdiction, although the district court retains jurisdiction under subsection (2) of this section for certain matters. Furstenfeld v. Pepin, 23 Neb. App. 673, 875 N.W.2d 468 (2016).

Subsection (2) of this section does not grant authority to hear and determine anew the very issues then pending on appeal and to enter permanent orders addressing these issues during the appeal process. Furstenfeld v. Pepin, 23 Neb. App. 673, 875 N.W.2d 468 (2016).

The word "support" in this section is not limited to child support and, in fact, applies to spousal support. Furstenfeld v. Pepin, 23 Neb. App. 673, 875 N.W.2d 468 (2016).

Satisfaction of the residency requirement in section 42-349 is required to confer subject matter jurisdiction on a district court hearing a dissolution proceeding. Catlett v. Catlett, 23 Neb. App. 136, 869 N.W.2d 368 (2015).

42-352.

A district court had jurisdiction to dissolve a parties' marriage where the plaintiff satisfied procedural due process by complying with the process service requirements for dissolution proceedings under this section and also satisfied Nebraska residency requirements. Metzler v. Metzler, 25 Neb. App. 757, 913 N.W.2d 733 (2018).

42-353.

Because the husband's complaint contained each of the allegations required by this section, he stated a claim upon which the district court could grant relief, and the court erred in granting the wife's motion to dismiss for failure to state a claim. Metzler v. Metzler, 25 Neb. App. 757, 913 N.W.2d 733 (2018).

42-358.

Subsection (1) of this section permits the district court to order the county to pay attorney fees and expenses only when a responsible party is indigent. White v. White, 296 Neb. 772, 896 N.W.2d 600 (2017).

When an indigence hearing takes place after the appointment of a guardian ad litem and the ordering of fees, a trial court's determination of indigence should depend upon a party's finances at the time of the indigence hearing. White v. White, 293 Neb. 439, 884 N.W.2d 1 (2016).

42-358.02.

The district court did not have discretion to reduce the amount of accrued interest on a father's child support arrearage. Ybarra v. Ybarra, 28 Neb. App. 216, 943 N.W.2d 447 (2020).

42-362.

The trial court did not abuse its discretion in awarding continuing monthly spousal support in favor of the wife until either party died or the wife remarried or was no longer mentally ill, even though the spousal-support obligation might place the husband at or near his net income level; the wife was in an even more difficult financial position given that she had no ability to work. Onstot v. Onstot, 298 Neb. 897, 906 N.W.2d 300 (2018).

42-364.

Pursuant to subdivision (1)(b) of this section, a court must determine physical custody based upon the best interests of a child and such determination shall be made by incorporating (i) a parenting plan developed by the parties, if approved by the court, or (ii) a parenting plan developed by the court based upon evidence produced after a hearing in open court if no parenting plan is developed by the parties and approved by the court. Blank v. Blank, 303 Neb. 602, 930 N.W.2d 523 (2019).

Pursuant to subsection (3) of this section, a joint physical custody award is allowed if (a) both parents agree to such an arrangement in the parenting plan and the court determines that such an arrangement is in the best interests of the child or (b) the court specifically finds, after a hearing in open court, that joint physical custody or joint legal custody, or both, is in the best interests of the minor child regardless of any parental agreement or consent. Blank v. Blank, 303 Neb. 602, 930 N.W.2d 523 (2019).

Pursuant to subsection (3) of this section, a trial court's decision to award joint legal or physical custody can be made without parental agreement or consent so long as it is in the child's best interests. Blank v. Blank, 303 Neb. 602, 930 N.W.2d 523 (2019).

In an action for dissolution of marriage involving the custody of minor children, the court is required to make a determination of legal and physical custody based upon the children's best interests. Such determinations shall be made by incorporation into the decree of a parenting plan, developed either by the parties as approved by the court or by the court after an evidentiary hearing. Dooling v. Dooling, 303 Neb. 494, 930 N.W.2d 481 (2019).

A juvenile court lacks statutory authority to transfer a proceeding back to the district court under subsection (5) of this section where: (1) The district court, having subject matter jurisdiction of a modification proceeding under subsection (6) of this section in which termination of parental rights has been placed in issue and having personal jurisdiction of the parties to that proceeding, has transferred jurisdiction of the proceeding to the appropriate juvenile court; (2) termination of parental rights remains in issue and unadjudicated in the transferred proceeding; (3) the State is not involved in the proceeding and has not otherwise asserted jurisdiction over the child or children involved in the modification proceeding; and (4) the juvenile court has not otherwise been deprived of jurisdiction. Christine W. v. Trevor W., 303 Neb. 245, 928 N.W.2d 398 (2019).

Although joint physical custody generally should be reserved for those cases where the parties can communicate and cooperate with one another, a court may order joint custody in the absence of parental agreement if, after a hearing in open court, it finds that such custody is in the child's best interests. Leners v. Leners, 302 Neb. 904, 925 N.W.2d 704 (2019).

When making a determination of child support under this section, the court must take into account and give effect to an existing order of support under section 43-512.04. The court may order the existing order to remain in effect

without modification after considering whether modification is warranted. Fetherkile v. Fetherkile, 299 Neb. 76, 907 N.W.2d 275 (2018).

Summons is required to be served on the defendant in a modification proceeding. Burns v. Burns, 293 Neb. 633, 879 N.W.2d 375 (2016).

The district court did not abuse its discretion by denying joint legal custody when the parties did not communicate and the mother thwarted any meaningful and appropriate contact between the father and the child. Kashyap v. Kashyap, 26 Neb. App. 511, 921 N.W.2d 835 (2018).

This section, which provides that a court may order joint custody, regardless of any parental agreement or consent, if the court specifically finds, after a hearing in open court, that joint physical custody or joint legal custody, or both, is in the best interests of the minor child, may be applied to custody disputes in paternity actions. State on behalf of Carter W. v. Anthony W., 24 Neb. App. 47, 879 N.W.2d 402 (2016).

The requirement in this section that a court make a specific finding of best interests before awarding joint custody does not apply in paternity actions where the parties were never married. Aguilar v. Schulte, 22 Neb. App. 80, 848 N.W.2d 644 (2014).

Subsection (3)(b) of this section requires that in dissolution cases, if the parties do not agree to joint custody in a parenting plan, the trial court can award joint custody if it specifically finds, after a hearing in open court, that it is in the best interests of the child. Hill v. Hill, 20 Neb. App. 528, 827 N.W.2d 304 (2013).

Although there was no evidence that the mother was currently engaged in abusive behaviors or an abusive relationship, the trial court acted within its discretion in finding that the father's custody was in the best interests of the child based on the mother's history of domestic violence, the previous removal of a child, and the mother's questionable rehabilitation. State on behalf of Keegan M. v. Joshua M., 20 Neb. App. 411, 824 N.W.2d 383 (2012).

42-364.08.

The basic subsistence limitation under the child support guidelines was not applicable to reduce the amount being withheld from a father's monthly Social Security benefits to pay his child support arrearages. Ybarra v. Ybarra, 28 Neb. App. 216, 943 N.W.2d 447 (2020).

42-364.15.

Modifications to a parenting plan made after finding the father in contempt were remedial measures to gain compliance and were part of the equitable relief that the court was authorized to provide. Yori v. Helms, 307 Neb. 375, 949 N.W.2d 325 (2020).

A motion to show cause gave the custodial parent notice that she could be found in contempt for denying parenting time which also gave notice of a possible modification pursuant to this section. Martin v. Martin, 294 Neb. 106, 881 N.W.2d 174 (2016).

42-364.16.

Though the Nebraska Child Support Guidelines are to be applied as a rebuttable presumption, offering flexibility and guidance rather than a stringent formula, the guidelines generally cannot be construed to allow for a deviation that is contrary to one of its specific provisions. Donald v. Donald, 296 Neb. 123, 892 N.W.2d 100 (2017).

In general, child support payments should be set according to the Nebraska Child Support Guidelines. Ybarra v. Ybarra, 28 Neb. App. 216, 943 N.W.2d 447 (2020).

Generally, child support payments should be set according to the guidelines. McDonald v. McDonald, 21 Neb. App. 535, 840 N.W.2d 573 (2013).

42-364.17.

Provisions in a decree or judgment related to child-related expenses listed in this section are modifiable when there has been a material change in circumstances, as such expenses are a subset of child support. Windham v. Kroll, 307 Neb. 947, 951 N.W.2d 744 (2020).

Court erred in not addressing each party's responsibility for the reasonable and necessary expenses of the children based on the record. Dooling v. Dooling, 303 Neb. 494, 930 N.W.2d 481 (2019).

The decree, together with the attached parenting plan, allocated the parties' responsibility for the necessary child expenses. Leners v. Leners, 302 Neb. 904, 925 N.W.2d 704 (2019).

Supervision of children in the form of day camps, lessons, or activities may under the circumstances constitute childcare for purposes of child support so long as such supervision is reasonable, in the child's best interests, and necessary due to employment or for education or training to obtain a job or enhance earning potential. Moore v. Moore, 302 Neb. 588, 924 N.W.2d 314 (2019).

Because the broader, more general terms contained in section 42-369(3) preceded the adoption of the Nebraska Child Support Guidelines and the passage of this section, the guidelines and this section are construed to control what categories of expenses can be ordered in addition to the monthly child support obligation determined under the guidelines. Kelly v. Kelly, 29 Neb. App. 198, 952 N.W.2d 207 (2020).

A trial court has the authority to order a parent to pay the categories of expenses specified in this section, in addition to the monthly child support obligation calculated under the guidelines. Smith v. King, 29 Neb. App. 152, 953 N.W.2d 258 (2020).

Because the broader, more general terms contained in section 42-369(3) preceded the adoption of the Nebraska Child Support Guidelines and the passage of this section, the guidelines and this section are construed to control what categories of expenses can be ordered in addition to the monthly child support obligation determined under the guidelines. Smith v. King, 29 Neb. App. 152, 953 N.W.2d 258 (2020).

42-365.

Where the parties have not expressly precluded or limited modification of alimony pursuant to section 42-366(7), an alimony provision that was agreed to by the parties as part of a property settlement agreement may later be modified in accordance with this section. Grothen v. Grothen, 308 Neb. 28, 952 N.W.2d 650 (2020).

A district court need not choose one single date to value the entire marital estate, so long as the valuation date rationally relates to the property being valued. Rohde v. Rohde, 303 Neb. 85, 927 N.W.2d 37 (2019).

The Nebraska Child Support Guidelines exclude alimony between parents from their total monthly income for the purpose of calculating child support obligations for their children. Hotz v. Hotz, 301 Neb. 102, 917 N.W.2d 467 (2018).

Equitable property division is a three-step process. The first step is to classify the parties' property as marital or nonmarital. The second step is to value the marital assets and liabilities of the parties. The third step is to calculate and divide the net marital estate between the parties in accordance with the principles contained in this section. Osantowski v. Osantowski, 298 Neb. 339, 904 N.W.2d 251 (2017).

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

Any given property can constitute a mixture of marital and nonmarital interests; a portion of an asset can be marital property while another portion can be separate property. Ramsey v. Ramsey, 29 Neb. App. 688, 958 N.W.2d 447 (2021).

Debts, like property, ought to also be considered in dividing marital property upon dissolution. Ramsey v. Ramsey, 29 Neb. App. 688, 958 N.W.2d 447 (2021).

Generally, all property accumulated and acquired by either spouse during a marriage is part of the marital estate. Exceptions include property that a spouse acquired before the marriage, or by gift or inheritance. Ramsey v. Ramsey, 29 Neb. App. 688, 958 N.W.2d 447 (2021).

Separate property becomes marital property by commingling if it is inextricably mixed with marital property or with the separate property of the other spouse. But if the separate property remains segregated or is traceable into its product, commingling does not occur. The burden of proof rests with the party claiming that property is nonmarital. Ramsey v. Ramsey, 29 Neb. App. 688, 958 N.W.2d 447 (2021).

When one party's nonmarital debt is repaid with marital funds, the value of the debt repayments ought to reduce that party's property award upon dissolution. Ramsey v. Ramsey, 29 Neb. App. 688, 958 N.W.2d 447 (2021).

The equitable division of property is a three-step process: (1) classify the parties' property as marital or nonmarital, setting aside the nonmarital property to the party who brought that property to the marriage; (2) value the marital assets and marital liabilities of the parties; and (3) calculate and divide the net marital estate between the parties in accordance with the principles contained in this section. Cook v. Cook, 26 Neb. App. 137, 918 N.W.2d 1 (2018).

Alimony should not be used to equalize the incomes of the parties or to punish one of the parties. Patton v. Patton, 20 Neb. App. 51, 818 N.W.2d 624 (2012).

Disparity in income or potential income may partially justify an award of alimony. Patton v. Patton, 20 Neb. App. 51, 818 N.W.2d 624 (2012).

In addition to the specific criteria listed in this section, in considering alimony upon a dissolution of marriage, a court is to consider the income and earning capacity of each party, as well as the general equities of each situation. Patton v. Patton, 20 Neb. App. 51, 818 N.W.2d 624 (2012).

In determining whether alimony should be awarded, in what amount, and over what period of time, the ultimate criterion is one of reasonableness. Patton v. Patton, 20 Neb. App. 51, 818 N.W.2d 624 (2012).

The equitable division of property is a three-step process. The first step is to classify the parties' property as marital or nonmarital. The second step is to value the marital assets and marital liabilities of the parties. The third step is to calculate and divide the net marital estate between the parties in accordance with the principles contained in this section. Patton v. Patton, 20 Neb. App. 51, 818 N.W.2d 624 (2012).

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

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

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

42-366.

Where the parties have not expressly precluded or limited modification of alimony pursuant to subsection (7) of this section, an alimony provision that was agreed to by the parties as part of a property settlement agreement may later be modified in accordance with section 42-365. Grothen v. Grothen, 308 Neb. 28, 952 N.W.2d 650 (2020).

Agreements regarding the custody and support of minor children are not binding on dissolution courts, and child support orders are always subject to modification and review. Windham v. Kroll, 307 Neb. 947, 951 N.W.2d 744 (2020).

To the extent employment benefits such as unused sick time, vacation time, and comp time have been earned during the marriage, they constitute deferred compensation benefits under subsection (8) of this section and are considered part of the marital estate subject to equitable division. Dooling v. Dooling, 303 Neb. 494, 930 N.W.2d 481 (2019).

Appreciation or income of a nonmarital asset during the marriage is marital insofar as it was caused by the efforts of either spouse or both spouses. Stephens v. Stephens, 297 Neb. 188, 899 N.W.2d 582 (2017).

An agreement between a husband and wife concerning the disposition of their property, not made in connection with the separation of the parties or the dissolution of their marriage, is not binding upon the courts during a later dissolution proceeding. Devney v. Devney, 295 Neb. 15, 886 N.W.2d 61 (2016).

Investment earnings accrued during the marriage on the nonmarital portion of a retirement account may be classified as nonmarital where the party seeking the classification proves: (1) The growth is readily identifiable and

traceable to the nonmarital portion of the account and (2) the growth is due solely to inflation, market forces, or guaranteed rate rather than the direct or indirect effort, contribution, or fund management of either spouse. Stanosheck v. Jeanette, 294 Neb. 138, 881 N.W.2d 599 (2016).

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

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

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

Deferred compensation, including pension plans, retirement plans, and annuities, is property for purposes of determining the marital estate under subsection (8) of this section. Wiech v. Wiech, 23 Neb. App. 370, 871 N.W.2d 570 (2015).

42-367.

A court may direct costs against either party in an action for dissolution of marriage. Barth v. Barth, 22 Neb. App. 241, 851 N.W.2d 104 (2014).

42-369.

Because the broader, more general terms contained in subsection (3) of this section preceded the adoption of the Nebraska Child Support Guidelines and the passage of section 42-364.17, the guidelines and section 42-364.17 are construed to control what categories of expenses can be ordered in addition to the monthly child support obligation determined under the guidelines. Kelly v. Kelly, 29 Neb. App. 198, 952 N.W.2d 207 (2020).

Section 42-364.17 provides categories of expenses incurred by a child which can be ordered by a trial court in addition to the monthly child support calculation determined under the guidelines. Kelly v. Kelly, 29 Neb. App. 198, 952 N.W.2d 207 (2020).

To construe subsection (3) of this section to require a parent to pay for basic necessities such as shelter, food, and clothing in addition to a monthly child support obligation which has been calculated using the Nebraska Child Support Guidelines basic net income and support calculation, worksheet 1, would make inexplicable what the monthly child support was otherwise intended to cover in terms of a child's needs. Kelly v. Kelly, 29 Neb. App. 198, 952 N.W.2d 207 (2020).

A trial court has the authority to order a parent to pay the categories of expenses specified in section 42-364.17, in addition to the monthly child support obligation calculated under the guidelines. Smith v. King, 29 Neb. App. 152, 953 N.W.2d 258 (2020).

Because the broader, more general terms contained in subsection (3) of this section preceded the adoption of the Nebraska Child Support Guidelines and the passage of section 42-364.17, the guidelines and section 42-364.17 are construed to control what categories of expenses can be ordered in addition to the monthly child support obligation determined under the guidelines. Smith v. King, 29 Neb. App. 152, 953 N.W.2d 258 (2020).

42-371.

An appearance bond deposited by the defendant into the court registry to secure the defendant's appearance in a criminal proceeding was not personal property registered with a county office, within the meaning of the statute creating a lien on personal property of a child support obligor registered with a county office; statute limited personal property subject to lien for unpaid child support as tangible goods and chattels, and money was neither good nor chattel, but, rather, was intangible property. State v. McColery, 301 Neb. 516, 919 N.W.2d 153 (2018).

42-378.

This section does not apply merely because a party believes that he or she is validly married or has a subjective desire to be married; rather, the parties must enter into the contract of marriage. Seivert v. Alli, 309 Neb. 246, 959 N.W.2d 777 (2021).

42-903.

Not only is the recipient or target of a credible threat a "victim" of abuse eligible for a domestic abuse protection order under section 42-924, so too are those family members for whose safety the target reasonably fears because of the threat. Robert M. on behalf of Bella O. v. Danielle O., 303 Neb. 268, 928 N.W.2d 407 (2019).

Subsection (1) of this section does not impose any limitation on the time during which a victim of domestic abuse resulting in bodily injury can file a petition and affidavit seeking a protection order. However, this does not mean that the remoteness of the abuse is irrelevant to the issue of whether a protection order is warranted. Sarah K. v. Jonathan K., 23 Neb. App. 471, 873 N.W.2d 428 (2015).

The term "physical menace" within the meaning of the abuse definition means a physical threat or act and requires more than mere words. Beemer v. Hammer, 20 Neb. App. 579, 826 N.W.2d 599 (2013).

42-924.

Not only is the recipient or target of a credible threat a "victim" of abuse eligible for a domestic abuse protection order under this section, so too are those family members for whose safety the target reasonably fears because of the threat. Robert M. on behalf of Bella O. v. Danielle O., 303 Neb. 268, 928 N.W.2d 407 (2019).

A protection order pursuant to this section is analogous to an injunction. Hronek v. Brosnan, 20 Neb. App. 200, 823 N.W.2d 204 (2012).

42-925.

In considering whether to continue an ex parte domestic abuse protection order following a finding that domestic abuse has occurred, a court is not limited to considering only whether the ex parte order was proper, but may also consider a number of factors pertinent to the likelihood of future harm. Maria A. on behalf of Leslie G. v. Oscar G., 301 Neb. 673, 919 N.W.2d 841 (2018).

Whether domestic abuse occurred is a threshold issue in determining whether an ex parte protection order should be affirmed; absent abuse as defined by the Protection from Domestic Abuse Act, a protection order may not remain in effect. Maria A. on behalf of Leslie G. v. Oscar G., 301 Neb. 673, 919 N.W.2d 841 (2018).

The 5-day period to file a show cause hearing request as set forth in subsection (1) of this section is directory and not mandatory. Accordingly, failing to file a request for a show cause hearing within that 5-day period does not preclude the later filing of a motion to bring the matter back before the court, including the filing of a motion to vacate an ex parte order. Courtney v. Jimenez, 25 Neb. App. 75, 903 N.W.2d 41 (2017).

42-1002.

The parties' premarital agreement providing that each party would retain "full and complete ownership of all real and personal property that they now own" and "full and complete ownership of all property which shall come into their possession as the result of each party's work and labor, investments, inheritance or otherwise" was enforceable. Cook v. Cook, 26 Neb. App. 137, 918 N.W.2d 1 (2018).

42-1004.

The proceeds from a wrongful death action are not the property of a decedent's estate and are therefore not contemplated as a property right waived in a premarital agreement unless the language of the premarital agreement specifically waives such a right. In re Estate of McConnell, 28 Neb. App. 303, 943 N.W.2d 722 (2020).

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42-1006.

The proceeds from a wrongful death action are not the property of a decedent's estate and are therefore not contemplated as a property right waived in a premarital agreement unless the language of the premarital agreement specifically waives such a right. In re Estate of McConnell, 28 Neb. App. 303, 943 N.W.2d 722 (2020).

43-101.

The plain language of this section allows a same-sex married couple to adopt a minor child. In re Adoption of Yasmin S., 308 Neb. 771, 956 N.W.2d 704 (2021).

43-102.

This section and sections 43-103 and 43-104, construed together, require that before a county court entertains a decision on the merits in an adoption proceeding, all those statutorily required to consent have done so. In re Adoption of Chase T., 295 Neb. 390, 888 N.W.2d 507 (2016).

Under this section, a county court or juvenile court will ordinarily have jurisdiction over an adoption proceeding. But district courts have inherent equity jurisdiction to resolve custody disputes, and they have jurisdiction over habeas proceedings challenging adoption proceedings. Accordingly, a county court's statutory jurisdiction over an adoption petition does not give it exclusive jurisdiction to resolve challenges to Nebraska's adoption statutes that could have foreclosed the adoption. In re Adoption of Jaelyn B., 293 Neb. 917, 883 N.W.2d 22 (2016).

43-103.

This section and sections 43-102 and 43-104, construed together, require that before a county court entertains a decision on the merits in an adoption proceeding, all those statutorily required to consent have done so. In re Adoption of Chase T., 295 Neb. 390, 888 N.W.2d 507 (2016).

43-104.

Under the Nebraska adoption statutes, a voluntary relinquishment is effective when a parent executes a written instrument and the Department of Health and Human Services or an agency, in writing, accepts responsibility for the child. In re Interest of Donald B. & Devin B., 304 Neb. 239, 933 N.W.2d 864 (2019).

Evidence of a parent's conduct, either before or after the statutory period, may be considered because this evidence is relevant to a determination of whether the purpose and intent of that parent was to abandon his or her child or children. In re Adoption of Micah H., 301 Neb. 437, 918 N.W.2d 834 (2018).

The critical period of time during which abandonment must be shown is the 6 months immediately preceding the filing of the adoption petition. In re Adoption of Micah H., 301 Neb. 437, 918 N.W.2d 834 (2018).

This section and sections 43-102 and 43-103, construed together, require that before a county court entertains a decision on the merits in an adoption proceeding, all those statutorily required to consent have done so. In re Adoption of Chase T., 295 Neb. 390, 888 N.W.2d 507 (2016).

Subsection (4) of this section does not apply to an acknowledged, legal father under another state's paternity determination. In re Adoption of Jaelyn B., 293 Neb. 917, 883 N.W.2d 22 (2016).

A finding of abandonment under subdivision (2)(b) of this section in an ongoing adoption proceeding is not a final, appealable order; such a finding does not terminate parental rights or standing in the proceedings, but merely eliminates the need for the abandoning parent's consent and authorizes the execution of substitute consent, and such a finding has no real and immediate effect on parental obligations, visitation, custody, or other matters pertaining to the parent's contact with the child during the pendency of the final judgment granting or denying the petition for adoption. In re Adoption of Madysen S. et al., 293 Neb. 646, 879 N.W.2d 34 (2016).

43-104.05.

Subsection (1) of this section details how a party goes about commencing an action for paternity and includes how venue of an action is determined. Peterson v. Jacobitz, 309 Neb. 486, 961 N.W.2d 258 (2021).

Subsection (4) of this section deals with the timing and duration of a court's authority and does not confer jurisdiction. Peterson v. Jacobitz, 309 Neb. 486, 961 N.W.2d 258 (2021).

Subsection (3) of this section does not authorize a county court to disestablish an acknowledged father's parental rights under another state's paternity determination. In re Adoption of Jaelyn B., 293 Neb. 917, 883 N.W.2d 22 (2016).

Subsection (1) of this section specifies the appropriate venue for an objection to adoption to be litigated and is not a statute conferring jurisdiction. Peterson v. Jacobitz, 29 Neb. App. 486, 955 N.W.2d 329 (2021).

Subsection (1) of this section specifies the proper venue for an objection to adoption. Peterson v. Jacobitz, 29 Neb. App. 486, 955 N.W.2d 329 (2021).

43-104.22.

An acknowledged, legal father who has the right to consent to an adoption under another state's paternity determination is not a "man" within the meaning of subsection (11) of this section. Jesse B. v. Tylee H., 293 Neb. 973, 883 N.W.2d 1 (2016); In re Adoption of Jaelyn B., 293 Neb. 917, 883 N.W.2d 22 (2016).

Subsection (11) of this section does not authorize a county court to disestablish an acknowledged father's parental rights under another state's paternity determination. Jesse B. v. Tylee H., 293 Neb. 973, 883 N.W.2d 1 (2016); In re Adoption of Jaelyn B., 293 Neb. 917, 883 N.W.2d 22 (2016).

43-106.01.

A duly executed revocation of a relinquishment and consent to adoption delivered to a licensed child placement agency within a reasonable time after execution of the relinquishment and before the agency has, in writing, accepted full responsibility for the child, as required by statute, is effective to invalidate the original relinquishment and consent. In re Interest of Nery V. et al., 20 Neb. App. 798, 832 N.W.2d 909 (2013).

The rights of the relinquishing parent are terminated when the Nebraska Department of Health and Human Services, or a licensed child placement agency, accepts responsibility for the child in writing. In re Interest of Nery V. et al., 20 Neb. App. 798, 832 N.W.2d 909 (2013).

There are four requirements for a valid and effective revocation of a relinquishment of parental rights: (1) There must be a duly executed revocation of a relinquishment, (2) the revocation must be delivered to a licensed child placement agency or the Nebraska Department of Health and Human Services, (3) delivery of the revocation must be within a reasonable time after execution of the relinquishment, and (4) delivery of the revocation must occur before the agency has, in writing, accepted full responsibility for the child. In re Interest of Nery V. et al., 20 Neb. App. 798, 832 N.W.2d 909 (2013).

When a parent's attempted revocation of his or her relinquishment of parental rights is not done in a reasonable time after the relinquishment, the relinquishment becomes irrevocable. In re Interest of Nery V. et al., 20 Neb. App. 798, 832 N.W.2d 909 (2013).

43-111.

The parental preference doctrine applies in a habeas proceeding to obtain custody of a child who is the subject of an adoption proceeding if the parent's relinquishment is invalid or void. A court in a habeas proceeding may not deprive a parent of custody of his or her minor child unless a party affirmatively shows that the parent is unfit or has forfeited the right to perform his or her parental duties. The best interests standard is subject to the overriding recognition that the relationship between parent and child is constitutionally protected. Jesse B. v. Tylee H., 293 Neb. 973, 883 N.W.2d 1 (2016).

Under this section, it is the adoption itself which terminates the parental rights, and until the adoption is granted, the parental rights are not terminated. When a parent's relinquishment of his or her child is invalid or void, this section governs when the parent's rights are terminated. Jesse B. v. Tylee H., 293 Neb. 973, 883 N.W.2d 1 (2016).

43-246.01.

County courts have not been given authority to decide motions to transfer to juvenile court in cases in which they lack jurisdiction to try the case. State v. A.D., 305 Neb. 154, 939 N.W.2d 484 (2020).

A city or county attorney has authority to seek a transfer to the criminal court when both the juvenile court and the criminal court have statutory jurisdiction; the county court and district court have statutory jurisdiction over criminal matters, except in those instances where the Legislature has preserved such matters to the exclusive

jurisdiction of the juvenile court, such as in subdivision (1) of this section. In re Interest of Luis D., 29 Neb. App. 495, 956 N.W.2d 25 (2021).

A juvenile fitting into the categories described in subdivisions (1) and (2) of this section must always be commenced in the juvenile court; however, proceedings initiated under subdivision (2) of this section are subject to transfer to the county or district court for further proceedings under the criminal code. In re Interest of Luis D., 29 Neb. App. 495, 956 N.W.2d 25 (2021).

Actions involving juveniles fitting into categories under subdivision (3) of this section may be initiated either in the juvenile court or in the county or district court and may be transferred as provided in section 43-274. In re Interest of Luis D., 29 Neb. App. 495, 956 N.W.2d 25 (2021).

Proceedings fitting under subdivision (1) of this section must always be filed via a juvenile petition and must always proceed to completion in the juvenile court. In re Interest of Luis D., 29 Neb. App. 495, 956 N.W.2d 25 (2021).

Subsection (3) of this section grants concurrent jurisdiction to the juvenile court and the county or district court over juvenile offenders who (1) are 11 years of age or older and commit a traffic offense that is not a felony or (2) are 14 years of age or older and commit a Class I, IA, IB, IC, ID, II, or IIA felony. State v. Comer, 26 Neb. App. 270, 918 N.W.2d 13 (2018).

43-246.02.

A bridge order is not final for purposes of section 25-1902. In re Interest of Kamille C. & Kamiya C., 302 Neb. 226, 922 N.W.2d 739 (2019).

A bridge order "shall only address matters of legal and physical custody and parenting time," but it is not a domestic relations custody decree. In re Interest of Kamille C. & Kamiya C., 302 Neb. 226, 922 N.W.2d 739 (2019).

In enacting this section authorizing bridge orders, the Legislature crafted a solution for temporary continuity when the child is no longer in need of the juvenile court's protection; the juvenile court has made, through a dispositional order, a custody determination in the child's best interests; and the juvenile court does not wish to enter a domestic relations custody decree under the power granted by subsection (3) of section 25-2740. In re Interest of Kamille C. & Kamiya C., 302 Neb. 226, 922 N.W.2d 739 (2019).

The custody determination made by the juvenile court has no legally preclusive effect and will be made anew by the district court if either parent is discontent with the custody arrangement originally set forth by the bridge order. In re Interest of Kamille C. & Kamiya C., 302 Neb. 226, 922 N.W.2d 739 (2019).

43-247.

Pursuant to subdivision (8) of this section, it was not necessary for the State to file a second supplemental petition to return two wards to the custody of the Department of Health and Human Services after their guardianships were disrupted because the juvenile court retained jurisdiction over the wards pursuant to section 43-1312.01(3). In re Interest of Mekhi S. et al., 309 Neb. 529, 960 N.W.2d 732 (2021).

At the adjudication stage, pursuant to subdivision (3)(a) of this section, in order for a juvenile court to assume jurisdiction of minor children, the State must prove the allegations of the petition by a preponderance of the evidence. In re Interest of Prince R., 308 Neb. 415, 954 N.W.2d 294 (2021).

To obtain jurisdiction over a juvenile at the adjudication stage, the court's only concern is whether the conditions in which the juvenile presently finds himself or herself fit within the asserted subdivision of this section. In re Interest of Prince R., 308 Neb. 415, 954 N.W.2d 294 (2021).

In the context of denying parental preference in a placement decision during proceedings under subdivision (3)(a) of this section, reasonable notice must include the factual bases for seeking to prove that the parent is unfit or has forfeited parental rights or that exceptional circumstances exist involving serious physical or psychological harm to the child or a substantial likelihood of such harm. In re Interest of A.A. et al., 307 Neb. 817, 951 N.W.2d 144 (2020).

There is no presumption that a disabled parent is unfit, that a disabled parent has forfeited parental rights, or that exceptional circumstances exist involving serious physical or psychological harm to the child or a substantial likelihood of such harm because a parent is disabled. In re Interest of A.A. et al., 307 Neb. 817, 951 N.W.2d 144 (2020).

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To obtain jurisdiction over a juvenile and the juvenile's parents, the court's only concern is whether the condition in which the juvenile presently finds himself or herself fits within the asserted subdivision of this section. In re Interest of A.A. et al., 307 Neb. 817, 951 N.W.2d 144 (2020).

When the allegations of a petition for adjudication invoking the jurisdiction of the juvenile court are against one parent only, the State cannot deny the request of the other parent—who has acquired constitutionally protected parental status—for temporary physical custody in lieu of a foster care placement, unless it pleads and proves by a preponderance of the evidence that the other parent is unfit or has forfeited custody or that there are exceptional circumstances involving serious physical or psychological harm to the child or a substantial likelihood of such harm. In re Interest of A.A. et al., 307 Neb. 817, 951 N.W.2d 144 (2020).

"Parental" as used in the phrase "lacks proper parental care" describes the type and nature of care rather than the relationship of the person providing it. In re Interest of Jeremy U. et al., 304 Neb. 734, 936 N.W.2d 733 (2020).

"Proper parental care" includes providing a home, support, subsistence, education, and other care necessary for the health, morals, and well-being of the child. It commands special care for the children in special need because of mental condition. It commands that the child not be placed in situations dangerous to life or limb, and not be permitted to engage in activities injurious to his or her health or morals. In re Interest of Jeremy U. et al., 304 Neb. 734, 936 N.W.2d 733 (2020).

The factual allegations of a petition seeking to adjudicate a child must give a parent notice of the bases for seeking to prove that the child is within the meaning of the statute. In re Interest of Jeremy U. et al., 304 Neb. 734, 936 N.W.2d 733 (2020).

The juvenile court properly declined to adjudicate two children who received proper parental care from their grandmother and were not at risk of harm from their mother; however, the court erred in failing to adjudicate a newborn, who lacked proper parental care as demonstrated by his mother's drug use during pregnancy until the time of his birth. In re Interest of Jeremy U. et al., 304 Neb. 734, 936 N.W.2d 733 (2020).

While the State need not prove that a child has actually suffered physical harm to assert jurisdiction, Nebraska case law is clear that at a minimum, the State must establish that without intervention, there is a definite risk of future harm. In re Interest of Jeremy U. et al., 304 Neb. 734, 936 N.W.2d 733 (2020).

A parent's absenteeism cannot defeat the juvenile court's authority to promote and protect a juvenile's best interests under subdivision (3)(b) of this section. In re Interest of Reality W., 302 Neb. 878, 925 N.W.2d 355 (2019).

A juvenile court may not, under section 43-285(2), change a juvenile's permanency plan from family reunification to guardianship unless there has been a prior adjudication of the juvenile under subdivision (3)(a) of this section, which adjudication is a requirement under section 43-1312.01 for establishing a juvenile guardianship. In re Interest of LeVanta S., 295 Neb. 151, 887 N.W.2d 502 (2016).

An order changing a permanency plan in a juvenile case adjudicated under subdivision (3)(a) of this section does not necessarily affect a substantial right of the parent for purposes of the final order statute, section 25-1902, when the order continues prior orders directed at family preservation and reunification or remedying the reasons that led to the adjudication. In re Interest of LeVanta S., 295 Neb. 151, 887 N.W.2d 502 (2016).

In a juvenile adjudication under subdivision (3)(c) of this section, no determination is made of a parent's ability to care for his or her child. Nor does the parent have the opportunity to respond to the allegations in the petition, because the allegations relate only to the juvenile and not to the parent. The absence of an opportunity for parents to respond to allegations about their fitness to raise their children implicates their due process rights. In re Interest of LeVanta S., 295 Neb. 151, 887 N.W.2d 502 (2016).

In a juvenile case adjudicated under subdivision (3)(a) of this section, a parent has both the opportunity and the incentive to contest and appeal the adjudication, which the parent does not have when the child is adjudicated under subdivision (3)(c) of this section. In re Interest of LeVanta S., 295 Neb. 151, 887 N.W.2d 502 (2016).

In a juvenile case adjudicated under subdivision (3)(a) of this section, a parent has the opportunity to deny a petition's allegations, whereas in an adjudication under subdivision (3)(c), the juvenile responds but parents have no statutory right to respond. In re Interest of LeVanta S., 295 Neb. 151, 887 N.W.2d 502 (2016).

In a juvenile case adjudicated under subsection (3)(a) of this section, an order that continues prior dispositional orders but changes the permanency objective from family reunification to another objective, is a final, appealable order under the final order statute, section 25-1902, only if the parent's ability to achieve rehabilitation and family reunification has been clearly eliminated, because such an order affects a substantial right. In re Interest of LeVanta S., 295 Neb. 151, 887 N.W.2d 502 (2016).

Subdivision (3)(c) of this section is substantially different from subsection (3)(a), which, generally speaking, applies to situations in which a juvenile lacks proper parental care, support, or supervision. Because a subdivision (3)(a) adjudication addresses the issue of parental fitness, significant legal consequences can flow from such an adjudication and greater procedural protections are required. In re Interest of LeVanta S., 295 Neb. 151, 887 N.W.2d 502 (2016).

Subsequent review orders in a juvenile case adjudicated under subdivision (3)(a) of this section do not typically affect a substantial right for purposes of appeal under the final order statute, section 25-1902, because the parent has been given the full and fair opportunity to respond to the allegations at the adjudication stage. In re Interest of LeVanta S., 295 Neb. 151, 887 N.W.2d 502 (2016).

The county attorney's coordinated effort with the school and its letter referring the family to various available community-based resources, including website resources, as well as specific contact information for a "Truancy Resource Specialist," complied with the "reasonable efforts" requirement of subsection (2) of section 43-276 as applied to the habitual truancy provision of subdivision (3)(b) of this section. In re Interest of Hla H., 25 Neb. App. 118, 903 N.W.2d 664 (2017).

At the adjudication stage, in order for a juvenile court to assume jurisdiction of a minor child, the State must prove the allegations of the petition by a preponderance of the evidence, and the court's only concern is whether the conditions in which the juvenile presently finds himself or herself fit within the asserted subsection of this section. In re Interest of Darius A., 24 Neb. App. 178, 884 N.W.2d 457 (2016).

Under this section, once a minor is adjudged to be within the jurisdiction of the juvenile court, the juvenile court shall have exclusive jurisdiction as to any such juvenile and as to the parent, guardian, or custodian of the juvenile. In re Interest of Miah T. & DeKandyce H., 23 Neb. App. 592, 875 N.W.2d 1 (2016).

This section grants to the juvenile court exclusive jurisdiction as to any juvenile defined in subsection (3) and, under subsection (5), jurisdiction over the parent, guardian, or custodian who has custody of such juvenile. In re Interest of Trenton W. et al., 22 Neb. App. 976, 865 N.W.2d 804 (2015).

Subsection (3)(a) of this section requires that the State prove the allegations set forth in the adjudication petition by a preponderance of the evidence in cases involving both non-Indian and Indian children. In re Interest of Mischa S., 22 Neb. App. 105, 847 N.W.2d 749 (2014).

The juvenile court shall have exclusive original jurisdiction as to the parties and proceedings provided in subsections (5), (6), and (8) of this section. In re Interest of Jordana H. et al., 22 Neb. App. 19, 846 N.W.2d 686 (2014).

At the adjudication stage, in order for a juvenile court to assume jurisdiction of a minor child under subsection (3)(a) of this section, the State must prove the allegations of the petition by a preponderance of the evidence, and the court's only concern is whether the conditions in which the juvenile presently finds himself or herself fit within the asserted subsection of this section. In re Interest of Laticia S., 21 Neb. App. 921, 844 N.W.2d 841 (2014).

Compulsory education statutes and juvenile code statutes regarding the neglect of children generally do not pertain to the same subject matter and should not be construed in pari materia. In re Interest of Laticia S., 21 Neb. App. 921, 844 N.W.2d 841 (2014).

Subsection (3)(a) of this section establishes the juvenile court's jurisdiction over a minor child, while sections 79-201 and 79-210 make the minor child's parents or legal guardians culpable for the child's truancy. The county attorney is free to decide whether to proceed utilizing the juvenile code or the compulsory education laws. In re Interest of Laticia S., 21 Neb. App. 921, 844 N.W.2d 841 (2014).

The school's duty to provide services in an attempt to address excessive absenteeism comes from section 79-209, relating to compulsory attendance and the possibility of a parent's being subjected to a criminal sanction. The school has no duty to provide reasonable efforts before an adjudication under subsection (3)(a) of this section of the juvenile code. In re Interest of Laticia S., 21 Neb. App. 921, 844 N.W.2d 841 (2014).

Subsection (9) of this section provides the juvenile court jurisdiction over the guardianship proceedings of a juvenile described elsewhere within the code. In re Interest of Brianna B., 21 Neb. App. 657, 842 N.W.2d 191 (2014).

Although the State need not prove that the juvenile has suffered physical harm to find the juvenile to be within the meaning of subsection (3)(a) of this section, the State must establish that without intervention, there is a definite risk of future harm. In re Interest of Chloe P., 21 Neb. App. 456, 840 N.W.2d 549 (2013).

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

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

43-251.01.

A youth was at serious risk of harm and detriment due to his refusal to attend school and develop basic life skills while living in the family home. In re Interest of Dana H., 299 Neb. 197, 907 N.W.2d 730 (2018).

"Harm," as defined by this section, encompasses not only physical injury and hurt, but also any material or tangible detriment. In re Interest of Dana H., 299 Neb. 197, 907 N.W.2d 730 (2018).

This section's exhaustion requirement demands evidence establishing that no other community-based resources have a reasonable possibility for success or that all options for community-based services have been thoroughly considered and none are feasible. In re Interest of Dana H., 299 Neb. 197, 907 N.W.2d 730 (2018).

The exhaustion requirement of subdivision (7)(a) of this section demands evidence establishing that no other community-based resources have a reasonable possibility for success or that all options for community-based services have been thoroughly considered and none are feasible. In re Interest of Robert W., 27 Neb. App. 11, 925 N.W.2d 714 (2019).

43-258.

Juveniles who face adjudication for a status offense must be competent to participate in the proceedings. In re Interest of Victor L., 309 Neb. 21, 958 N.W.2d 413 (2021).

The procedure for protecting a juvenile's right to be competent to participate in juvenile proceedings is left to the sound discretion of the juvenile court, based on the best interests of the juvenile. In re Interest of Victor L., 309 Neb. 21, 958 N.W.2d 413 (2021).

43-271.

An appellate court's criminal speedy trial jurisprudence with respect to the calculations of the running of the speedy trial clock is applicable in the juvenile context. In re Interest of Shaquille H., 20 Neb. App. 141, 819 N.W.2d 741 (2012).

Juveniles being held in custody are to receive an adjudication hearing as soon as *possible*, whereas juveniles not being held in custody are to receive an adjudication hearing as soon as *practicable*; both sets of juveniles should receive an adjudication hearing within a 6-month period after the petition is filed pursuant to this section, but a statutory scheduling preference is granted to those juveniles that are in custody pending adjudication. In re Interest of Shaquille H., 20 Neb. App. 141, 819 N.W.2d 741 (2012).

43-272.01.

This section has long provided that a guardian ad litem in certain juvenile cases has certain duties, which may include filing petitions on behalf of juveniles, presenting evidence and witnesses, and cross-examining witnesses at all evidentiary hearings. In re Guardianship of Aimee S., 26 Neb. App. 380, 920 N.W.2d 18 (2018).

43-273.

Orders fixing fees for a court-appointed counsel in juvenile cases are final orders because they are made in a special proceeding and affect a substantial right. In re Claim of Roberts for Attorney Fees, 307 Neb. 346, 949 N.W.2d 299 (2020).

This section does not require that a county be notified when a fee application is filed by court-appointed counsel, nor does it require that an evidentiary hearing be routinely held on such an application. In re Claim of Roberts for Attorney Fees, 307 Neb. 346, 949 N.W.2d 299 (2020).

When a juvenile case is appealed, the appointed counsel should apply to the juvenile court, not the appellate court, for payment of services performed on appeal. In re Claim of Roberts for Attorney Fees, 307 Neb. 346, 949 N.W.2d 299 (2020).

43-274.

An order granting transfer from juvenile court to county court or district court is reviewed de novo on the record for an abuse of discretion. In re Interest of Steven S., 299 Neb. 447, 908 N.W.2d 391 (2018).

In determining whether a case should be transferred from juvenile court to criminal court, a juvenile court should consider those factors set forth in section 43-276; there are no weighted factors and no prescribed method by which more or less weight is assigned to a specific factor. In re Interest of Steven S., 299 Neb. 447, 908 N.W.2d 391 (2018).

Actions involving juveniles fitting into categories under section 43-246.01(3) may be initiated either in the juvenile court or in the county or district court and may be transferred as provided in this section. In re Interest of Luis D., 29 Neb. App. 495, 956 N.W.2d 25 (2021).

When the prosecution seeks to transfer a juvenile offender's case to criminal court, the juvenile court must retain the matter unless a preponderance of the evidence shows that the proceeding should be transferred to the county court or district court. The prosecution has the burden by a preponderance of the evidence to show why such proceeding should be transferred. In re Interest of William E., 29 Neb. App. 44, 950 N.W.2d 392 (2020).

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

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

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

43-276.

Subsection (2) of this section requires the county attorney to make reasonable efforts to refer the juvenile and family to community-based resources. In re Interest of Reality W., 302 Neb. 878, 925 N.W.2d 355 (2019).

In deciding whether to grant the requested waiver and to transfer the proceedings to juvenile court, the court having jurisdiction over a pending criminal prosecution must carefully consider the juvenile's request in the light of the criteria or factors set forth in this section. State v. Tyler P., 299 Neb. 959, 911 N.W.2d 260 (2018).

Pursuant to section 29-1816(3)(a), after considering the evidence and the criteria set forth in this section, the court shall transfer the case to juvenile court unless a sound basis exists for retaining the case in county court or district court. State v. Tyler P., 299 Neb. 959, 911 N.W.2d 260 (2018).

There is no arithmetical computation or formula required in a court's consideration of the statutory criteria or factors. Also, there are no weighted factors. It is a balancing test by which public protection and societal security are weighed against the practical and nonproblematical rehabilitation of the juvenile. State v. Tyler P., 299 Neb. 959, 911 N.W.2d 260 (2018).

In determining whether a case should be transferred from juvenile court to criminal court, a juvenile court should consider those factors set forth in this section; there are no weighted factors and no prescribed method by which more or less weight is assigned to a specific factor. In re Interest of Steven S., 299 Neb. 447, 908 N.W.2d 391 (2018).

This section sets forth 15 factors for a juvenile court to consider in making the determination of whether to transfer a case to county court or district court. In re Interest of William E., 29 Neb. App. 44, 950 N.W.2d 392 (2020).

The district court abused its discretion in granting the transfer of two criminal cases to the juvenile court because there was substantial evidence supporting the retention of the cases in the district court for the sake of public safety and societal security, and there was a lack of evidence demonstrating that any further rehabilitation through the

juvenile system would be practical and nonproblematical in the limited time left under the juvenile court's jurisdiction. State v. Esai P., 28 Neb. App. 226, 942 N.W.2d 416 (2020).

Denial of a motion to transfer without a specific finding with regard to subdivision (1)(h) of this section does not constitute an abuse of discretion. State v. Comer, 26 Neb. App. 270, 918 N.W.2d 13 (2018).

In determining whether a case should be transferred to juvenile court, a court should consider those factors set forth in this section. State v. Comer, 26 Neb. App. 270, 918 N.W.2d 13 (2018).

Second degree murder and use of a deadly weapon charges filed against a 15-year-old were retained in the district court; the trial court's denial of a motion to transfer to the juvenile court is reviewed for an abuse of discretion. State v. Leroux, 26 Neb. App. 76, 916 N.W.2d 903 (2018).

The county attorney's coordinated effort with the school and its letter referring the family to various available community-based resources, including website resources, as well as specific contact information for a "Truancy Resource Specialist," complied with the "reasonable efforts" requirement of subsection (2) of this section as applied to the habitual truancy provision of subdivision (3)(b) of section 43-247. In re Interest of Hla H., 25 Neb. App. 118, 903 N.W.2d 664 (2017).

Considering the statutory factors on a motion to transfer to juvenile court is a balancing test by which public protection and societal security are weighed against the practical and nonproblematical rehabilitation of the juvenile. State v. Landera, 20 Neb. App. 24, 816 N.W.2d 20 (2012).

In case involving multiple counts of possession of child pornography, the district court properly weighed all applicable statutory factors in denying juvenile defendant's motion to transfer his case to juvenile court; in addition to the fact that there would likely be insufficient time to treat the defendant in the juvenile system before he aged out of the juvenile court's jurisdiction, the district court considered the defendant's maturity, as well as the fact that the motivation for the offenses appeared to be the desire to view and distribute pornography, predominantly involving young children, which preference was potentially associated with someone afflicted with pedophilia. State v. Landera, 20 Neb. App. 24, 816 N.W.2d 20 (2012).

In order to retain juvenile proceedings in the district court, the court does not need to resolve every statutory factor against the juvenile; moreover, there are no weighted factors and no prescribed method by which more or less weight is assigned to each specific factor. State v. Landera, 20 Neb. App. 24, 816 N.W.2d 20 (2012).

43-279.01.

A father's due process rights were not violated where he was advised during the adjudication phase of the proceedings of his rights listed in this section and was advised of the nature of the juvenile court proceedings and possible consequences, including the possibility that his parental rights could ultimately be terminated, but he was not advised again during the termination of parental rights phase, nor was the court required to do so. In re Interest of Aaliyah M. et al., 21 Neb. App. 63, 837 N.W.2d 98 (2013).

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

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

43-283.01.

The term "aggravated circumstances" embodies the concept that the nature of the abuse or neglect must have been so severe or repetitive that to attempt reunification would jeopardize and compromise the safety of the child and would place the child in a position of an unreasonable risk to be reabused. In re Interest of Jade H. et al., 25 Neb. App. 678, 911 N.W.2d 276 (2018).

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

43-284.

When a juvenile is adjudicated under subsection (3) of section 43-247, the juvenile court may permit the juvenile to remain in his or her own home subject to supervision or may make an order committing the juvenile to the care and custody of the Department of Health and Human Services. In re Interest of Alex F. & Tony F., 23 Neb. App. 195, 870 N.W.2d 150 (2015).

43-285.

A juvenile court may not, under subsection (2) of this section, change a juvenile's permanency plan from family reunification to guardianship unless there has been a prior adjudication of the juvenile under section 43-247(3)(a), which adjudication is a requirement under section 43-1312.01 for establishing a juvenile guardianship. In re Interest of LeVanta S., 295 Neb. 151, 887 N.W.2d 502 (2016).

Under subsection (2) of this section, following the adjudication of a juvenile, the juvenile court may order the Department of Health and Human Services to prepare and file with the court a proposed plan for the care, placement, services, and permanency which are to be provided to such juvenile and his or her family, and the court may approve the plan, modify the plan, order an alternative plan, or implement another plan that is in the juvenile's best interests. In re Interest of Alex F. & Tony F., 23 Neb. App. 195, 870 N.W.2d 150 (2015).

Under subsection (3) of this section, the juvenile court is authorized to establish guardianships for juveniles in the custody of the Department of Health and Human Services without resorting to a proceeding under the probate code. In re Interest of Brianna B., 21 Neb. App. 657, 842 N.W.2d 191 (2014).

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

43-286.

The language of this section contemplates a nonexhaustive list of examples of terms and conditions that a juvenile court may order, and thus, the juvenile court had the authority to order restitution for medical expenses as long as such order was in the interest of the juvenile's reformation or rehabilitation. In re Interest of Seth C., 307 Neb. 862, 951 N.W.2d 135 (2020).

The reference to restitution for stolen or damaged property is merely one example of an offense for which the juvenile court could order restitution. In re Interest of Seth C., 307 Neb. 862, 951 N.W.2d 135 (2020).

This section does not limit the types of restitution a juvenile court may order to only restitution for property stolen or damaged. In re Interest of Seth C., 307 Neb. 862, 951 N.W.2d 135 (2020).

When the State withdrew its motion to revoke probation prior to the motion's being heard, the juvenile court lacked authority to extend the juvenile's probation and to supply an additional condition of probation. In re Interest of Josue G., 299 Neb. 784, 910 N.W.2d 159 (2018).

Before a juvenile court can commit a juvenile to the Office of Juvenile Services for placement at a youth rehabilitation and treatment center, the Office of Probation Administration must review and consider thoroughly any reliable alternatives to that commitment and provide the court with a report that supports one of two conclusions: (1) There are untried conditions of probation or community-based services that have a reasonable possibility for success or (2) all levels of probation and options for community-based services have been studied thoroughly and none are feasible. In re Interest of Alan L., 294 Neb. 261, 882 N.W.2d 682 (2016).

In considering whether the State has shown that a juvenile should be placed at a youth rehabilitation and treatment center, a juvenile court is not required to repeat measures that were previously unsuccessful. In re Interest of Alan L., 294 Neb. 261, 882 N.W.2d 682 (2016).

Once a juvenile court has entered a delinquency disposition under this section, it is plain error for the court to change that disposition when the State has not complied with the procedural requirements under subsection (5) of this section—unless the record shows that the juvenile was not denied any of the statutory procedural protections

that the juvenile would have received if the State had followed the proper procedures. In re Interest of Alan L., 294 Neb. 261, 882 N.W.2d 682 (2016).

Under subsection (1) of this section, the State can file a motion to commit a juvenile to the Office of Juvenile Services for placement at a youth rehabilitation and treatment center at only three points in a delinquency proceeding: (1) before a court enters an original disposition, (2) before a court enters a new disposition following a new adjudication, and (3) before a court enters a new disposition following a motion to revoke probation or court supervision. In re Interest of Alan L., 294 Neb. 261, 882 N.W.2d 682 (2016).

When a juvenile court has already entered a disposition under subdivision (1)(a) of this section, a commitment to the Office of Juvenile Services under subdivision (1)(b) of this section must be consistent with the procedures for a new disposition under subsection (5) of this section. In re Interest of Alan L., 294 Neb. 261, 882 N.W.2d 682 (2016).

When the State files successive motions to change a juvenile's disposition under this section, a juvenile court can compare the facts as they existed when it entered a previous order to new facts arising after that order to determine whether a change in circumstances warrants a different decision. In re Interest of Alan L., 294 Neb. 261, 882 N.W.2d 682 (2016).

A juvenile court may not change a disposition unless the juvenile has violated a term of probation or supervision or the juvenile has violated an order of the court and the procedures established in subdivision (5)(b) of this section have been satisfied. In re Interest of Iyana P., 25 Neb. App. 439, 907 N.W.2d 333 (2018).

Subsection (5) of this section sets forth the procedures for changing an existing disposition. In re Interest of Iyana P., 25 Neb. App. 439, 907 N.W.2d 333 (2018).

This section sets out a juvenile court's disposition options for juveniles who have been adjudicated under subdivision (1), (2), or (4) of section 43-247. In re Interest of Iyana P., 25 Neb. App. 439, 907 N.W.2d 333 (2018).

43-288.

A juvenile court's order that children under its jurisdiction have their immunizations brought up to date was within the power of that court, even where the Department of Health and Human Services did not indicate concern about the children's health or immunization history. In re Interest of Becka P. et al., 298 Neb. 98, 902 N.W.2d 697 (2017).

43-290.

The Nebraska Child Support Guidelines apply in juvenile cases where child support is ordered. In re Interest of Cayden R. et al., 27 Neb. App. 242, 929 N.W.2d 913 (2019).

43-292.

Although the term "unfitness" is not expressly stated in this section, it derives from the fault and neglect subdivisions and from an assessment of the child's best interests. In re Interest of Mateo L. et al., 309 Neb. 565, 961 N.W.2d 516 (2021).

Out-of-home placement is itself defined by the Legislature as an independent ground for termination, since children cannot, and should not, be suspended in foster care or be made to await uncertain parental maturity. In re Interest of Mateo L. et al., 309 Neb. 565, 961 N.W.2d 516 (2021).

Parental obligation requires a continuing interest in the children and a genuine effort to maintain communication and association with the children. In re Interest of Mateo L. et al., 309 Neb. 565, 961 N.W.2d 516 (2021).

Parental unfitness means a personal deficiency or incapacity that has prevented, or will probably prevent, performance of a reasonable parental obligation in child rearing and that has caused, or probably will result in, detriment to a child's well-being. In re Interest of Mateo L. et al., 309 Neb. 565, 961 N.W.2d 516 (2021).

Reasonable efforts to reunify a family are required under the juvenile code only when termination is sought under subdivision (6) of this section. In re Interest of Mateo L. et al., 309 Neb. 565, 961 N.W.2d 516 (2021).

Showing that termination of parental rights is in the best interests of the child is necessarily a particularly high bar, since a parent's right to raise his or her children is constitutionally protected. The Due Process Clause of the U.S. Constitution would be offended if a state were to attempt to force the breakup of a natural family, over the objections of the parents and their children, without some showing of unfitness. In re Interest of Mateo L. et al., 309 Neb. 565, 961 N.W.2d 516 (2021).

Subdivision (7) of this section operates mechanically and, unlike the other subdivisions of this section, does not require the State to adduce evidence of any specific fault on the part of a parent. In re Interest of Mateo L. et al., 309 Neb. 565, 961 N.W.2d 516 (2021).

Termination based on the ground that a child has been in out-of-home placement for 15 of the past preceding 22 months is not in a child's best interests when the record demonstrates that a parent is making efforts toward reunification and has not been given a sufficient opportunity for compliance with a reunification plan. In re Interest of Mateo L. et al., 309 Neb. 565, 961 N.W.2d 516 (2021).

That the foster parents might provide a higher standard of living does not defeat the parent's right to maintain the constitutionally protected relationship with his or her child. In re Interest of Mateo L. et al., 309 Neb. 565, 961 N.W.2d 516 (2021).

The best interests and parental unfitness analyses in the context of a termination of parental rights case require separate, fact-intensive inquiries, but each examines essentially the same underlying facts. In re Interest of Mateo L. et al., 309 Neb. 565, 961 N.W.2d 516 (2021).

The period of 15 out of 22 months' out-of-home placement as a ground for termination of parental rights was set by the Legislature as a guideline for what would be a reasonable time for parents to rehabilitate themselves to a minimum degree of fitness. In re Interest of Mateo L. et al., 309 Neb. 565, 961 N.W.2d 516 (2021).

There is a rebuttable presumption that it is in the child's best interests to share a relationship with his or her parent. That presumption can only be overcome by a showing that the parent is either unfit to perform the duties imposed by the relationship or has forfeited that right. In re Interest of Mateo L. et al., 309 Neb. 565, 961 N.W.2d 516 (2021).

This section contains 11 separate subdivisions, any one of which can serve as a basis for terminating parental rights when coupled with evidence that termination is in the best interests of the child. In re Interest of Mateo L. et al., 309 Neb. 565, 961 N.W.2d 516 (2021).

To terminate parental rights, it is the State's burden to show by clear and convincing evidence both that one of the statutory bases exists and that termination is in the child's best interests. In re Interest of Mateo L. et al., 309 Neb. 565, 961 N.W.2d 516 (2021).

Whereas the statutory grounds for termination are based on a parent's past conduct, the best interests inquiry focuses on the future well-being of the child. In re Interest of Mateo L. et al., 309 Neb. 565, 961 N.W.2d 516 (2021).

The evidence supported terminating the parental rights of a mother who, due in part to continued drug use and an abusive relationship, failed to put herself in a position to have her children returned to her care within a reasonable time. In re Interest of Leyton C. & Landyn C., 307 Neb. 529, 949 N.W.2d 773 (2020).

Although a therapist testified that the mother and child had a bond and recommended that a relationship between them continue, the State adduced clear and convincing evidence that termination of the mother's parental rights was in the child's best interests. In re Interest of Alec S., 294 Neb. 784, 884 N.W.2d 701 (2016).

A court reviewing a termination of parental rights case on the ground of abandonment need not consider the 6-month period in a vacuum. Instead, the court may consider evidence of a parent's conduct, either before or after the statutory period, in determining whether the purpose and intent of that parent was to abandon his or her children. In re Interest of Isabel P. et al., 293 Neb. 62, 875 N.W.2d 848 (2016).

"Abandonment" is a parent's intentionally withholding from a child, without just cause or excuse, the parent's presence, care, love, protection, maintenance, and the opportunity for the display of parental affection for the child. In re Interest of Isabel P. et al., 293 Neb. 62, 875 N.W.2d 848 (2016).

So long as a parent was afforded due process of law, a defect during the adjudication phase does not preclude consideration of termination of parental rights. In re Interest of Isabel P. et al., 293 Neb. 62, 875 N.W.2d 848 (2016).

In order to terminate an individual's parental rights, the State must prove by clear and convincing evidence that one of the statutory grounds enumerated in this section exists and that termination is in the children's best interests. In re Interest of Joshua R. et al., 265 Neb. 374, 657 N.W.2d 209 (2003); In re Interest of Michael B. et al., 258 Neb. 545, 604 N.W.2d 405 (2000); In re Interest of Kalie W., 258 Neb. 46, 601 N.W.2d 753 (1999); In re Interest of Emerald C. et al., 19 Neb. App. 608, 810 N.W.2d 750 (2012); In re Interest of Stacey D. & Shannon D., 12 Neb. App. 707, 684 N.W.2d 594 (2004).

ANNOTATIONS

Aggravated circumstances exist when a child suffers severe, intentional physical abuse. In re Interest of Ky'Ari J., 29 Neb. App. 124, 952 N.W.2d 715 (2020).

Where the circumstances created by the parent's conduct create an unacceptably high risk to the health, safety, and welfare of the child, they are aggravated. In re Interest of Ky'Ari J., 29 Neb. App. 124, 952 N.W.2d 715 (2020).

If an appellate court determines that a lower court correctly found that termination of parental rights is appropriate under one of the statutory grounds set forth in this section, the appellate court need not further address the sufficiency of the evidence to support termination under any other statutory ground. In re Interest of Aly T. & Kazlynn T., 26 Neb. App. 612, 921 N.W.2d 856 (2018).

In Nebraska statutes, the bases for termination of parental rights are codified in this section. In re Interest of Aly T. & Kazlynn T., 26 Neb. App. 612, 921 N.W.2d 856 (2018).

In order to terminate parental rights under subdivision (6) of this section, the State must prove by clear and convincing evidence that (1) the parent has failed to comply, in whole or in part, with a reasonable provision material to the rehabilitative objective of the plan and (2) in addition to the parent's noncompliance with the rehabilitative plan, termination of parental rights is in the best interests of the child. In re Interest of Aly T. & Kazlynn T., 26 Neb. App. 612, 921 N.W.2d 856 (2018).

The State must prove the facts by clear and convincing evidence when showing a factual basis exists under any of the 11 subdivisions of this section. In re Interest of Aly T. & Kazlynn T., 26 Neb. App. 612, 921 N.W.2d 856 (2018).

The term "unfitness" is not expressly used in this section but the concept is generally encompassed by the fault and neglect subsections of this section, and also through a determination of the child's best interests. In re Interest of Aly T. & Kazlynn T., 26 Neb. App. 612, 921 N.W.2d 856 (2018).

This section provides 11 separate conditions, any one of which can serve as the basis for the termination of parental rights when coupled with evidence that termination is in the best interests of the child. In re Interest of Aly T. & Kazlynn T., 26 Neb. App. 612, 921 N.W.2d 856 (2018).

Reasonable efforts to reunify a family are required under the juvenile code only when termination is sought under subdivision (6) of this section. In re Interest of Jade H. et al., 25 Neb. App. 678, 911 N.W.2d 276 (2018).

Subdivision (9) of this section allows for terminating parental rights when the parent of the juvenile has subjected the juvenile or another minor child to aggravated circumstances, including, but not limited to, abandonment, torture, chronic abuse, or sexual abuse. In re Interest of Jade H. et al., 25 Neb. App. 678, 911 N.W.2d 276 (2018).

Whether aggravated circumstances under subdivision (9) of this section exist is determined on a case-by-case basis. In re Interest of Jade H. et al., 25 Neb. App. 678, 911 N.W.2d 276 (2018).

Without other evidence of a parent's neglect of his or her children, incarceration alone is insufficient to justify termination of parental rights under subdivision (2) of this section. In re Interest of Lizabella R., 25 Neb. App. 421, 907 N.W.2d 745 (2018).

For purposes of subdivision (1) of this section, "abandonment" is a parent's intentionally withholding from a child, without just cause or excuse, the parent's presence, care, love, protection, maintenance, and the opportunity for the display of parental affection for the child. In re Interest of Austin G., 24 Neb. App. 773, 898 N.W.2d 385 (2017).

Under subdivision (2) of this section, the State must establish that the parental neglect required to terminate a parent's rights to a minor child was substantial and continuous or repeated; a handful of incidents, none of which resulted in permanent or serious injury to the children, is insufficient. In re Interest of Elijah P. et al., 24 Neb. App. 521, 891 N.W.2d 330 (2017).

Under subdivision (9) of this section, the "aggravated circumstances" required for terminating parental rights are based on severe, intentional actions on the part of the parent; a single act of negligent conduct is insufficient. In re Interest of Elijah P. et al., 24 Neb. App. 521, 891 N.W.2d 330 (2017).

Any one of the 11 separate codified grounds can serve as the basis for the termination of parental rights when coupled with evidence that termination is in the best interests of the child. In re Interest of Giavonna G., 23 Neb. App. 853, 876 N.W.2d 422 (2016).

If an appellate court determines that the lower court correctly found that termination of parental rights is appropriate under one of the statutory grounds, the appellate court need not further address the sufficiency of the

evidence to support termination under any other statutory ground. In re Interest of Giavonna G., 23 Neb. App. 853, 876 N.W.2d 422 (2016).

When parental rights are terminated based on the parent subjecting the juvenile or another minor child to aggravated circumstances, including, but not limited to, abandonment, torture, chronic abuse, or sexual abuse, pursuant to subsection (9) of this section, a prior adjudication order is not required. In re Interest of Gavin S. & Jordan S., 23 Neb. App. 401, 873 N.W.2d 1 (2015).

Generally, when termination is sought under subsections of this section other than subsection (7), the evidence adduced to prove the statutory grounds for termination will also be highly relevant to the best interests of the juvenile, as it would show abandonment, neglect, unfitness, or abuse; however, this is not always the case, as statutory grounds are based on a parent's past conduct, but the best interests element focuses on the future well-being of the child. In re Interest of Mya C. et al., 23 Neb. App. 383, 872 N.W.2d 56 (2015).

The State needs to provide reasonable efforts to reunify a family only when terminating parental rights under subsection (6) of this section. In re Interest of Mya C. et al., 23 Neb. App. 383, 872 N.W.2d 56 (2015).

A defective adjudication does not preclude a termination of parental rights under subsections (1) through (5) of this section, because no adjudication is required to terminate pursuant to those subsections, as long as due process safeguards are met. In re Interest of Keisha G., 21 Neb. App. 472, 840 N.W.2d 562 (2013).

The State failed to prove that the parent's drug use was detrimental to the child, and thus, there was insufficient evidence to support a termination of parental rights under subsection (4) of this section. In re Interest of Keisha G., 21 Neb. App. 472, 840 N.W.2d 562 (2013).

In a hearing on the termination of parental rights without a prior adjudication hearing, where such termination is sought under subsections (1) through (5) of this section, such proceedings must be accompanied by due process safeguards. In re Interest of Aaliyah M. et al., 21 Neb. App. 63, 837 N.W.2d 98 (2013).

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

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

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

43-292.01.

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

43-293.

Under the Nebraska Juvenile Code, in order to terminate parental rights, the court must take judicial action. In re Interest of Donald B. & Devin B., 304 Neb. 239, 933 N.W.2d 864 (2019).

43-295.

While an appeal is pending, this section provides for the juvenile court's continuing jurisdiction over the custody or care of the child, which includes visitation. In re Interest of Angeleah M. & Ava M., 23 Neb. App. 324, 871 N.W.2d 49 (2015).

43-2,106.01.

Under this section, the adjudicated child's aunt lacked standing to appeal the juvenile court's order changing the child's placement and permanency plan. In re Interest of Joseph C., 299 Neb. 848, 910 N.W.2d 773 (2018).

Appellate courts in Nebraska have jurisdiction to hear appeals from final orders issued by juvenile courts in the same manner as appeals from the district courts. In re Interest of LeVanta S., 295 Neb. 151, 887 N.W.2d 502 (2016).

This section controls who has the right to appeal from a juvenile court's placement order. It does not authorize an adjudicated child's sibling to appeal from an adverse placement order. In re Interest of Nettie F., 295 Neb. 117, 887 N.W.2d 45 (2016).

Neither foster parents nor grandparents, as such, have a statutory right to appeal from a juvenile court order. In re Interest of Jackson E., 293 Neb. 84, 875 N.W.2d 863 (2016).

Had the Legislature intended that appeals under subsection (2)(d) of this section be made to the Court of Appeals, that subsection would have referred to sections 29-2315.01 to 29-2316, instead of to sections 29-2317 to 29-2319. In re Interest of Lori S., 20 Neb. App. 152, 819 N.W.2d 736 (2012).

Most cases arising under subsection (1) of this section are governed by section 25-1912, which sets forth the requirements for appealing district court decisions. In re Interest of Lori S., 20 Neb. App. 152, 819 N.W.2d 736 (2012).

Once jeopardy has attached in a delinquency case, an appeal may only be taken under the procedures of sections 29-2317 to 29-2319. In re Interest of Lori S., 20 Neb. App. 152, 819 N.W.2d 736 (2012).

The plain language of subsection (2)(d) of this section carves out an exception for delinquency cases in which jeopardy has attached. In re Interest of Lori S., 20 Neb. App. 152, 819 N.W.2d 736 (2012).

43-2,106.02.

Courts have the power to vacate or modify their own judgments and orders at any time during the term at which they were pronounced. But this power may not be used to circumvent the Legislature's power to fix the time limit to take an appeal. A court may not vacate an order or judgment and reinstate it at a later date just for the purpose of extending the time for appeal. One exception to this rule against using a court's power to vacate as a tool to extend the time for appeal is where a clerk fails to provide notice of a judgment to a party, thereby impairing the party's ability to appeal. In re Interest of Luz P. et al., 295 Neb. 814, 891 N.W.2d 651 (2017).

Juvenile courts have the power to vacate or modify their own judgments and orders during or after the term in which they were made in the same manner as provided for district courts under section 25-2001. In re Interest of Luz P. et al., 295 Neb. 814, 891 N.W.2d 651 (2017).

43-512.03.

The remedy specified in this section is a means by which the State, as the real party in interest, may recover amounts which it has paid or is obligated to pay on behalf of a dependent child. Thus, the State's right to sue under this section is conditioned upon the payment of public assistance benefits for a minor child. State on behalf of Elijah K. v. Marceline K., 28 Neb. App. 772, 949 N.W.2d 531 (2020).

The Nebraska Court of Appeals has found no authority stating that the request from the Department of Health and Human Services is necessary evidence for the State to have standing in a contempt action under this section. House v. House, 24 Neb. App. 595, 894 N.W.2d 362 (2017).

43-512.04.

Any order imposing an obligation of child support is necessarily a legal determination of paternity. Fetherkile v. Fetherkile, 299 Neb. 76, 907 N.W.2d 275 (2018).

When making a determination of child support under section 42-364, the court must take into account and give effect to an existing order of support under this section. The court may order the existing order to remain in effect without modification after considering whether modification is warranted. Fetherkile v. Fetherkile, 299 Neb. 76, 907 N.W.2d 275 (2018).

43-532.

State policy is to assist juveniles in the least restrictive method consistent with their needs. In re Interest of Skylar E., 20 Neb. App. 725, 831 N.W.2d 358 (2013).

43-1238.

Mother had a significant connection to the country of Togo because she had been married there, had family living there, and voluntarily sent the minor child to live there. DeLima v. Tsevi, 301 Neb. 933, 921 N.W.2d 89 (2018).

A 2018 amendment to subsection (b) of this section clarifies that courts with jurisdiction over an "initial child custody determination" as that term is used in subsection (a) of this section also have jurisdiction and authority to make special findings of fact similar to those contemplated by 8 U.S.C. 1101(a)(27)(J) (Supp. V 2018). In re Guardianship of Carlos D., 300 Neb. 646, 915 N.W.2d 581 (2018).

Because a 2018 amendment to subsection (b) of this section merely clarifies the authority and procedure for making the factual findings in child custody cases, it is a procedural amendment, and applies to pending cases. In re Guardianship of Carlos D., 300 Neb. 646, 915 N.W.2d 581 (2018).

On appeal from a dissolution of marriage decree that awarded primary physical custody of the children to the father, the Court of Appeals could not review, upon the mother's request, an Illinois court's prior decision to not exercise jurisdiction over the parties' child custody dispute under the Uniform Child Custody Jurisdiction and Enforcement Act; the only decision made by the district court was to accept jurisdiction in the matter after the Illinois court declined to exercise jurisdiction over the matter, and any claim of error by the Illinois court would have to be appealed to the appellate courts of that state. Bryant v. Bryant, 28 Neb. App. 362, 943 N.W.2d 742 (2020).

In order for a state to exercise jurisdiction over a child custody dispute, that state must be the home state as defined by the Uniform Child Custody Jurisdiction and Enforcement Act or fall under limited exceptions to the home state requirement specified by the act. Floerchinger v. Floerchinger, 24 Neb. App. 120, 883 N.W.2d 419 (2016).

Unlike the Nebraska Child Custody Jurisdiction Act, the Uniform Child Custody Jurisdiction and Enforcement Act does not contain the alternative analysis allowing jurisdiction to be established in Nebraska when it is not the child's home state but when it is in the best interests of the child to exercise jurisdiction. Floerchinger v. Floerchinger, 24 Neb. App. 120, 883 N.W.2d 419 (2016).

43-1239.

When North Dakota made the initial child custody determination concerning a child in the parents' divorce, exclusive and continuing jurisdiction remained with that court under the Uniform Child Custody Jurisdiction and Enforcement Act, either until a determination was made under subsection (a) of this section or until the court declined to exercise jurisdiction under section 43-1244 on the basis of being an inconvenient forum. In re Interest of Kirsten H., 25 Neb. App. 909, 915 N.W.2d 815 (2018).

Exclusive and continuing jurisdiction remains with the district court under the Uniform Child Custody Jurisdiction and Enforcement Act either until jurisdiction is lost under subsection (a) of this section or until the court declines to exercise jurisdiction under section 43-1244 on the basis of being an inconvenient forum. Floerchinger v. Floerchinger, 24 Neb. App. 120, 883 N.W.2d 419 (2016).

The Uniform Child Custody Jurisdiction and Enforcement Act lists evidence concerning the child's care, protection, training, and personal relationships as relevant evidence regarding custody. Floerchinger v. Floerchinger, 24 Neb. App. 120, 883 N.W.2d 419 (2016).

43-1243.

Since a child custody proceeding had been commenced in North Dakota, the Nebraska court should have stayed its juvenile proceeding and communicated with the North Dakota court. In re Interest of Kirsten H., 25 Neb. App. 909, 915 N.W.2d 815 (2018).

43-1244.

When North Dakota made the initial child custody determination concerning a child in the parents' divorce, exclusive and continuing jurisdiction remained with that court under the Uniform Child Custody Jurisdiction and Enforcement Act, either until a determination was made under subsection (a) of section 43-1239 or until the court declined to exercise jurisdiction under this section on the basis of being an inconvenient forum. In re Interest of Kirsten H., 25 Neb. App. 909, 915 N.W.2d 815 (2018).

Exclusive and continuing jurisdiction remains with the district court under the Uniform Child Custody Jurisdiction and Enforcement Act either until jurisdiction is lost under section 43-1239(a) or until the court declines

to exercise jurisdiction under this section on the basis of being an inconvenient forum. Floerchinger v. Floerchinger, 24 Neb. App. 120, 883 N.W.2d 419 (2016).

43-1252.

When the registration procedure of this section has been followed and the registration is either not contested or, after a hearing, none of the statutory grounds have been established, the registering court shall confirm the registered order. Hollomon v. Taylor, 303 Neb. 121, 926 N.W.2d 670 (2019).

43-1266.

The Uniform Child Custody Jurisdiction and Enforcement Act became operative on January 1, 2004, and establishes that all motions made in a child custody proceeding commenced prior to this date are governed by the prior law in effect at that time. The law governing child custody jurisdiction prior to the effective date of the Uniform Child Custody Jurisdiction and Enforcement Act was the Nebraska Child Custody Jurisdiction Act. Floerchinger v. Floerchinger, 24 Neb. App. 120, 883 N.W.2d 419 (2016).

43-1311.01.

Despite the Legislature's creation of new duties for the Department of Health and Human Services to preserve sibling relationships, it has not created a private right of action for an adjudicated child's sibling to enforce the department's duties under section 43-1311.02 and this section. Instead, section 43-1311.02(3) specifically limits the right to enforce these duties to parties. In re Interest of Nizigiyimana R., 295 Neb. 324, 889 N.W.2d 362 (2016).

Under this section and section 43-1311.02, the Department of Health and Human Services' duties to make reasonable efforts to implement a joint-sibling placement do not depend upon the continued existence of the parent-child relationship with each of the siblings. The department's duties exist even if the siblings' custody orders were entered at separate times, even if a court has terminated a parent's relationship with each child, and even if the siblings have not previously lived together. Additionally, the department's duties regarding siblings do not depend on whether both siblings are adjudicated under section 43-247 or whether the department has placement authority for both siblings. Instead, the Legislature intended for the department to develop and maintain an adjudicated child's sibling relationships in a variety of circumstances. In re Interest of Nizigiyimana R., 295 Neb. 324, 889 N.W.2d 362 (2016).

43-1311.02.

Despite the Legislature's creation of new duties for the Department of Health and Human Services to preserve sibling relationships, it has not created a private right of action for an adjudicated child's sibling to enforce the department's duties under section 43-1311.01 and this section. Instead, subsection (3) of this section specifically limits the right to enforce these duties to parties. In re Interest of Nizigiyimana R., 295 Neb. 324, 889 N.W.2d 362 (2016).

Under this section and section 43-1311.01, the Department of Health and Human Services' duties to make reasonable efforts to implement a joint-sibling placement do not depend upon the continued existence of the parent-child relationship with each of the siblings. The department's duties exist even if the siblings' custody orders were entered at separate times, even if a court has terminated a parent's relationship with each child, and even if the siblings have not previously lived together. Additionally, the department's duties regarding siblings do not depend on whether both siblings are adjudicated under section 43-247 or whether the department has placement authority for both siblings. Instead, the Legislature intended for the department to develop and maintain an adjudicated child's sibling relationships in a variety of circumstances. In re Interest of Nizigiyimana R., 295 Neb. 324, 889 N.W.2d 362 (2016).

43-1312.01.

A juvenile court may not, under section 43-285(2), change a juvenile's permanency plan from family reunification to guardianship unless there has been a prior adjudication of the juvenile under section 43-247(3)(a), which adjudication is a requirement under this section for establishing a juvenile guardianship. In re Interest of LeVanta S., 295 Neb. 151, 887 N.W.2d 502 (2016).

The elements under subsection (1) of this section form a conjunctive list, each of which must be met before a juvenile guardianship may be established. In re Interest of LeVanta S., 295 Neb. 151, 887 N.W.2d 502 (2016).

43-1314.

Under this section, a preadoptive parent in a dependency proceeding is a foster parent whom a juvenile court has approved for a future adoption because a child's parent has surrendered his or her parental rights, a court-approved permanency plan does not call for the child's reunification with his or her parent, or the parents' parental rights have been or will be terminated. In re Interest of Nizigiyimana R., 295 Neb. 324, 889 N.W.2d 362 (2016).

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

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

43-1402.

When an acknowledgment of paternity has been executed by the parties, the district court has the inherent authority to consider the issue of child custody, and this section authorizes the filing of an action for child custody and support. Benjamin M. v. Jeri S., 307 Neb. 733, 950 N.W.2d 381 (2020).

Under this section, establishment of paternity by acknowledgment is the equivalent of establishment of paternity by a judicial proceeding. In re Adoption of Jaelyn B., 293 Neb. 917, 883 N.W.2d 22 (2016).

43-1406.

It is not contrary to Nebraska's public policy to recognize an acknowledged father's parental rights under another state's statutes when a Nebraska court has recognized an acknowledged father's parental rights under Nebraska's statutes. Jesse B. v. Tylee H., 293 Neb. 973, 883 N.W.2d 1 (2016).

The Full Faith and Credit Clause requires states to give the same effect to a judgment in the forum state that it has in the state where the court rendered the judgment. This section extends that requirement for judgments to a sister state's paternity determination established through a voluntary acknowledgment. Jesse B. v. Tylee H., 293 Neb. 973, 883 N.W.2d 1 (2016); In re Adoption of Jaelyn B., 293 Neb. 917, 883 N.W.2d 22 (2016).

Whether a paternity acknowledgment in a sister state gives an acknowledged father the right to block an adoption in Nebraska depends upon whether the acknowledgment confers that right in the state where it was made. Jesse B. v. Tylee H., 293 Neb. 973, 883 N.W.2d 1 (2016); In re Adoption of Jaelyn B., 293 Neb. 917, 883 N.W.2d 22 (2016).

43-1409.

A father whose paternity is established by a final, voluntary acknowledgment has the same right to seek custody as the child's biological mother. Benjamin M. v. Jeri S., 307 Neb. 733, 950 N.W.2d 381 (2020).

A previous paternity determination, including a properly executed and undisturbed acknowledgment, must be set aside before a third party's paternity may be considered. Tyler F. v. Sara P., 306 Neb. 397, 945 N.W.2d 502 (2020).

The proper legal effect of a signed, notarized acknowledgment of paternity is a finding that the individual who signed as the father is in fact the legal father. Tyler F. v. Sara P., 306 Neb. 397, 945 N.W.2d 502 (2020).

In cases where a defendant has signed a notarized acknowledgment of paternity but properly challenges the acknowledgment, due process requires that an indigent defendant be furnished appointed counsel at public expense, even if the case was not commenced as a paternity case. State on behalf of Mia G. v. Julio G., 303 Neb. 207, 927 N.W.2d 817 (2019).

43-1411.

The 4-year statute of limitations on paternity actions does not bar an action for child custody and child support for a father who executed an acknowledgment of paternity. Benjamin M. v. Jeri S., 307 Neb. 733, 950 N.W.2d 381 (2020).

The definition of "child" in this section means a child under the age of 18 years born out of wedlock. State on behalf of Miah S. v. Ian K., 306 Neb. 372, 945 N.W.2d 178 (2020).

The State may not bring an action under this section to establish the paternity of a child born in wedlock. State on behalf of Miah S. v. Ian K., 306 Neb. 372, 945 N.W.2d 178 (2020).

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

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

A guardian, next friend of the child, or the State is authorized to bring a paternity action on behalf of a child under subsection (2) of this section within 18 years after the child's birth. This section does not extend the statute of limitations for anyone other than the minor child involved. State on behalf of Elijah K. v. Marceline K., 28 Neb. App. 772, 949 N.W.2d 531 (2020).

In an action filed by the State under this section, the minor child is the real party in interest, and the State is authorized by statute to bring the action on the child's behalf. State on behalf of Elijah K. v. Marceline K., 28 Neb. App. 772, 949 N.W.2d 531 (2020).

Pursuant to this section, the State, in its parens patriae role, may bring a paternity action on behalf of a minor child for future support. The State's right to sue under this section is not conditioned upon the payment of public assistance benefits for the minor child. State on behalf of Elijah K. v. Marceline K., 28 Neb. App. 772, 949 N.W.2d 531 (2020).

This section applies in proceedings that solely seek to establish the paternity of a child or parental support for a child, but not when custody and/or visitation of a child is at issue. Wolter v. Fortuna, 27 Neb. App. 166, 928 N.W.2d 416 (2019).

A biological parent is barred from bringing a paternity action as his or her child's next friend under subdivision (2) of this section when the parent fails to show that the child is without a guardian because the child is living with a biological parent. Tyler F. v. Sara P., 24 Neb. App. 370, 888 N.W.2d 537 (2016).

A parent's right to initiate paternity actions under this section is barred after 4 years, but actions brought by a guardian or next friend on behalf of children born out of wedlock may be brought within 18 years after the child's birth. Tyler F. v. Sara P., 24 Neb. App. 370, 888 N.W.2d 537 (2016).

43-1412.

Retroactive support is included in the support that the trial court may order under subsection (3) of this section. State on behalf of Elijah K. v. Marceline K., 28 Neb. App. 772, 949 N.W.2d 531 (2020).

43-1412.01.

This section provides support for the conclusion that an acknowledgment legally establishes paternity and grants the individual named as the father the legal status of a parent to the child, regardless of genetic factors. Benjamin M. v. Jeri S., 307 Neb. 733, 950 N.W.2d 381 (2020).

A properly executed acknowledgment of paternity cannot be set aside merely by DNA testing which later shows the identified individual is not the child's biological father. Tyler F. v. Sara P., 306 Neb. 397, 945 N.W.2d 502 (2020).

The State is not an "individual" who may file a complaint to disestablish paternity under this section. State on behalf of Miah S. v. Ian K., 306 Neb. 372, 945 N.W.2d 178 (2020).

The disestablishment provisions of this section presuppose a legal determination of paternity and are not applicable until after a final judgment or other legal determination of paternity has been entered. Erin W. v. Charissa W., 297 Neb. 143, 897 N.W.2d 858 (2017).

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

43-1503.

A guardianship proceeding qualified as a "foster care placement" as defined by the federal Indian Child Welfare Act of 1978 and subdivision (3)(a) of this section, where the proceeding was initiated by a grandparent of an Indian child, and the object of the proceeding was to remove custody from the Indian child's parent and place custody with the Indian child's grandparent who would serve as guardian. In re Guardianship of Eliza W., 304 Neb. 995, 938 N.W.2d 307 (2020).

There is no precise formula for active efforts; the active efforts standard requires a case-by-case analysis and should be judged by the individual circumstances. In re Adoption of Micah H., 301 Neb. 437, 918 N.W.2d 834 (2018).

43-1504.

The applicability of the Nebraska Indian Child Welfare Act to an adoption proceeding turns not on the Indian status of the person who invoked the acts but on whether an "Indian child" is involved. In re Adoption of Micah H., 295 Neb. 213, 887 N.W.2d 859 (2016).

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

A motion to transfer to tribal court was not made at an advanced stage of the termination of parental rights proceedings where a previous motion for termination was dismissed for failure to include the Nebraska Indian Child Welfare Act allegations; thus, the current motion for termination constituted a separate and distinct proceeding, and the motion to transfer was filed very shortly after the filing of the current motion for termination. In re Interest of Jayden D. & Dayten J., 21 Neb. App. 666, 842 N.W.2d 199 (2014).

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

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

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

43-1505.

In addition to the requirements under the adoption statutes, the Nebraska Indian Child Welfare Act adds two elements to adoption proceedings involving Indian children. First, subsection (4) of this section sets forth an "active efforts" element. Second, subsection (6) of this section sets forth a "serious emotional or physical damage" element. In re Adoption of Micah H., 295 Neb. 213, 887 N.W.2d 859 (2016).

Subsection (6) of this section requires that the qualified expert's opinion must support the ultimate finding of the court, i.e., that continued custody by the parent will likely result in serious emotional or physical damage to the child. In re Interest of Audrey T., 26 Neb. App 822, 924 N.W.2d 72 (2019).

In a foster care placement determination involving an Indian child, the failure to make findings under subsection (4) of this section is harmless error where a de novo review indicates that evidence supports these findings. In re Interest of Mischa S., 22 Neb. App. 105, 847 N.W.2d 749 (2014).

In adjudication cases, the standard of proof for the active efforts element in subsection (4) of this section is proof by a preponderance of the evidence. In re Interest of Mischa S., 22 Neb. App. 105, 847 N.W.2d 749 (2014).

The active efforts standard contained in this section requires more than the reasonable efforts standard that applies in cases not involving the Indian Child Welfare Act. In re Interest of Shayla H. et al., 22 Neb. App. 1, 846 N.W.2d 668 (2014).

If an Indian child's tribe was not given proper notice of proceedings resulting in termination of parental rights to the child, the termination proceedings conducted were invalid and the order of termination must be vacated. In re Interest of Nery V. et al., 20 Neb. App. 798, 832 N.W.2d 909 (2013).

43-1506.

The provisions relating to the withdrawal of a relinquishment provided for in this section of the Nebraska Indian Child Welfare Act do not apply to a relinquishment signed prior to the applicability of the act. In re Interest of Nery V. et al., 20 Neb. App. 798, 832 N.W.2d 909 (2013).

43-1508.

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

43-1512.

In a child custody proceeding involving an Indian child, this section applies only when "any petitioner" improperly removes or retains custody of the Indian child; it does not apply where a court order brings about the removal of the Indian child and a petitioner merely follows that order. In re Guardianship of Eliza W., 304 Neb. 995, 938 N.W.2d 307 (2020).

43-1613.

When a referee makes a report and no exception is filed, the district court reviews the referee's report de novo on the record; however, if an exception is filed, the party filing an exception is entitled to a hearing and the district court as a court of equity has the discretion to allow the presentation of new or additional evidence at an exception hearing. State on behalf of Lockwood v. Laue, 24 Neb. App. 909, 900 N.W.2d 582 (2017).

43-1801.

Under this section, "context" means the context of the statutory language and not the factual circumstances of an individual's case. As such, persons who acted as grandparents but were not the "biological or adoptive parent of [the] minor child's biological or adoptive parent" have no right to grandparent visitation under the grandparent visitation statutes. Heiden v. Norris, 300 Neb. 171, 912 N.W.2d 758 (2018).

Grandparents' standing is predicated upon their satisfying the statutory definition of "grandparent" at the time they filed their action for grandparent visitation. Dean D. v. Rachel S., 26 Neb. App. 678, 923 N.W.2d 87 (2018).

43-1802.

Modification of grandparent visitation may be ordered pursuant to subsection (3) of this section, subject to the parties' receiving notice and having an opportunity to be heard. Krejci v. Krejci, 304 Neb. 302, 934 N.W.2d 179 (2019).

Because the order for temporary grandparent visitation at issue was not a final, appealable order, the appellate court could not address whether such orders were permissible. Simms v. Friel, 302 Neb. 1, 921 N.W.2d 369 (2019).

The grandparents' standing is predicated upon their satisfying the statutory definition of "grandparent" at the time they filed their action for grandparent visitation. Dean D. v. Rachel S., 26 Neb. App. 678, 923 N.W.2d 87 (2018).

When grandparents sought grandparent visitation under subdivision (1)(b) of this section, their legally cognizable interest was predicated upon the divorce of their grandchild's parents. The grandparents' legal basis for visitation still existed because the grandchild's parents remained divorced. Thus, the grandparents' application for grandparent visitation did not become moot, because they continued to have a legally cognizable interest in the outcome of litigation, they sought to determine a question upon existing facts and rights, and the issues presented were still alive. Dean D. v. Rachel S., 26 Neb. App. 678, 923 N.W.2d 87 (2018).

A court can order grandparent visitation only if the petitioning grandparent proves by clear and convincing evidence that (1) there is, or has been, a significant beneficial relationship between the grandparent and the child; (2) it is in the best interests of the child that such relationship continue; and (3) such visitation will not adversely interfere with the parent-child relationship. Gatzemeyer v. Knihal, 25 Neb. App. 897, 915 N.W.2d 630 (2018).

At the commencement of the case, grandparents had standing to seek visitation; however, the case became moot when, during the pendency of the proceedings, the statutory requirements for grandparent visitation ceased to exist. Muzzey v. Ragone, 20 Neb. App. 669, 831 N.W.2d 38 (2013).

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

43-1803.

In an action for grandparent visitation, the noncustodial father has a statutory right to be served with a copy of the petition and to be given notice of the trial. Davis v. Moats, 308 Neb. 757, 956 N.W.2d 682 (2021).

It is clear from the language of subdivision (2) of this section that both parents should be served with a copy of the petition in an action for grandparent visitation. Davis v. Moats, 308 Neb. 757, 956 N.W.2d 682 (2021).

A noncustodial parent is entitled to be served and participate in grandparent visitation proceedings by virtue of both subdivision (2) of this section and the parent's constitutionally protected parental rights. A noncustodial parent is an indispensable party to grandparent visitation actions, and when the parent is not joined as a party, the court lacks jurisdiction to consider such action. Morse v. Olmer, 29 Neb. App. 346, 954 N.W.2d 638 (2021).

43-2101.

Unless married, persons under 19 years of age are declared to be minors pursuant to subsection (1) of this section. Johnson v. Johnson, 308 Neb. 623, 956 N.W.2d 261 (2021).

43-2922.

In a case where parents shared joint legal custody of the minor child, and neither parent had final decisionmaking authority, the mother's unilateral decision to change the minor child's school was a willful violation of the decree of dissolution of marriage. As such, this is a matter to be considered at an evidentiary hearing where the father could offer evidence to demonstrate both that a violation of the court order occurred and that the violation was willful. Vyhlidal v. Vyhlidal, 309 Neb. 376, 960 N.W.2d 309 (2021).

Joint legal custody is the joint authority and responsibility for making major decisions regarding the child's welfare, while sole legal custody essentially establishes that one party will have the final say in such decisions. Vyhlidal v. Vyhlidal, 309 Neb. 376, 960 N.W.2d 309 (2021).

The mother's decision to move the child 4 hours away deprived the father of his court-ordered parenting time. Thus, the district court abused its discretion in failing to issue an order to show cause as to why the mother did not willfully violate the decree of dissolution in regard to the father's parenting time. Vyhlidal v. Vyhlidal, 309 Neb. 376, 960 N.W.2d 309 (2021).

Where the parenting plan indicates the parties were to share joint legal custody of the minor child, and where neither party was granted exclusive final decisionmaking authority, it is undisputed that the parties share mutual authority for making fundamental decisions regarding the minor child's welfare, including choices regarding education, such as where the minor child will attend school. Vyhlidal v. Vyhlidal, 309 Neb. 376, 960 N.W.2d 309 (2021).

"Domestic intimate partner abuse," pursuant to subdivision (8) of this section, requires both attempting to cause or intentionally and knowingly causing bodily injury with or without a dangerous instrument to a family or household member and a pattern or history of abuse. Blank v. Blank, 303 Neb. 602, 930 N.W.2d 523 (2019).

Joint legal custody is separate and distinct from joint physical custody, and an appellate court will address each separately. Donald v. Donald, 296 Neb. 123, 892 N.W.2d 100 (2017).

An order governing custody was an award of "joint physical custody," rather than an award of "sole physical custody" to the mother, although the trial court referred to it as an award of "sole physical custody," where the custody order granted the father parenting time that amounted to seven overnights out of fourteen, and each parent was granted continuous blocks of parenting time for significant periods. State on behalf of Emery W. v. Michael W., 28 Neb. App. 956, 951 N.W.2d 177 (2020).

43-2923.

A 15-year-old child's custody preference and the reasoning behind such preference is entitled to consideration but is not controlling in the determination of custody. Leners v. Leners, 302 Neb. 904, 925 N.W.2d 704 (2019).

The best interests considerations for determining custody and the best interests considerations for determining removal become intertwined when a change in custody necessarily includes the relocation of the child's primary residence to another state. Burton v. Schlegel, 29 Neb. App. 393, 954 N.W.2d 645 (2021).

Based on subdivision (6) of this section, when determining the best interests of the child in deciding custody, a court must consider, at a minimum, (1) the relationship of the minor child to each parent prior to the commencement of the action; (2) the desires and wishes of a sufficiently mature child, if based on sound reasoning; (3) the general health, welfare, and social behavior of the child; (4) credible evidence of abuse inflicted on any family or household member; and (5) credible evidence of child abuse or neglect or domestic intimate partner abuse. Chmelka v. Chmelka, 29 Neb. App. 265, 953 N.W.2d 288 (2020).

The best interests of a child require a parenting plan that provides for a child's safety, emotional growth, health, stability, physical care, and regular school attendance and which promotes a child's continued contact with his or her families and parents who have shown the ability to act in the child's best interests. Chmelka v. Chmelka, 29 Neb. App. 265, 953 N.W.2d 288 (2020).

The trial court was required to make written findings in a marital dissolution proceeding as to why the parties' stipulated parenting plan was not in the children's best interests, and beyond the court's statement that it did not approve of the parties' sharing joint decisionmaking authority over their children, the dissolution decree provided no written findings explaining why it rejected and modified the stipulated parenting plan. Cook v. Cook, 26 Neb. App. 137, 918 N.W.2d 1 (2018).

The best interests of a child require that the child's family remain appropriately active and involved in parenting with safe, appropriate, and continuing quality contact between the child and the child's family when they have shown the ability to act in the best interests of the child and have shared in the responsibilities of raising the child. Thompson v. Thompson, 24 Neb. App. 349, 887 N.W.2d 52 (2016).

This section of the Nebraska Parenting Act sets forth a nonexhaustive list of factors to be considered in determining the best interests of a child in regard to custody. Such factors include the relationship of the minor child with each parent, the desires of the minor child, the general health and well-being of the minor child, and credible evidence of abuse inflicted on the child by any family or household member. Floerchinger v. Floerchinger, 24 Neb. App. 120, 883 N.W.2d 419 (2016).

While the wishes of a child are not controlling in the determination of custody, if a child is of sufficient age and has expressed an intelligent preference, the child's preference is entitled to consideration. Floerchinger v. Floerchinger, 24 Neb. App. 120, 883 N.W.2d 419 (2016).

The trial court did not err in considering an 8 1/2-year-old child's wishes regarding custody, where there was no evidence that the court regarded the child's wishes as determinative of its decision and the child was of an age of comprehension and displayed sound reasoning. Kenner v. Battershaw, 24 Neb. App. 58, 879 N.W.2d 409 (2016).

Although there was no evidence that the mother was currently engaged in abusive behaviors or an abusive relationship, the trial court acted within its discretion in finding that the father's custody was in the best interests of the child based on the mother's history of domestic violence, previous removal of a child, and the mother's questionable rehabilitation. State on behalf of Keegan M. v. Joshua M., 20 Neb. App. 411, 824 N.W.2d 383 (2012).

43-2924.

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

43-2929.

Pursuant to subdivision (1)(b)(ix) of this section, the district court did not abuse its discretion in ordering the mother to attend an anger management course and counseling to address her coparenting issues. Schriner v. Schriner, 25 Neb. App. 165, 903 N.W.2d 691 (2017).

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

43-2930.

Pursuant to subdivision (2)(e) of this section, the district court did not abuse its discretion in ordering the mother to attend an anger management course and counseling to address her coparenting issues. Schriner v. Schriner, 25 Neb. App. 165, 903 N.W.2d 691 (2017).

43-2932.

In awarding custody of a child, special written findings that a child and other parent can be adequately protected from harm are required if a parent is found to have engaged in "domestic intimate partner abuse," which means attempting to cause or intentionally and knowingly causing bodily injury with or without a dangerous instrument to a family or household member and a pattern or history of abuse. Blank v. Blank, 303 Neb. 602, 930 N.W.2d 523 (2019).

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

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

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

The district court did not abuse its discretion by ordering therapeutic and supervised parenting time for the father. The ability to transition to unsupervised parenting time was in the father's control. He simply needed to demonstrate that he would no longer engage in manipulative or alienating behavior which adversely impacted the children's relationship with their mother. Wright v. Wright, 29 Neb. App. 787, 961 N.W.2d 834 (2021).

When a parent has committed domestic intimate partner abuse, subsection (3) of this section requires the district court to make special written findings that the child and other parent can be adequately protected from harm before ordering legal or physical custody to be given to that parent. Fales v. Fales, 25 Neb. App. 868, 914 N.W.2d 478 (2018).

The requirement to make special written findings that the child and the "other parent" can be adequately protected from harm if child custody is awarded to the parent with a record of domestic abuse applies to instances where domestic abuse occurred between the parents of the child or children at issue, where it is necessary to ensure that there is no future domestic abuse to the "other parent." This section does not apply to a case in which one parent's conviction for domestic abuse was the result of an incident with a prior or estranged domestic intimate partner, who is not a party in the current action. State on behalf of Dawn M. v. Jerrod M., 22 Neb. App. 835, 861 N.W.2d 755 (2015).

43-2933.

To overcome the "bursting bubble" presumption set forth in subdivision (1)(c) of this section, a custodial parent must produce evidence that, even with a sex offender's access, the child or children are not at significant risk. If the evidence is produced, the presumption disappears and the trial court must weigh the evidence presented free from any legal presumptions. Hopkins v. Hopkins, 294 Neb. 417, 883 N.W.2d 363 (2016).

Pursuant to subsection (2) of this section, no person shall be granted custody, parenting time, visitation, or other access with a child if the person has been convicted under section 28-319 (first degree sexual assault) and the child was conceived as a result of that violation. In re Interest of Danajah G. et al., 23 Neb. App. 244, 870 N.W.2d 432 (2015).

Subsection (2) of this section applies to cases under the Nebraska Juvenile Code when parenting functions are at issue under chapter 42 of the Nebraska Revised Statutes. In re Interest of Danajah G. et al., 23 Neb. App. 244, 870 N.W.2d 432 (2015).

Subsection (2) of this section does not provide for any exception to or discretion in its mandatory language. In re Interest of Danajah G. et al., 23 Neb. App. 244, 870 N.W.2d 432 (2015).

Subsection (2) of this section falls under the Parenting Act, section 43-2920 et seq., and not under the Nebraska Juvenile Code, section 43-245 et seq. In re Interest of Danajah G. et al., 23 Neb. App. 244, 870 N.W.2d 432 (2015).

A person seeking a change in custody based upon "material" changes in circumstances cannot piggyback such alleged material changes on the statutorily deemed change in circumstances provided by this section. Hopkins v. Hopkins, 23 Neb. App. 174, 869 N.W.2d 390 (2015).

If an attempt to change custody is not successful pursuant to this section, then as to any other grounds for modification alleged, the party seeking the modification in custody bears the burden of showing a material change of circumstances affecting the best interests of the child. Hopkins v. Hopkins, 23 Neb. App. 174, 869 N.W.2d 390 (2015).

43-4505.

Immigration relief services, under subdivision (3)(h) of this section, is an exception where the Department of Health and Human Services may offer immigration assistance to unlawful aliens until they are 21 years old. E.M. v. Nebraska Dept. of Health & Human Servs., 306 Neb. 1, 944 N.W.2d 252 (2020).

44-3,128.01.

This section does not preempt the common fund doctrine. Hauptman, O'Brien v. Auto-Owners Ins. Co., 29 Neb. App. 662, 958 N.W.2d 428 (2021).

This section meets the standard of legislative reasonableness and is therefore constitutional and enforceable. Hauptman, O'Brien v. Auto-Owners Ins. Co., 29 Neb. App. 662, 958 N.W.2d 428 (2021).

45-103.

Where offsetting claims and counterclaims were tried separately, postjudgment interest did not begin to accrue until all claims were tried and reduced to a single judgment. VKGS v. Planet Bingo, 309 Neb. 950, 962 N.W.2d 909 (2021).

45-103.02.

Recovery of prejudgment interest under this section is limited to claims that are liquidated. Mogensen Bros. Land & Cattle Co. v. Mogensen, 29 Neb. App. 56, 952 N.W.2d 688 (2020).

45-104.

Compliance with Neb. Ct. R. Pldg. § 6-1108(a) is not determinative where entitlement to interest is based on statute and the adverse party had notice and an opportunity to be heard prior to judgment. McGill Restoration v. Lion Place Condo. Assn., 309 Neb. 202, 959 N.W.2d 251 (2021).

Section 45-103.02(1) and (2) and this section provide alternate and independent means of recovering prejudgment interest, each with different criteria for the recovery of prejudgment interest, and none makes the recovery of prejudgment interest contingent on proof of another. McGill Restoration v. Lion Place Condo. Assn., 309 Neb. 202, 959 N.W.2d 251 (2021).

Compliance with Neb. Ct. R. Pldg. § 6-1108(a) is not determinative where entitlement to interest is based on statute and the adverse party had notice and an opportunity to be heard prior to judgment. AVG Partners I v. Genesis Health Clubs, 307 Neb. 47, 948 N.W.2d 212 (2020).

Prejudgment interest can be recovered on a lease, although the statute's provisions may be superseded by terms set forth in the lease. AVG Partners I v. Genesis Health Clubs, 307 Neb. 47, 948 N.W.2d 212 (2020).

Whether a claim is liquidated or unliquidated is immaterial with respect to a litigant's ability to recover prejudgment interest under this section. AVG Partners I v. Genesis Health Clubs, 307 Neb. 47, 948 N.W.2d 212 (2020).

47-503.

Spending time in a treatment facility and spending time in jail are not the same, and this section specifically refers to credit for time spent in jail. State v. McCain, 29 Neb. App. 981, 961 N.W.2d 576 (2021).

48-120.

An employer may contest any future workers' compensation claims for medical treatment on the basis that such treatment is unrelated to the original work-related injury or occupational disease, or that the treatment is unnecessary or inapplicable, only after a Form 50 physician has been appointed and prescribed treatment. Rogers v. Jack's Supper Club, 308 Neb. 107, 953 N.W.2d 9 (2021).

48-121.

An employee suffering a below-the-knee amputation was not entitled to consecutive amounts of disability benefits for the loss of his five toes, his foot, and his leg, because subdivision (3) of this section explicitly states that a below-the-knee amputation is the equivalent of a loss of a foot and because, as a general rule, a party may not have double recovery for a single injury. Melton v. City of Holdrege, 309 Neb. 385, 960 N.W.2d 298 (2021).

48-125.

A reasonable controversy existed due to an unanswered question of law regarding the timing of permanent disability payments in a case involving an amputation. Melton v. City of Holdrege, 309 Neb. 385, 960 N.W.2d 298 (2021).

48-162.01.

The workers' compensation court did not clearly err in denying vocational rehabilitation benefits to an employee who had secured substantial gainful employment but who desired an award of vocational rehabilitation in case he became unable to continue his present employment. Melton v. City of Holdrege, 309 Neb. 385, 960 N.W.2d 298 (2021).

48-180.

This section does not limit the reasons for which a compensation court may modify its findings, order, award, or judgment. Parks v. Hy-Vee, 307 Neb. 927, 951 N.W.2d 504 (2020).

48-185.

Based on 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 judgment, order, or award; or (4) the findings of fact by the compensation court do not support the order or award. Arroyo v. Caring for People Servs., 29 Neb. App. 93, 952 N.W.2d 11 (2020).

48-824.

In determining whether a topic is covered by an agreement, an appellate court considers whether the topic is within the compass of the terms of the agreement or it is instead wholly absent or contained in so broad and vague a reservation as to negate the requirement of bargaining in good faith regarding subjects of mandatory bargaining. Fraternal Order of Police v. City of York, 309 Neb. 359, 960 N.W.2d 315 (2021).

48-1114.

Employees who complained about coworkers' alleged unlawful practices failed to establish a prima facie case of retaliation because subdivision (1)(c) of this section refers to an unlawful practice of the employer and does not protect an employee's opposition to the unlawful activities of fellow employees. Baker-Heser v. State, 309 Neb. 979, 963 N.W.2d 59 (2021).

64-201.

A notary public or other authorized officer should use a traditional jurat (long or short) to certify the administration of an oath or affirmation and employ an acknowledgment for documents requiring that type of proof. AVG Partners I v. Genesis Health Clubs, 307 Neb. 47, 948 N.W.2d 212 (2020).

67-404.

Under subsection (1) of this section, relations among the partners and between the partners and the partnership are also governed by the partnership agreement. Fredericks Peebles v. Assam, 300 Neb. 670, 915 N.W.2d 770 (2018).

67-445.

Based on this section, partners are entitled to an accounting upon the winding up of the business of a partnership. Mogensen Bros. Land & Cattle Co. v. Mogensen, 29 Neb. App. 56, 952 N.W.2d 688 (2020).

68-919.

The Department of Health and Human Services may recover from a Medicaid recipient's estate sums paid on the recipient's behalf for room and board and other "nonmedical" expenses at nursing facilities. In re Estate of Vollmann, 296 Neb. 659, 896 N.W.2d 576 (2017).

Under the Medical Assistance Act, where a Medicaid recipient is not survived by a spouse or by a child who is either under the age of 21 or blind or totally and permanently disabled and where no undue hardship as provided in the Department of Health and Human Services' rules and regulations would result, the beneficiaries of a recipient's estate are not entitled to an inheritance at the public's expense. In re Estate of Vollmann, 296 Neb. 659, 896 N.W.2d 576 (2017).

69-2301.

The scope of the Disposition of Personal Property Landlord and Tenant Act is not so narrowly confined as to exclude commercial leases; as such, the act applies in commercial lease cases. Pan v. IOC Realty Specialist, 301 Neb. 256, 918 N.W.2d 273 (2018).

69-2302.

"Landlord," as defined under this section as the "owner, lessor, or sublessor of furnished or unfurnished premises, including self-service storage units or facilities," does not limit the application of the Disposition of Personal Property Landlord and Tenant Act to self-service storage units or facilities, but, rather, relates to the inclusion of those two types of facilities indicating a nonexclusive list of example applications. Pan v. IOC Realty Specialist, 301 Neb. 256, 918 N.W.2d 273 (2018).

"Tenant," as defined under this section as a person entitled under a rental agreement to occupy any premises for rent or storage uses to the exclusion of others "whether such premises are used as a dwelling unit or self-service storage unit or facility or not," does not limit the application of the Disposition of Personal Property Landlord and Tenant Act to leases in nature of dwelling unit or self-service storage unit. Rather, the language "whether or not" indicates that it is not important which of the possibilities were true. Pan v. IOC Realty Specialist, 301 Neb. 256, 918 N.W.2d 273 (2018).

The definition of landlord under this section clearly includes agents under its scope. Pan v. IOC Realty Specialist, 301 Neb. 256, 918 N.W.2d 273 (2018).

69-2307.

Giving the word "former" its plain and ordinary meaning, "former tenant" under this section includes any past tenant to whom the property may have belonged. Pan v. IOC Realty Specialist, 301 Neb. 256, 918 N.W.2d 273 (2018).

Reading this section in conjunction with section 69-2312, a landlord would not be required to relinquish property to any party that is either (1) not a former tenant or (2) not a person who is reasonably believed by the landlord to be the owner of the personal property at issue. Pan v. IOC Realty Specialist, 301 Neb. 256, 918 N.W.2d 273 (2018).

The purpose of this section is to protect landlords from liability to the owners of personal property when the landlord erroneously surrenders property to a party other than the true owner but who the landlord reasonably believed was the owner. Conversely, if the requesting party is not a former tenant or a person that the landlord reasonably believes owns the personal property, the landlord would not be protected from liability under this section. Pan v. IOC Realty Specialist, 301 Neb. 256, 918 N.W.2d 273 (2018).

69-2312.

Under this section, the phrase "value of the personal property" in its relation to "[a]ctual damages" is the fair market value of the property at the time the tenant's property is improperly detained by the landlord. Pan v. IOC Realty Specialist, 301 Neb. 256, 918 N.W.2d 273 (2018).

69-2433.

A conviction for violating an Oklahoma statute prohibiting the transportation of a loaded pistol, rifle, or shotgun in a landborne motor vehicle over a public highway was sufficiently similar to section 37-522 to justify the denial of a concealed handgun permit application under subsection (8) of this section. Shurigar v. Nebraska State Patrol, 293 Neb. 606, 879 N.W.2d 25 (2016).

70-655.

A discount provided only to wholesale customers who renewed their contractual relationship with Nebraska Public Power District was not discriminatory under the circumstances. In re Application of Northeast Neb. Pub. Power Dist., 300 Neb. 237, 912 N.W.2d 884 (2018).

70-1008.

"Reintegration" for the purposes of section 70-1010 means "to restore to unity after disintegration" and is distinct from any accompanying loss of revenue that might be associated with a loss of load following a transfer of electrical services under this section and section 70-1010. In re Application of City of Neligh, 299 Neb. 517, 909 N.W.2d 73 (2018).

70-1010.

"Reintegration" for the purposes of this section means "to restore to unity after disintegration" and is distinct from any accompanying loss of revenue that might be associated with a loss of load following a transfer of electrical services under section 70-1008 and this section. In re Application of City of Neligh, 299 Neb. 517, 909 N.W.2d 73 (2018).

70-1301.

The Nebraska Power Review Board's jurisdiction to resolve wholesale electric rate disputes extends to contractual issues intertwined with such disputes. City of Sidney v. Municipal Energy Agency of Neb., 301 Neb. 147, 917 N.W.2d 826 (2018).

70-1306.

This section makes the Commercial Arbitration Rules of the American Arbitration Association, as amended and in effect March 1, 1977, the default procedural rules governing arbitration. City of Sidney v. Municipal Energy Agency of Neb., 301 Neb. 147, 917 N.W.2d 826 (2018).

This section provides an arbitration board with the authority to allow a party to amend its notice, substantive or not, at any time in the arbitrative proceedings. City of Sidney v. Municipal Energy Agency of Neb., 301 Neb. 147, 917 N.W.2d 826 (2018).

70-1327.

Despite de novo review, when credible evidence is in conflict on material issues of fact, the appellate court will consider and may give weight to the fact that the arbitration board under section 70-1301 et seq. observed the witnesses and accepted one version of the facts over another. In re Application of Northeast Neb. Pub. Power Dist., 300 Neb. 237, 912 N.W.2d 884 (2018).

On an appeal from the decision of an arbitration board convened under section 70-1301 et seq., trial in the appellate court is de novo on the record. In re Application of Northeast Neb. Pub. Power Dist., 300 Neb. 237, 912 N.W.2d 884 (2018).

71-445.

The State has not waived its sovereign immunity for claims arising under the Health Care Facility Licensure Act. Baker-Heser v. State, 309 Neb. 979, 963 N.W.2d 59 (2021).

71-947.

An attorney validly appointed by a court to assist an indigent subject in a habeas corpus proceeding challenging the subject's custody or treatment under the Sex Offender Commitment Act is entitled to attorney fees. D.I. v. Gibson, 295 Neb. 903, 890 N.W.2d 506 (2017).

71-1214.

The proper procedure to be followed when taking an appeal from a final order of the district court under this section is the general appeal procedure set forth in section 25-1912. In re Interest of L.T., 295 Neb. 105, 886 N.W.2d 525 (2016).

75-109.01.

Under subsection (2) of this section, the Public Service Commission's authority to regulate public grain warehouses is purely statutory, in contrast to its plenary authority to regulate common carriers under the state Constitution. Amend v. Nebraska Pub. Serv. Comm., 298 Neb. 617, 905 N.W.2d 551 (2018).

75-110.

The Public Service Commission has authority to take actions affecting parties subject to its jurisdiction if such action is taken pursuant to a statute. In re Application No. OP-0003, 303 Neb. 872, 932 N.W.2d 653 (2019).

75-134.02.

The words "file" and "filing" in this section mean that a motion for reconsideration must be in the possession of the Public Service Commission within 10 days after the effective date of the order in order to suspend the time for filing a notice of intention to appeal. In re App. No. C-4973 of Skrdlant, 305 Neb. 635, 942 N.W.2d 196 (2020).

75-136.

An appellate court reviews an order of the Nebraska Public Service Commission de novo on the record. In re Application No. OP-0003, 303 Neb. 872, 932 N.W.2d 653 (2019).

75-362.

Pursuant to subdivision (31) of this section, when distinguishing between a motor carrier and a broker, the determinative question is whether the disputed party accepted legal responsibility to transport the shipment. Sparks v. M&D Trucking, 301 Neb. 977, 921 N.W.2d 110 (2018).

Even if the regulatory scheme governing intrastate motor carriers was applicable to common-law concepts of respondeat superior liability in a tort action, a general contractor that was a registered motor carrier, and that hired another registered motor carrier to transport construction debris, was not the statutory employer of the hired carrier or its truckdriver and, thus, could not be held vicariously liable to automobile passenger who was injured in a collision with the hired carrier's truck while the driver was under the influence of drugs; regulatory scheme contemplated a relationship between a registered motor carrier and a private truck owner or driver that was not a registered motor carrier, and did not impose an agency relationship when the independent contractor was also a registered motor carrier. Cruz v. Lopez, 301 Neb. 531, 919 N.W.2d 479 (2018).

Under the plain language of "employee" and "employer," as used in the statutes governing intrastate motor carriers and adopting certain federal motor carrier safety regulations, a registered motor carrier that is also an employer of the drivers of its commercial motor vehicles cannot at the same time be the statutory employee of another motor carrier acting as a general contractor for a particular job. Cruz v. Lopez, 301 Neb. 531, 919 N.W.2d 479 (2018).

75-363.

A motor carrier may combine more than one policy, and use more than one method, to meet the minimum financial responsibility requirements. Shelter Ins. Co. v. Gomez, 306 Neb. 607, 947 N.W.2d 92 (2020).

Compliance with the minimum financial responsibility requirements in this section is the responsibility of the motor carrier, not the insurer. Shelter Ins. Co. v. Gomez, 306 Neb. 607, 947 N.W.2d 92 (2020).

This section does not regulate the terms and conditions of insurance policies. Shelter Ins. Co. v. Gomez, 306 Neb. 607, 947 N.W.2d 92 (2020).

76-106.

This section eliminates common-law technicalities and exactions regarding the language used to make a reservation in a deed; whether a provision is a reservation does not depend upon the use of a particular word but upon the character and effect of the provision itself. Walters v. Sporer, 298 Neb. 536, 905 N.W.2d 70 (2017).

76-2,120.

If a conveyance of real property is not made in compliance with this section, the purchaser shall have a cause of action against the seller and may recover the actual damages, court costs, and reasonable attorney fees. Hutchison v. Kula, 27 Neb. App. 96, 927 N.W.2d 373 (2019).

Sellers must complete the disclosure statement to the best of their belief and knowledge as of the date it was completed and signed, and as they are otherwise required by law to update before closing on the property. Hutchison v. Kula, 27 Neb. App. 96, 927 N.W.2d 373 (2019).

To state a cause of action under this section, the buyer must plead and prove either that the seller failed to provide a disclosure statement or that the statement contained knowingly false disclosures by the seller. Hutchison v. Kula, 27 Neb. App. 96, 927 N.W.2d 373 (2019).

76-705.

This section includes compensation for property that is damaged, in addition to property that is taken. Russell v. Franklin County, 27 Neb. App. 684, 934 N.W.2d 517 (2019).

A job is not the type of property for which inverse condemnation claims can be brought. Craw v. City of Lincoln, 24 Neb. App. 788, 899 N.W.2d 915 (2017).

76-717.

This section provides that only when a district court orders an appealing party to file a petition on appeal does it become necessary for the court to impose such sanctions as are reasonable. Pinnacle Enters. v. City of Papillion, 302 Neb. 297, 923 N.W.2d 372 (2019).

76-726.

An affidavit is admissible to introduce evidence relating to an award of attorney fees under this section. TransCanada Keystone Pipeline v. Nicholas Family, 299 Neb. 276, 908 N.W.2d 60 (2018).

"Incurred" under the plain language of this section means that landowners be indebted to counsel for services rendered and that the fees charged be reasonable. TransCanada Keystone Pipeline v. Nicholas Family, 299 Neb. 276, 908 N.W.2d 60 (2018).

Landowners seeking the reimbursement of fees owed under this section need not show that the fees sought were actually paid, but only that they were actually incurred. TransCanada Keystone Pipeline v. Nicholas Family, 299 Neb. 276, 908 N.W.2d 60 (2018).

76-876.

The Nebraska Nonprofit Corporation Act applies broadly to all nonprofit corporations, whereas the Nebraska Condominium Act applies only to condominium regimes and condominium owners. To the extent that there is conflict between two statutes on the same subject, the specific statute controls over the general statute. Dunbar v. Twin Towers Condo. Assn., 26 Neb. App. 354, 920 N.W.2d 1 (2018).

This section does not confer on condominium owners the right to make copies of all records; rather, it gives them the right to examine all of them. Dunbar v. Twin Towers Condo. Assn., 26 Neb. App. 354, 920 N.W.2d 1 (2018).

This section, rather than the Nebraska Nonprofit Corporation Act, controls a condominium owner's right to examine all financial and other records of its association. Dunbar v. Twin Towers Condo. Assn., 26 Neb. App. 354, 920 N.W.2d 1 (2018).

76-1006.

Section 76-1012 provides a trustor the ability to cure a default on an obligation secured by a trust deed prior to a trustee's sale and have the trust deed reinstated. While section 76-1012 contemplates and references the filing of a notice of default, it does not itself require the notice of default or specify the necessary contents of a notice of default, which requirements are set forth in this section. Section 76-1012 adds no additional requirements for notices of default to those in this section. First Nat. Bank North Platte v. Cardenas, 299 Neb. 497, 909 N.W.2d 79 (2018).

This section imposes the requirement for notices of default, while section 76-1012 provides the means by which a trustor may cure the default of an obligation secured by a trust deed. First Nat. Bank North Platte v. Cardenas, 299 Neb. 497, 909 N.W.2d 79 (2018).

This section includes detailed requirements that a trustee must satisfy prior to exercising the power of sale in a trust deed. A trustee must file with the county register of deeds a notice of default identifying the trust deed, stating that a breach of the obligation secured by the trust deed has occurred, setting forth the nature of the breach, and stating its election to sell the property to satisfy the obligation. First Nat. Bank North Platte v. Cardenas, 299 Neb. 497, 909 N.W.2d 79 (2018).

76-1008.

A proper reading of this section provides that unless the person or institution is a party to the trust deed at issue, that person or institution is not entitled to notice unless it is requested under subsection (1) of this section. First Neb. Ed. Credit Union v. U.S. Bancorp, 293 Neb. 308, 877 N.W.2d 578 (2016).

76-1012.

Section 76-1006 imposes the requirement for notices of default, while this section provides the means by which a trustor may cure the default of an obligation secured by a trust deed. First Nat. Bank North Platte v. Cardenas, 299 Neb. 497, 909 N.W.2d 79 (2018).

This section provides a trustor the ability to cure a default on an obligation secured by a trust deed prior to a trustee's sale and have the trust deed reinstated. While this section contemplates and references the filing of a notice of default, it does not itself require the notice of default or specify the necessary contents of a notice of default, which requirements are set forth in section 76-1006. This section adds no additional requirements for notices of default to those in section 76-1006. First Nat. Bank North Platte v. Cardenas, 299 Neb. 497, 909 N.W.2d 79 (2018).

This section provides that in order to cure a default, the trustor must pay to the beneficiary the entire amount then due. Thus, a default must be cured by tendering payment. A tender of payment is more than being willing and able to pay. It is an offer to perform, coupled with the present ability of immediate performance, which, were it not for the refusal of cooperation by the party to whom tender is made, would immediately satisfy the condition or obligation for which the tender is made. First Nat. Bank North Platte v. Cardenas, 299 Neb. 497, 909 N.W.2d 79 (2018).

76-1013.

This section provides a mechanism for creditors to recover a deficiency judgment for amounts still due and owing after a trustee's sale. First Nat. Bank North Platte v. Cardenas, 299 Neb. 497, 909 N.W.2d 79 (2018).

Under this section, a below fair market value sale would reduce the amount the creditor could recover in a deficiency action. But, depending upon the mathematics of the transaction, a below market sale would not necessarily be a total bar to a recovery of a deficiency. First Nat. Bank North Platte v. Cardenas, 299 Neb. 497, 909 N.W.2d 79 (2018).

76-1418.

A tenant who accepts possession and lives on the property for several months thereafter does not have a claim under this section, because the duties described in this section pertain to the "commencement" of the lease term. Vasquez v. CHI Properties, 302 Neb. 742, 925 N.W.2d 304 (2019).

76-1419.

The duties set forth in this section to comply with minimum housing codes materially affecting health and safety and to "put and keep" the premises in a fit and habitable condition are not limited under the plain language to conditions arising after commencement of the lease term. Vasquez v. CHI Properties, 302 Neb. 742, 925 N.W.2d 304 (2019).

76-1425.

So long as a tenant has given notice when required by section 76-1419, a tenant can seek damages or injunctive relief under subsection (2) of this section without sending notice under subsection (1) of this section specifying that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice of the breach, if not remedied within 14 days. Vasquez v. CHI Properties, 302 Neb. 742, 925 N.W.2d 304 (2019).

The conjunction "and" in subsection (2) of this section "serves to vest a tenant with two distinct options for relief" and does not require that both be pursued in order to pursue either. Vasquez v. CHI Properties, 302 Neb. 742, 925 N.W.2d 304 (2019).

76-1439.

A separate action for termination of a rental agreement is not a prerequisite to termination under this section. Vasquez v. CHI Properties, 302 Neb. 742, 925 N.W.2d 304 (2019).

76-2005.

A right of first refusal is a nonvested property interest. Walters v. Sporer, 298 Neb. 536, 905 N.W.2d 70 (2017).

77-101.

This section did not require the definition of "[d]epreciable tangible personal property" in section 77-119 to be used to define "depreciable repairs or parts" in section 77-2708.01, because the term "repairs" in section 77-2708.01 made the phrases contextually different. Farmers Co-op v. State, 296 Neb. 347, 893 N.W.2d 728 (2017).

77-119.

Section 77-101 did not require the definition of "[d]epreciable tangible personal property" in this section to be used to define "depreciable repairs or parts" in section 77-2708.01, because the term "repairs" in section 77-2708.01 made the phrases contextually different. Farmers Co-op v. State, 296 Neb. 347, 893 N.W.2d 728 (2017).

77-202.

A conservation group qualified as a "charitable organization" for purposes of subdivision (1)(d) of this section. Platte River Crane Trust v. Hall Cty. Bd. of Equal., 298 Neb. 970, 906 N.W.2d 646 (2018).

A tax exemption for charitable use is allowed because those exemptions benefit the public generally and the organization performs services which the state is relieved pro tanto from performing. Platte River Crane Trust v. Hall Cty. Bd. of Equal., 298 Neb. 970, 906 N.W.2d 646 (2018).

77-1327.

Section 77-5027(3) does not require the Property Tax Administrator to set out every property sale that the Department of Revenue's assessment division has included in its statistical analyses under subsection (3) of this section. County of Webster v. Nebraska Tax Equal. & Rev. Comm., 296 Neb. 751, 896 N.W.2d 887 (2017).

The Property Tax Administrator's required reports under subsection (3) of this section are competent evidence to support an equalization order under section 77-5026 without including the sales file information for each real property transaction. Accordingly, in a show cause hearing under section 77-5026, a county has the burden to demonstrate that the Tax Equalization and Review Commission should not rely on the reports. County of Webster v. Nebraska Tax Equal. & Rev. Comm., 296 Neb. 751, 896 N.W.2d 887 (2017).

77-1343.

The county assessor's valuation of homesite acres was not arbitrary, capricious, or unreasonable, where the valuation was based on the sale of similarly sized parcels within the same market and where sufficient differences

justified the $14,000 difference in valuation from another nearby property. Burdess v. Washington Cty. Bd. of Equal., 298 Neb. 166, 903 N.W.2d 35 (2017).

The county assessor's valuation of wasteland was not arbitrary, capricious, or unreasonable, where the valuation was based on a market analysis of arm's-length sales of property sold, subject to certain probable and legal agricultural purposes and uses. Burdess v. Washington Cty. Bd. of Equal., 298 Neb. 166, 903 N.W.2d 35 (2017).

The special valuation statutes were enacted because of the economic impact that urban development and other nonagricultural development have on neighboring agricultural and horticultural land. Special valuation protects persons engaged in agricultural endeavors from excessive tax burdens that might force them to discontinue those endeavors. Burdess v. Washington Cty. Bd. of Equal., 298 Neb. 166, 903 N.W.2d 35 (2017).

77-1344.

The greenbelt tax status of agricultural land does not qualify as particular evidence rural character. County of Sarpy v. City of Gretna, 309 Neb. 320, 960 N.W.2d 272 (2021).

77-1507.01.

A presumption exists that a county board of equalization has faithfully performed its official duties in making a property tax assessment and has acted upon sufficient competent evidence to justify its action. The presumption disappears when competent evidence to the contrary is presented. Once the presumption is rebutted, whether the valuation assessed is reasonable becomes a question of fact based on all of the evidence. Cain v. Custer Cty. Bd. of Equal., 298 Neb. 834, 906 N.W.2d 285 (2018).

When the Tax Equalization and Review Commission hears a property tax protest and performs the factfinding functions that a county board of equalization would have if the county had timely provided notice to the taxpayer, the taxpayer's burden of persuasion is by a preponderance of the evidence. Cain v. Custer Cty. Bd. of Equal., 298 Neb. 834, 906 N.W.2d 285 (2018).

77-1801.

Under this section, properties with delinquent real estate taxes on or before the first Monday of March may be sold at a tax sale. HBI, L.L.C. v. Barnette, 305 Neb. 457, 941 N.W.2d 158 (2020).

Actions challenging title obtained via a tax deed are governed by statute. Adair Holdings v. Johnson, 304 Neb. 720, 936 N.W.2d 517 (2020).

77-1807.

The successful bidder under the bid-down procedure acquires only an interest in the undivided percentage of the real estate. Adair Asset Mgmt. v. Terry's Legacy, 293 Neb. 32, 875 N.W.2d 421 (2016).

77-1824.

A property owner may redeem a property sold at a tax sale with payment of the amount noted on the tax certificate, other taxes subsequently paid, and interest. HBI, L.L.C. v. Barnette, 305 Neb. 457, 941 N.W.2d 158 (2020).

If a property sold at a tax sale has not been redeemed after 3 years, there are two methods by which the holder of a tax certificate may acquire a deed to the property: the tax deed method and judicial foreclosure. HBI, L.L.C. v. Barnette, 305 Neb. 457, 941 N.W.2d 158 (2020).

A tax deed holder's misstatement of the time available for the redemption provided in a notice rendered the tax deed invalid, regardless of whether the record owner relied on the misstatement. Adair Holdings v. Johnson, 304 Neb. 720, 936 N.W.2d 517 (2020).

77-1827.

A person with a "mental disorder" under this section is one who suffers from a condition of mental derangement which actually prevents the sufferer from understanding his or her legal rights or from instituting legal action, and a mental disorder within the meaning of this section is an incapacity which disqualifies one from acting for the protection of one's rights. Wisner v. Vandelay Investments, 300 Neb. 825, 916 N.W.2d 698 (2018).

This section extends the redemption period for a mental disorder only if the owner had a mental disorder at the time of the property's sale. Wisner v. Vandelay Investments, 300 Neb. 825, 916 N.W.2d 698 (2018).

77-1831.

This section does not contain language requiring the party applying for the tax deed to be included in the notice. HBI, L.L.C. v. Barnette, 305 Neb. 457, 941 N.W.2d 158 (2020).

A misstatement in the statutory notice of the expiration of the time of redemption renders the tax deed invalid. Adair Holdings v. Johnson, 304 Neb. 720, 936 N.W.2d 517 (2020).

A tax deed holder's misstatement of the time available for the redemption provided in a notice rendered the tax deed invalid, regardless of whether the record owner relied on the misstatement. Adair Holdings v. Johnson, 304 Neb. 720, 936 N.W.2d 517 (2020).

77-1832.

Under this section, notice may be sent by certified mail, return receipt requested, to the address where the property tax statement is mailed. HBI, L.L.C. v. Barnette, 305 Neb. 457, 941 N.W.2d 158 (2020).

Under this section, service need only be provided to the owner of record at the address where the property tax statement was mailed and may only be done by certified mail, return receipt requested. Wisner v. Vandelay Investments, 300 Neb. 825, 916 N.W.2d 698 (2018).

77-1834.

In contrast to section 25-520.01, this section does not require that the published notice be mailed to all parties having a direct legal interest in the action when the party's name and address are known. HBI, L.L.C. v. Barnette, 305 Neb. 457, 941 N.W.2d 158 (2020).

Notice by publication is permitted under this section upon proof of compliance with section 77-1832 if the record owner lives at the address where the property tax statement was mailed. HBI, L.L.C. v. Barnette, 305 Neb. 457, 941 N.W.2d 158 (2020).

This section only authorizes service by publication in the county where the property at issue is located. HBI, L.L.C. v. Barnette, 305 Neb. 457, 941 N.W.2d 158 (2020).

77-1837.

Under this section, a tax deed acts to convey property to the purchaser of a tax sale certificate or his or her assignee and may be issued by the county treasurer after proper notice is provided. HBI, L.L.C. v. Barnette, 305 Neb. 457, 941 N.W.2d 158 (2020).

77-1843.

A misstatement in the statutory notice of the expiration of the time of redemption renders the tax deed invalid. Adair Holdings v. Johnson, 304 Neb. 720, 936 N.W.2d 517 (2020).

A record owner's attempt to tender payment to the county treasurer for all taxes due upon the property complied with this section's requiring that all such taxes be "paid" by a person seeking to challenge a tax deed and gave the record owner standing to assert a claim seeking to set aside the tax deed, though the record owner's attempted tender took place outside of the statutory redemption period; the record owner attempted tender within the redemption period set forth in a public notice by the holder of the tax deed, and the treasurer refused to accept the tender because the tax deed had already issued. Adair Holdings v. Johnson, 304 Neb. 720, 936 N.W.2d 517 (2020).

This section has a jurisdictional component that renders a tax deed void when the tax deed holder failed to comply with the statutory notice requirements prior to acquiring the deed. Adair Holdings v. Johnson, 304 Neb. 720, 936 N.W.2d 517 (2020).

77-1844.

A record owner's attempt to tender payment to the county treasurer for all taxes due upon the property complied with this section's requiring that all such taxes be "paid" by a person seeking to challenge a tax deed and gave the record owner standing to assert a claim seeking to set aside the tax deed, though the record owner's attempted tender

took place outside of the statutory redemption period; the record owner attempted tender within the redemption period set forth in a public notice by the holder of the tax deed, and the treasurer refused to accept the tender because the tax deed had already issued. Adair Holdings v. Johnson, 304 Neb. 720, 936 N.W.2d 517 (2020).

The standing requirement that the taxes are "paid" under this section includes tendering payment. Adair Holdings v. Johnson, 304 Neb. 720, 936 N.W.2d 517 (2020).

This section sets forth the conditions precedent to questioning title conveyed under a tax deed; to obtain standing to redeem property after the issuance of a tax deed, even if title under a tax deed is void or voidable, a party must satisfy these conditions precedent. Wisner v. Vandelay Investments, 300 Neb. 825, 916 N.W.2d 698 (2018).

To comply with this section, a party only needs to show that it has tendered the tax payment to the treasurer, not that the taxes have actually been paid. Wisner v. Vandelay Investments, 300 Neb. 825, 916 N.W.2d 698 (2018).

To satisfy the tax payment requirement in this section, a party must show the tender or payment of taxes due to the county treasurer. Wisner v. Vandelay Investments, 300 Neb. 825, 916 N.W.2d 698 (2018).

77-1902.

Judicial foreclosure requires the holder of a tax certificate to foreclose on the lien for taxes in the district court of the county where the property is located. HBI, L.L.C. v. Barnette, 305 Neb. 457, 941 N.W.2d 158 (2020).

Where the successful bidder purchased a tax sale certificate by bidding down to a 1-percent undivided interest of property, its lien to be judicially foreclosed was limited to 1 percent of the property. Adair Asset Mgmt. v. Terry's Legacy, 293 Neb. 32, 875 N.W.2d 421 (2016).

77-2004.

Factual findings necessary in determining whether the requisite acknowledged parent-child relationship of this section exists should be reviewed for sufficient evidence and should not be disturbed on appeal unless clearly wrong. In re Estate of Chambers, 27 Neb. App. 398, 932 N.W.2d 343 (2019).

The following factors serve as appropriate guideposts to the trial court in making a determination of an acknowledged relationship of a parent under this section: (1) reception of the child into the home and treatment of the child as a member of the family, (2) assumption of the responsibility for support beyond occasional gifts and financial aid, (3) exercise of parental authority and discipline, (4) relationship by blood or marriage, (5) advice and guidance to the child, (6) sharing of time and affection, and (7) existence of written documentation evincing the decedent's intent to act as parent. In re Estate of Chambers, 27 Neb. App. 398, 932 N.W.2d 343 (2019).

Factual findings necessary in determining whether the requisite acknowledged parent-child relationship of this section exists should be reviewed for sufficient evidence and should not be disturbed on appeal unless clearly wrong. In re Estate of Sedlacek, 27 Neb. App. 390, 932 N.W.2d 91 (2019).

The Nebraska Supreme Court has identified the following factors as appropriate guideposts to the trial court in making a determination of an acknowledged relationship of a parent under this section: (1) reception of the child into the home and treatment of the child as a member of the family, (2) assumption of the responsibility for support beyond occasional gifts and financial aid, (3) exercise of parental authority and discipline, (4) relationship by blood or marriage, (5) advice and guidance to the child, (6) sharing of time and affection, and (7) existence of written documentation evincing the decedent's intent to act as a parent. In re Estate of Sedlacek, 27 Neb. App. 390, 932 N.W.2d 91 (2019).

77-2018.02.

Published notice is not a prerequisite of a county court's subject matter jurisdiction of an independent proceeding for the sole purpose of determining Nebraska inheritance tax; rather, such jurisdiction is invoked by the filing of a petition to initiate the proceeding. In re Estate of Marsh, 307 Neb. 893, 951 N.W.2d 486 (2020).

The county court has subject matter jurisdiction of an independent proceeding brought for the sole purpose of determining Nebraska inheritance tax. In re Estate of Marsh, 307 Neb. 893, 951 N.W.2d 486 (2020).

Although subsection (5) of this section states that the court may dispense with the notice required under subsections (2) and (3), the court is ultimately responsible for determining the inheritance tax. In re Estate of Chambers, 27 Neb. App. 398, 932 N.W.2d 343 (2019).

77-2018.03.

This section, while authorizing the county attorney to stipulate to facts regarding the determination of inheritance tax which could be presented by evidence to the county court, does not require the court to accept the stipulated facts. In re Estate of Chambers, 27 Neb. App. 398, 932 N.W.2d 343 (2019).

77-2701.10.

Where the statutes allow contractors a choice as to how they are taxed and where certain exceptions are provided, there is no conflict between subdivision (2) of this section, which allows a contractor to pay sales tax as a consumer, and subdivision (2)(e) of section 77-2701.16, which requires the payment of tax on the "furnishing, installing, or connecting" of mobile telecommunications services. Diversified Telecom Servs. v. State, 306 Neb. 834, 947 N.W.2d 550 (2020).

77-2701.16.

Where the statutes allow contractors a choice as to how they are taxed and where certain exceptions are provided, there is no conflict between subdivision (2) of section 77-2701.10, which allows a contractor to pay sales tax as a consumer, and subdivision (2)(e) of this section, which requires the payment of tax on the "furnishing, installing, or connecting" of mobile telecommunications services. Diversified Telecom Servs. v. State, 306 Neb. 834, 947 N.W.2d 550 (2020).

77-2701.34.

When determining whether property is being leased in the normal course of a taxpayer's business, a court may consider factors including, but not limited to, whether the leases are entered into with consumers who are related to or associated with the taxpayer, whether the terms of the leases and the parties' subsequent conduct reflect an arm's-length business transaction, whether the leases produced reasonable revenue for the taxpayer's business in relation to operating expenses, and whether the taxpayer held itself out to the public as being in the business of leasing the property. Big Blue Express v. Nebraska Dept. of Rev., 309 Neb. 838, 962 N.W.2d 528 (2021).

77-2701.46.

For purposes of the statutory definition of "manufacturing," "reduce" means "to diminish in size, amount, extent, or number," and "transform" means "to change the outward former appearance" or "to change in character or condition." Ash Grove Cement Co. v. Nebraska Dept. of Rev., 306 Neb. 947, 947 N.W.2d 731 (2020).

77-2703.

This section places the legal incidence of admissions taxes on the consumer, not the retailer. Therefore, the consumer, and not the retailer, has standing to claim a refund of admissions taxes under section 77-2708. Aline Bae Tanning v. Nebraska Dept. of Rev., 293 Neb. 623, 880 N.W.2d 61 (2016).

77-2708.

Section 77-2703 places the legal incidence of admissions taxes on the consumer, not the retailer. Therefore, the consumer, and not the retailer, has standing to claim a refund of admissions taxes under this section. Aline Bae Tanning v. Nebraska Dept. of Rev., 293 Neb. 623, 880 N.W.2d 61 (2016).

77-2708.01.

"[D]epreciable repairs or parts" means repairs or parts that appreciably prolong the life of the property, arrest its deterioration, or increase its value or usefulness, and are ordinarily capital expenditures for which a deduction is allowed only through the depreciation recovery allowance. Farmers Co-op v. State, 296 Neb. 347, 893 N.W.2d 728 (2017).

Section 77-101 did not require the definition of "[d]epreciable tangible personal property" in section 77-119 to be used to define "depreciable repairs or parts" in this section, because the term "repairs" in this section made the phrases contextually different. Farmers Co-op v. State, 296 Neb. 347, 893 N.W.2d 728 (2017).

The legislative intent of creating the refund for "depreciable repairs or parts" in this section was to prevent double taxation but also to ensure that all depreciable repairs and parts were subject to personal property tax. Farmers Co-op v. State, 296 Neb. 347, 893 N.W.2d 728 (2017).

The party claiming a tax refund must establish its entitlement to the refund. Farmers Co-op v. State, 296 Neb. 347, 893 N.W.2d 728 (2017).

77-2714.01.

An individual's subjective intent is not dispositive of domicile if a limited visa of a foreign country is intended to restrict intent, for an intent inconsistent with law is unrealistic and insufficient to establish a domicile. Houghton v. Nebraska Dept. of Rev., 308 Neb. 188, 953 N.W.2d 237 (2021).

To acquire a domicile by choice, there must be both (1) residence through bodily presence in the new locality and (2) an intention to remain there; to change domicile, there must be an intention to abandon the old domicile. Houghton v. Nebraska Dept. of Rev., 308 Neb. 188, 953 N.W.2d 237 (2021).

77-2715.08.

This section does not include any "economic activity" or "business purpose" requirements for creating a qualified corporation and merely sets forth certain requirements for the shareholders at one specific point in time for the special capital gains election. Stewart v. Nebraska Dept. of Rev., 294 Neb. 1010, 885 N.W.2d 723 (2016).

77-2715.09.

Taxpayers' election to receive special capital gains/extraordinary dividend treatment available only to someone domiciled in Nebraska militated against a finding that taxpayers possessed intent to abandon their Nebraska domicile. Houghton v. Nebraska Dept. of Rev., 308 Neb. 188, 953 N.W.2d 237 (2021).

This section does not contain language discussing underlying sales and transactions or requiring a purpose for taking actions to comply with the section other than qualifying for the special capital gains election. Courts and executive agencies lack the authority to add such language where a statute is clear and not ambiguous. Stewart v. Nebraska Dept. of Rev., 294 Neb. 1010, 885 N.W.2d 723 (2016).

77-2781.

Taxpayers had the burden of proof to show they possessed the intent to abandon their Nebraska domicile and remain indefinitely in a foreign country. Houghton v. Nebraska Dept. of Rev., 308 Neb. 188, 953 N.W.2d 237 (2021).

77-5016.

Where the only issue raised on appeal to the Nebraska Tax Equalization and Review Commission was whether a natural resources district's parcels were being used for a public purpose as required for property tax exemption, the commission lacked jurisdiction to consider questions beyond whether the parcels were being used for a public purpose, including whether the parcels were leased at fair market value and whether assessment of taxes to surface lessees would violate due process. Upper Republican NRD v. Dundy Cty. Bd. of Equal., 300 Neb. 256, 912 N.W.2d 796 (2018).

The procedures for a hearing to show cause why an adjustment should not be made to a county's valuation of a class or subclass of real property are not governed by subdivision (4) of this section. Instead, the show cause hearing is part of equalization procedures under sections 77-5022, 77-5023, and 77-5026. County of Webster v. Nebraska Tax Equal. & Rev. Comm., 296 Neb. 751, 896 N.W.2d 887 (2017).

77-5019.

Questions of law arising during appellate review of Tax Equalization and Review Commission decisions are reviewed de novo. Cain v. Custer Cty. Bd. of Equal., 298 Neb. 834, 906 N.W.2d 285 (2018).

On appeal, an order that subsection (5) of this section defines as a "final decision" is reviewed for error on the record. When reviewing a judgment for errors appearing on the record, an appellate court's inquiry is whether the decision conforms to the law, is supported by competent evidence, and is neither arbitrary, capricious, nor unreasonable. County of Webster v. Nebraska Tax Equal. & Rev. Comm., 296 Neb. 751, 896 N.W.2d 887 (2017).

When reviewing a judgment for errors appearing on the record, the inquiry is whether the decision conforms to the law, is supported by competent evidence, and is neither arbitrary, capricious, nor unreasonable. An agency decision is supported by competent evidence, sufficient evidence, or substantial evidence if the agency could

reasonably have found the facts as it did on the basis of the testimony and exhibits contained in the record before it. Agency action is arbitrary, capricious, and unreasonable if it is taken in disregard of the facts or circumstances of the case, without some basis which would lead a reasonable and honest person to the same conclusion. Agency action taken in disregard of the agency's own substantive rules is also arbitrary and capricious. County of Douglas v. Nebraska Tax Equal. & Rev. Comm., 296 Neb. 501, 894 N.W.2d 308 (2017).

77-5022.

The procedures for a hearing to show cause why an adjustment should not be made to a county's valuation of a class or subclass of real property are not governed by section 77-5016(4). Instead, the show cause hearing is part of equalization procedures under this section and sections 77-5023 and 77-5026. County of Webster v. Nebraska Tax Equal. & Rev. Comm., 296 Neb. 751, 896 N.W.2d 887 (2017).

77-5023.

The procedures for a hearing to show cause why an adjustment should not be made to a county's valuation of a class or subclass of real property are not governed by section 77-5016(4). Instead, the show cause hearing is part of equalization procedures under this section and sections 77-5022 and 77-5026. County of Webster v. Nebraska Tax Equal. & Rev. Comm., 296 Neb. 751, 896 N.W.2d 887 (2017).

77-5026.

The procedures for a hearing to show cause why an adjustment should not be made to a county's valuation of a class or subclass of real property are not governed by section 77-5016(4). Instead, the show cause hearing is part of equalization procedures under this section and sections 77-5022 and 77-5023. County of Webster v. Nebraska Tax Equal. & Rev. Comm., 296 Neb. 751, 896 N.W.2d 887 (2017).

The Property Tax Administrator's required reports under section 77-1327(3) are competent evidence to support an equalization order under this section without including the sales file information for each real property transaction. Accordingly, in a show cause hearing under this section, a county has the burden to demonstrate that the Tax Equalization and Review Commission should not rely on the reports. County of Webster v. Nebraska Tax Equal. & Rev. Comm., 296 Neb. 751, 896 N.W.2d 887 (2017).

77-5027.

Subsection (3) of this section does not require the Property Tax Administrator to set out every property sale that the Department of Revenue's assessment division has included in its statistical analyses under section 77-1327(3). County of Webster v. Nebraska Tax Equal. & Rev. Comm., 296 Neb. 751, 896 N.W.2d 887 (2017).

77-5704.

Any term used in the Nebraska Advantage Act shall have the same meaning as used in chapter 77, article 27, of Nebraska's statutes. Ash Grove Cement Co. v. Nebraska Dept. of Rev., 306 Neb. 947, 947 N.W.2d 731 (2020).

77-5715.

In the context of the Nebraska Advantage Act, "manufacturing" and "processing" have distinct meanings. In the absence of a statute or regulation indicating the contrary, the term "processing" means to subject to a particular method, system, or technique of preparation, handling or other treatment designed to prepare tangible personal property for market, manufacture, or other commercial use which does not result in the transformation of property into a substantially different character. Ash Grove Cement Co. v. Nebraska Dept. of Rev., 306 Neb. 947, 947 N.W.2d 731 (2020).

79-201.

Subsection (2) of this section does not make the start of the public school calendar year the default start date for other schools and does not provide that a child must attend a legally recognized school each day of the public school year. Nor does it require parents to enroll their child in a legally recognized school until they obtain the State's recognition of an exempt homeschool. State v. Thacker, 286 Neb. 16, 834 N.W.2d 597 (2013).

Under subsection (2) of this section, an exempt school's ability to complete the minimum instruction hours is the only timing requirement imposed upon an exempt school's calendar year. State v. Thacker, 286 Neb. 16, 834 N.W.2d 597 (2013).

Where a juvenile is adjudicated solely on the basis of habitual truancy from school under subsection (3)(b) of section 43-247 and the status of truancy is subsequently terminated by the lawful execution of a parental release authorizing discontinuation of school pursuant to subsection (3)(d) of this section, a juvenile court may terminate its jurisdiction without a finding that such termination is in the best interests of the juvenile. In re Interest of Kevin K., 274 Neb. 678, 742 N.W.2d 767 (2007).

Compulsory education statutes and juvenile code statutes regarding the neglect of children generally do not pertain to the same subject matter and should not be construed in pari materia. In re Interest of Laticia S., 21 Neb. App. 921, 844 N.W.2d 841 (2014).

Subdivision (3)(a) of section 43-247 establishes the juvenile court's jurisdiction over a minor child, while this section and section 79-210 make the minor child's parents or legal guardians culpable for the child's truancy. The county attorney is free to decide whether to proceed utilizing the juvenile code or the compulsory education laws. In re Interest of Laticia S., 21 Neb. App. 921, 844 N.W.2d 841 (2014).

79-209.

The plain language of this section does not provide that a parent's absence at the collaborative plan meeting is a defense to adjudication. In re Interest of Reality W., 302 Neb. 878, 925 N.W.2d 355 (2019).

The school's failure to document the efforts required by subsection (3) of this section is a defense to adjudication for habitual truancy. In re Interest of Reality W., 302 Neb. 878, 925 N.W.2d 355 (2019).

Under the former law, subsection (3) of this section permitted a school attendance officer to make a report to the county attorney if a child is absent more than 20 days per year or the hourly equivalent, even if all of the absences are excused due to illness or otherwise. It mandated such a report if the child exceeds the 20-day absence limitation and any of such absences are not excused. In re Interest of Samantha C., 287 Neb. 644, 843 N.W.2d 665 (2014).

Under the former law, this section had no effect upon the juvenile court's exclusive and original jurisdiction over juveniles found to be within the meaning of section 43-247(3)(b). In re Interest of Samantha C., 287 Neb. 644, 843 N.W.2d 665 (2014).

Absence of a guardian from a collaborative plan meeting is not an absolute defense in a truancy proceeding where the school documented sufficient efforts to obtain the guardian's presence. In re Interest of Cole J., 26 Neb. App. 951, 925 N.W.2d 365 (2019).

The school's duty to provide services in an attempt to address excessive absenteeism comes from this section, relating to compulsory attendance and the possibility of a parent's being subjected to a criminal sanction. The school has no duty to provide reasonable efforts before an adjudication under subdivision (3)(a) of section 43-247 of the juvenile code. In re Interest of Laticia S., 21 Neb. App. 921, 844 N.W.2d 841 (2014).

79-210.

Subdivision (3)(a) of section 43-247 establishes the juvenile court's jurisdiction over a minor child, while section 79-201 and this section make the minor child's parents or legal guardians culpable for the child's truancy. The county attorney is free to decide whether to proceed utilizing the juvenile code or the compulsory education laws. In re Interest of Laticia S., 21 Neb. App. 921, 844 N.W.2d 841 (2014).

79-254.

School officials' statutory authority to conduct searches of students is implied by the Student Discipline Act. J.P. v. Millard Public Schools, 285 Neb. 890, 830 N.W.2d 453 (2013).

79-262.

School officials have authority to regulate and control student conduct on school grounds, but are not given authority to search off school grounds, including a vehicle parked off school grounds that is not associated with a school-sponsored event or activity. J.P. v. Millard Public Schools, 285 Neb. 890, 830 N.W.2d 453 (2013).

79-267.

This section limits a school district's jurisdiction to discipline students for possession of a controlled substance to conduct occurring on school property, at a school-sponsored activity or athletic event, or in a vehicle owned or used

by the school for a school purpose. Driving to school was not a school-sponsored event and was not associated with a school-sponsored event, and a high school did not have implied authority to search a student's vehicle parked off campus. J.P. v. Millard Public Schools, 285 Neb. 890, 830 N.W.2d 453 (2013).

This section makes a clear distinction between conduct that occurs on school grounds and conduct that occurs off school grounds. J.P. v. Millard Public Schools, 285 Neb. 890, 830 N.W.2d 453 (2013).

This section sets the limits of a school's authority to discipline students for unlawfully possessing a controlled substance. J.P. v. Millard Public Schools, 285 Neb. 890, 830 N.W.2d 453 (2013).

79-289.

The requirements under subsection (3) of this section are mandatory conditions precedent for a district court to obtain subject matter jurisdiction over a proceeding for further review. J.S. v. Grand Island Public Schools, 297 Neb. 347, 899 N.W.2d 893 (2017).

79-291.

The Student Discipline Act specifically grants the district court the power to reverse the decision of a board of education if a student's constitutional rights were violated. J.P. v. Millard Public Schools, 285 Neb. 890, 830 N.W.2d 453 (2013).

79-413.

A state committee's approval of a petition for reorganization, including a school district's reallocation of bonding authority, is a "change" within the committee's jurisdiction under subsection (4) of this section, subject to appeal, and it may not be collaterally attacked. Cumming v. Red Willow Sch. Dist. No. 179, 273 Neb. 483, 730 N.W.2d 794 (2007).

79-419.

Under the precursor to subsection (2) of this section, merging school boards were not authorized to include in their merger petition a requirement that the surviving school board obtain a majority vote from voters in a former school district or a unanimous vote from school board members before moving grades four through six from an elementary school in a former district. Citizens for Eq. Ed. v. Lyons-Decatur Sch. Dist., 274 Neb. 278, 739 N.W.2d 742 (2007).

79-458.

Under subsection (5) of this section, appeals from a freeholder board must be filed by August 10 when the board either acted or failed to act on a petition by August 1. Butler Cty. Sch. Dist. v. Freeholder Petitioners, 283 Neb. 903, 814 N.W.2d 724 (2012).

A party filing a petition under this section has a direct and legal interest in an appeal filed with the district court objecting to the granting of that petition. Koch v. Cedar Cty. Freeholder Bd., 276 Neb. 1009, 759 N.W.2d 464 (2009).

Deficiencies in a petition filed under this section do not necessarily defeat the jurisdiction of a freeholder board. Koch v. Cedar Cty. Freeholder Bd., 276 Neb. 1009, 759 N.W.2d 464 (2009).

In determining whether land is contiguous under this section, a freeholder board shall consider all petitions together in order to find that otherwise noncontiguous land is nevertheless contiguous. Koch v. Cedar Cty. Freeholder Bd., 276 Neb. 1009, 759 N.W.2d 464 (2009).

79-515.

A contract continuation clause does not create a contract of indefinite duration in violation of this section. Central City Ed. Assn. v. Merrick Cty. Sch. Dist., 280 Neb. 27, 783 N.W.2d 600 (2010).

79-827.

A contract of a certificated employee may be canceled at any time during the school year pursuant to the provisions of this section. Schiefelbein v. School Dist. No. 0013, 17 Neb. App. 80, 758 N.W.2d 645 (2008).

A contractual provision purporting to alter the deadline for notice of nonrenewal does not affect a school board's ability to cancel a contract pursuant to this section. Schiefelbein v. School Dist. No. 0013, 17 Neb. App. 80, 758 N.W.2d 645 (2008).

The notice of cancellation required by this section is fulfilled, even where the notice incorrectly states that any hearing will be an informal due process hearing pursuant to section 79-834, if the notice states that all the formal due process hearing protections contained in section 79-832 will be provided. Schiefelbein v. School Dist. No. 0013, 17 Neb. App. 80, 758 N.W.2d 645 (2008).

79-829.

Although this section does not specifically define the phrase "reduction in force" as used in the teacher tenure statutes, it involves terminating a teacher's contract due to a surplus of staff. Miller v. School Dist. No. 18-0011 of Clay Cty., 278 Neb. 1018, 775 N.W.2d 413 (2009).

The intent of the tenured teacher statutes is to guarantee a tenured, or permanent certificated, teacher continued employment except where specific statutory grounds for termination of the teacher's contract are demonstrated. Miller v. School Dist. No. 18-0011 of Clay Cty., 278 Neb. 1018, 775 N.W.2d 413 (2009).

79-831.

If an employee who is given notice of possible cancellation of his or her contract does not request a hearing within 7 calendar days, a school board has no duty to provide a hearing. Schiefelbein v. School Dist. No. 0013, 17 Neb. App. 80, 758 N.W.2d 645 (2008).

79-832.

The notice of cancellation required by section 79-827 is fulfilled, even where the notice incorrectly states that any hearing will be an informal due process hearing pursuant to section 79-834, if the notice states that all the formal due process hearing protections contained in this section will be provided. Schiefelbein v. School Dist. No. 0013, 17 Neb. App. 80, 758 N.W.2d 645 (2008).

79-834.

The notice of cancellation required by section 79-827 is fulfilled, even where the notice incorrectly states that any hearing will be an informal due process hearing pursuant to this section, if the notice states that all the formal due process hearing protections contained in section 79-832 will be provided. Schiefelbein v. School Dist. No. 0013, 17 Neb. App. 80, 758 N.W.2d 645 (2008).

79-846.

A school district is legally prohibited by Nebraska's teacher tenure statutes from terminating a permanent certificated teacher's contract and then hiring a probationary teacher to replace him or her. Miller v. School Dist. No. 18-0011 of Clay Cty., 278 Neb. 1018, 775 N.W.2d 413 (2009).

79-902.

Disability as defined in subsection (37) of this section has two components: (1) The individual must have a physical or mental impairment of the nature described, and (2) by reason of the impairment, the individual must be unable to engage in a substantially gainful activity. Shepherd v. Chambers, 281 Neb. 57, 794 N.W.2d 678 (2011).

79-951.

If the Public Employees Retirement Board's medical examiner opines that the member is not disabled, the member may offer other medical evidence. Shepherd v. Chambers, 281 Neb. 57, 794 N.W.2d 678 (2011).

Subsection (1) of this section ordinarily requires expert medical evidence to establish a disability. Shepherd v. Chambers, 281 Neb. 57, 794 N.W.2d 678 (2011).

79-1073.

Because the levy authorized under this section benefits all taxpayers in a learning community, which is the relevant taxing district, this section does not violate the constitutional prohibition in Neb. Const. art. VIII, sec. 4, against a commutation of taxes. Sarpy Cty. Farm Bureau v. Learning Community, 283 Neb. 212, 808 N.W.2d 598 (2012).

Because the levy distributed under this section is uniform throughout the entire learning community, which is the relevant taxing district, this section does not violate the uniformity clause in Neb. Const. art. VIII, sec. 1. Sarpy Cty. Farm Bureau v. Learning Community, 283 Neb. 212, 808 N.W.2d 598 (2012).

This section was enacted for substantially local purposes, and therefore, it does not violate the prohibition in Neb. Const. art. VIII, sec. 1A, against a property tax for a state purpose. Sarpy Cty. Farm Bureau v. Learning Community, 283 Neb. 212, 808 N.W.2d 598 (2012).

79-1094.

The school board of any district maintaining more than one school may close any school or schools within the district. Haskell v. Madison Cty. Sch. Dist. No. 0001, 17 Neb. App. 669, 771 N.W.2d 156 (2009).

79-10,105.

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

79-1601.

This section does not set out a deadline for an exempt school to begin operations. State v. Thacker, 286 Neb. 16, 834 N.W.2d 597 (2013).

81-885.01.

Unless otherwise specified in a written agency agreement pursuant to section 76-2422(6), the fiduciary duties owed by a real estate broker derive only from the performance of limited activities defined in subdivision (2) of this section. Professional Mgmt. Midwest v. Lund Co., 284 Neb. 777, 826 N.W.2d 225 (2012).

When a client engages a real estate broker to perform any of the activities defined in subdivision (2) of this section, the resulting agency relationship is called a brokerage relationship. Professional Mgmt. Midwest v. Lund Co., 284 Neb. 777, 826 N.W.2d 225 (2012).

One of the enumerated activities covered by section 76-2422(6) is the exchange of property, based on the plain language of subdivision (2) of this section. McCully, Inc. v. Baccaro Ranch, 279 Neb. 443, 778 N.W.2d 115 (2010).

Pursuant to the Nebraska Real Estate License Act, any person collecting a fee or commission on the sale of real estate must be a licensed real estate broker or salesperson unless they meet one of the exceptions provided in the act. In re Estate of Ronan, 277 Neb. 516, 763 N.W.2d 704 (2009).

81-885.04.

The exception provided by subsection (2) of this section is limited to those instances where an attorney is acting within the scope of his duties as an attorney. In re Estate of Ronan, 277 Neb. 516, 763 N.W.2d 704 (2009).

81-885.24.

Whether subdivision (13) of this section creates a private right of action against a real estate broker for inducement to breach a contract of sale or lease depends on its purpose and whether the Legislature intended to create such a private right of action. Professional Mgmt. Midwest v. Lund Co., 284 Neb. 777, 826 N.W.2d 225 (2012).

Whether subdivision (13) of this section includes an implied right of action against a real estate broker for inducement to breach a contract of sale or lease is distinct and separate from the issue whether this section creates a duty in tort which can be enforced via a negligence action. Professional Mgmt. Midwest v. Lund Co., 284 Neb. 777, 826 N.W.2d 225 (2012).

A real estate broker's actions clearly demonstrated unworthiness under this section. Clark v. Tyrrell, 16 Neb. App. 692, 750 N.W.2d 364 (2008).

Double jeopardy was not applicable to a real estate broker's discipline under this section. Clark v. Tyrrell, 16 Neb. App. 692, 750 N.W.2d 364 (2008).

81-8,108.

Registered surveyors are professionals for purposes of professional negligence. Bixenmann v. Dickinson Land Surveyors, 294 Neb. 407, 882 N.W.2d 910 (2016).

81-8,117.

Registered surveyors are professionals for purposes of professional negligence. Bixenmann v. Dickinson Land Surveyors, 294 Neb. 407, 882 N.W.2d 910 (2016).

81-8,209.

A state officer or employee cannot be sued in his or her individual capacity for negligence claims arising out of actions performed while acting within the scope of his or her office or employment. Davis v. State, 297 Neb. 955, 902 N.W.2d 165 (2017).

81-8,210.

The Public Service Commission is a state agency for purposes of the State Tort Claims Act, and as a result, the provisions of the act are applicable in tort suits against the commission. Amend v. Nebraska Pub. Serv. Comm., 298 Neb. 617, 905 N.W.2d 551 (2018).

Under subsection (4) of this section, state officers and employees acting within the scope of their offices or employment can be sued for tortious conduct only in their official capacities. Davis v. State, 297 Neb. 955, 902 N.W.2d 165 (2017).

81-8,212.

The doctrine of substantial compliance applies when determining whether presuit presentment requirements pertaining to a claim's content are met. Saylor v. State, 306 Neb. 147, 944 N.W.2d 726 (2020).

81-8,213.

The 6-month filing extension in section 81-8,227 runs from the first date on which the claim could have been withdrawn under this section, not the date the claim is actually withdrawn. Komar v. State, 299 Neb. 301, 908 N.W.2d 610 (2018).

81-8,219.

The intentional tort exception provides immunity and bars all claims arising out of an intentional tort, regardless of whether the intentional tort was committed by an agent of the State or by a third party. Moser v. State, 307 Neb. 18, 948 N.W.2d 194 (2020).

A recreational activity involves something more than simply being physically on property maintained by the State; it must involve some leisure activity other than merely being present on state-maintained land. Brown v. State, 305 Neb. 111, 939 N.W.2d 354 (2020).

For the recreational activity exception to apply, the claim must relate to a recreational activity on property leased, owned, or controlled by the State; the claim must result from an inherent risk of that recreational activity; and no fee must have been charged for the plaintiff to participate in, or be a spectator at, the recreational activity. Brown v. State, 305 Neb. 111, 939 N.W.2d 354 (2020).

It is necessary as a threshold matter to identify the recreational activity, if any, in which the plaintiff was engaged as either a participant or a spectator. Brown v. State, 305 Neb. 111, 939 N.W.2d 354 (2020).

"[A]ny law enforcement officer" covered by the exception to the waiver of sovereign immunity in the State Tort Claims Act, specifically subdivision (2) of this section, includes all law enforcement officers, including Department of Correctional Services personnel. Rouse v. State, 301 Neb. 1037, 921 N.W.2d 355 (2019).

ANNOTATIONS

An exception to the State's sovereign immunity under this section is not a waivable affirmative defense which the State must plead and prove, but, rather, is a matter of sovereign immunity implicating subject matter jurisdiction which the State may raise at any time, including for the first time on appeal. Davis v. State, 297 Neb. 955, 902 N.W.2d 165 (2017).

Tort claims by a parolee against State officials and employees were barred by the false imprisonment exception, under subdivision (4) of this section, where the parolee alleged that he turned himself in to authorities and was reincarcerated for almost 2 months despite his protests that he had been correctly paroled. Davis v. State, 297 Neb. 955, 902 N.W.2d 165 (2017).

The misrepresentation exception to the waiver of sovereign immunity, which must be strictly construed in favor of the government, can apply to claims for personal injuries as well as economic injuries and to claims not involving business transactions. Jill B. & Travis B. v. State, 297 Neb. 57, 899 N.W.2d 241 (2017).

The decision to seek a mental health commitment of an inmate who was believed to be mentally ill and dangerous was discretionary where the inmate was not admitted for emergency protective custody. Holloway v. State, 293 Neb. 12, 875 N.W.2d 435 (2016).

Sovereign immunity barred a claim against the State of Nebraska and Cass County concerning a sight-restricted railroad crossing at which a collision occurred because neither the State nor the county had any mandatory legal duty to improve any sight restrictions at the crossing. Shipley v. Department of Roads, 283 Neb. 832, 813 N.W.2d 455 (2012).

Sovereign immunity barred a claim against the State of Nebraska and Cass County concerning the lack of pavement markings at a railroad crossing at which a collision occurred because the decision of whether to place pavement markings at the crossing was discretionary. Shipley v. Department of Roads, 283 Neb. 832, 813 N.W.2d 455 (2012).

Sovereign immunity barred a failure-to-warn claim concerning a sight-restricted railroad crossing; neither the State of Nebraska nor Cass County had a nondiscretionary duty to warn where the truck wash facility alleged to be the cause of the sight restriction was built by a private party on private property and was readily apparent to a motorist approaching the crossing. Shipley v. Department of Roads, 283 Neb. 832, 813 N.W.2d 455 (2012).

Under subsection (4) of this section, the State has not waived its sovereign immunity for claims of fraudulent concealment. Doe v. Board of Regents, 280 Neb. 492, 788 N.W.2d 264 (2010).

Under subsection (9) of this section, the State is immune from liability against allegations of a malfunctioning traffic signal unless the malfunction was not corrected by the State within a reasonable time after it received actual or constructive notice of the problem. Fickle v. State, 273 Neb. 990, 735 N.W.2d 754 (2007).

Exceptions found in this section to the general waiver of tort immunity are matters of defense which must be pled and proved by the State. D.M. v. State, 23 Neb. App. 17, 867 N.W.2d 622 (2015).

A defendant may affirmatively plead that the plaintiff has failed to state a cause of action under this section because an exception to the waiver of sovereign immunity applies. Bojanski v. Foley, 18 Neb. App. 929, 798 N.W.2d 134 (2011).

Even though this section has been amended in 1993, 1999, 2004, 2005, and 2007, claims for invasion of privacy are still not among those claims for which sovereign immunity provides protection for State employees or officers. Bojanski v. Foley, 18 Neb. App. 929, 798 N.W.2d 134 (2011).

81-8,227.

Under the State Tort Claims Act, if a claimant brings his or her claim before a claims board and elects to await final disposition instead of withdrawing the claim to file suit, a 6-month extension from the mailing of a denial applies regardless of whether final disposition was made before or after the 2-year limitation for suits. Patterson v. Metropolitan Util. Dist., 302 Neb. 442, 923 N.W.2d 717 (2019).

The 6-month filing extension in this section runs from the first date on which the claim could have been withdrawn under section 81-8,213, not the date the claim is actually withdrawn. Komar v. State, 299 Neb. 301, 908 N.W.2d 610 (2018).

The beneficence of the discovery rule is not bestowed on a potential plaintiff where the potential plaintiff in fact discovers, or in the exercise of reasonable diligence should have discovered, an injury within the initial period of limitations running from the wrongful act or omission. Carruth v. State, 271 Neb. 433, 712 N.W.2d 575 (2006).

A claimant who files a tort claim with the risk manager of the State Claims Board prior to 18 months after the claim has accrued and who, as a result, could have withdrawn a claim from the board prior to the expiration of the 2-year statute of limitations should be given an additional 6 months from the time the claimant could have withdrawn the claim from the board, rather than an additional 6 months from the time the claimant actually withdrew the claim, to file a complaint in the district court. A claimant cannot delay the expiration of the statute of limitations by choosing to delay the withdrawal of a claim from the board. Komar v. State, 24 Neb. App. 692, 897 N.W.2d 310 (2017).

81-8,303.

A cause of action for misrepresentation is not a "dispute regarding a contract" under subdivision (1) of this section, because the gravamen of the case is in tort and is independent from any underlying contract. Zawaideh v. Nebraska Dept. of Health & Human Servs., 285 Neb. 48, 825 N.W.2d 204 (2013).

81-8,305.

This section does not violate article VIII, section 9, of the Nebraska Constitution. Pavers, Inc. v. Board of Regents, 276 Neb. 559, 755 N.W.2d 400 (2008).

81-1170.01.

Requests need not be made under this section before filing suit in retirement benefits controversies. Livengood v. Nebraska State Patrol Ret. Sys., 273 Neb. 247, 729 N.W.2d 55 (2007).

81-1369.

Public employee bargaining units, created under the State Employees Collective Bargaining Act, 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).

81-1372.

The comparability requirement of the Industrial Relations Act is superseded by the 2-year contract requirement of the State Employees Collective Bargaining Act. State v. State Code Agencies Teachers Assn., 280 Neb. 459, 788 N.W.2d 238 (2010).

81-1377.

The specific number of unused sick leave hours included in a retirement calculation does not constitute a retirement program under subsection (2) of this section. Livengood v. Nebraska State Patrol Ret. Sys., 273 Neb. 247, 729 N.W.2d 55 (2007).

81-1379.

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 this section. Nebraska Protective Servs. Unit v. State, 299 Neb. 797, 910 N.W.2d 767 (2018).

81-1382.

The January 10 deadline provided in this section is not jurisdictional. State v. State Code Agencies Teachers Assn., 280 Neb. 459, 788 N.W.2d 238 (2010).

81-1383.

Parties are not permitted to offer additional evidence before the Commission of Industrial Relations. The commission's review of a special master's ruling is an appeal and does not provide for the admission of additional evidence. State v. State Code Agencies Teachers Assn., 280 Neb. 459, 788 N.W.2d 238 (2010).

81-1848.

Victims are permitted to both offer a written statement for a presentence report under subdivision (1)(d)(iv) of this section and offer a written impact statement at the time of sentencing under subdivision (1)(d)(vii) of this section. State v. Hurd, 307 Neb. 393, 949 N.W.2d 339 (2020).

Although the victim's parents, and not the victim's sister, were statutorily defined "victims" under section 29-119, the court did not abuse its discretion in allowing the sister to read her impact statement at sentencing where the parents were elderly, lived out of state, and did not want to participate in the resentencing. State v. Thieszen, 300 Neb. 112, 912 N.W.2d 696 (2018).

81-2026.

Subsection (3) of this section, as it existed in 2002, is ambiguous as to the proper distribution of a deceased trooper's annuity where there are surviving minor children who are not all in the care of a surviving spouse. Consistent with the legislative intent of subsection (3) of this section, to provide benefits to the surviving members of a trooper's family, this section requires distribution of benefits to all of a deceased trooper's minor children, regardless of with whom they reside. Zach v. Eacker, 271 Neb. 868, 716 N.W.2d 437 (2006).

81-2031.

The election to receive either a refund of contributions plus accrued interest or a monthly annuity is made by "the officer." Klimek v. Klimek, 18 Neb. App. 82, 775 N.W.2d 444 (2009).

81-2032.

The amendment of anti-attachment statutes to allow a civil judgment to attach to the distributed retirement assets of State Patrol officers and other public employees who had committed six specified crimes constituted special legislation in violation of the Nebraska Constitution. The Legislature's attempt to create very limited exceptions to an absolute privilege from attachment of a public employee's retirement assets resulted in a law that benefited only a select group of victims and arbitrarily protected public employees who were convicted of comparably serious crimes, yet retained an absolute privilege from attachment of their retirement assets because their crimes were not included in the amendment. J.M. v. Hobbs, 288 Neb. 546, 849 N.W.2d 480 (2014).

A benefit is a cash payment or service provided for under an annuity, pension plan, or insurance policy. J.M. v. Hobbs, 281 Neb. 539, 797 N.W.2d 227 (2011).

An annuity is a fixed sum of money payable periodically. J.M. v. Hobbs, 281 Neb. 539, 797 N.W.2d 227 (2011).

This section exempts annuities or benefits a person is entitled to receive under the Nebraska State Patrol Retirement Act from execution, even in the person's possession. J.M. v. Hobbs, 281 Neb. 539, 797 N.W.2d 227 (2011).

83-174.01.

This section is not unconstitutionally vague. In re Interest of A.M., 281 Neb. 482, 797 N.W.2d 233 (2011).

A prerequisite of the Sex Offender Commitment Act is a criminal conviction for a sex offense. In re Interest of J.R., 277 Neb. 362, 762 N.W.2d 305 (2009).

83-174.02.

This section provides a mechanism for identifying potentially dangerous sex offenders prior to their release from incarceration and for notifying prosecuting authorities so that they have adequate time to determine whether to file a petition under the Sex Offender Commitment Act before the offender's release date. It does not create any substantive or procedural rights in the offender who is the subject of the mental health evaluation. In re Interest of D.H., 281 Neb. 554, 797 N.W.2d 263 (2011).

83-174.03.

Because lifetime community supervision under this section is an additional form of punishment, a jury, rather than a trial court, must make a specific finding concerning the facts necessary to establish an aggravated offense

where such facts are not specifically included in the elements of the offense of which the defendant is convicted. State v. Alfredson, 282 Neb. 476, 804 N.W.2d 153 (2011).

When a crime is committed before the enactment of a statute which imposed an additional punishment of lifetime community supervision, inclusion of that punishment violates the Ex Post Facto Clauses of the Nebraska and federal Constitutions. State v. Simnick, 279 Neb. 499, 779 N.W.2d 335 (2010).

The legislative intent in enacting this section was to establish an additional form of punishment for some sex offenders. State v. Payan, 277 Neb. 663, 765 N.W.2d 192 (2009).

Where the facts necessary to establish an aggravated offense as defined by the Sex Offender Registration Act are not specifically included in the elements of the offense of which the defendant is convicted, such facts must be specifically found by the jury in order to impose lifetime community supervision as a term of the sentence. State v. Payan, 277 Neb. 663, 765 N.W.2d 192 (2009).

83-178.

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

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

When a defendant in a capital sentencing proceeding places his or her mental health at issue either by asserting mental retardation or by asserting mental illness, there is good cause under subsection (2) of this section for the prosecution to obtain access to the defendant's mental health records in the possession of the Department of Correctional Services. State v. Vela, 279 Neb. 94, 777 N.W.2d 266 (2009).

83-183.

This section, when construed with section 83-183.01, does not require that an inmate be provided with full-time employment as a prerequisite to the applicability of rules and regulations promulgated under the authority of section 83-183.01. Hurbenca v. Nebraska Dept. of Corr. Servs., 18 Neb. App. 31, 773 N.W.2d 402 (2009).

83-183.01.

Section 83-183, when construed with this section, does not require that an inmate be provided with full-time employment as a prerequisite to the applicability of rules and regulations promulgated under the authority of this section. Hurbenca v. Nebraska Dept. of Corr. Servs., 18 Neb. App. 31, 773 N.W.2d 402 (2009).

83-1,106.

There is nothing in the language of subsection (1) of this section indicating that credit for time served should be applied to only one concurrent sentence while a defendant is in custody before any sentence is pronounced but should be applied to multiple concurrent sentences when the defendant is in custody pending the resolution of an appeal and then pending sentence. State v. Wines, 308 Neb. 468, 954 N.W.2d 893 (2021).

The credit for time served to which a defendant is entitled is an absolute and objective number that is established by the record. State v. McCulley, 305 Neb. 139, 939 N.W.2d 373 (2020).

Failing to give credit for time served, while erroneous, does not render the sentence void. State v. Barnes, 303 Neb. 167, 927 N.W.2d 64 (2019).

Subsection (1) of this section does not set forth a right to collaterally attack the final judgment in a criminal case on the ground that credit for time served was not given as mandated by statute. State v. Barnes, 303 Neb. 167, 927 N.W.2d 64 (2019).

Pursuant to subsection (1) of this section, the defendant was not entitled to credit for time served during his pretrial detainment in Nebraska, following his extradition from Colorado, for time that occurred prior to Colorado's grant

of parole, since he was in custody because of his Colorado sentence up until he was paroled. State v. Leahy, 301 Neb. 228, 917 N.W.2d 895 (2018).

Under subsection (4) of this section, the conduct in question need not be the same or related to the conduct for which time was originally served. State v. Carngbe, 288 Neb. 347, 847 N.W.2d 302 (2014).

Section 47-503 and subsection (1) of this section 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).

A defendant ordered to complete a work ethic camp was "in custody." State v. Becker, 282 Neb. 449, 804 N.W.2d 27 (2011).

Under this section, when consecutive sentences are imposed for two or more offenses, periods of presentence incarceration may be credited only against the aggregate of all terms imposed: an offender who receives consecutive sentences is entitled to credit against only the first sentence imposed, while an offender sentenced to concurrent terms in effect receives credit against each sentence. State v. Williams, 282 Neb. 182, 802 N.W.2d 421 (2011).

The phrase "in custody" under this section means judicially imposed physical confinement in a governmental facility authorized for detention, control, or supervision of a defendant before, during, or after a trial on a criminal charge. State v. Anderson, 18 Neb. App. 329, 779 N.W.2d 623 (2010).

83-1,107.

A defendant must serve the mandatory minimum sentence before earning good time credit toward either the maximum or minimum sentence. State v. Castillas, 285 Neb. 174, 826 N.W.2d 255 (2013).

Good time reductions do not apply to mandatory minimum sentences. State v. Castillas, 285 Neb. 174, 826 N.W.2d 255 (2013).

Multiple mandatory minimum sentences must be served consecutively. State v. Castillas, 285 Neb. 174, 826 N.W.2d 255 (2013).

When a mandatory minimum sentence is involved, the mandatory discharge date is computed by subtracting the mandatory minimum sentence from the maximum sentence, halving the difference, and adding that difference to the mandatory minimum. State v. Castillas, 285 Neb. 174, 826 N.W.2d 255 (2013).

83-1,108.

"Good time" under this section should not be applied against a mandatory minimum sentence imposed under section 29-2221(1). Hurbenca v. Nebraska Dept. of Corr. Servs., 16 Neb. App. 222, 742 N.W.2d 773 (2007).

83-1,110.

This section, which makes a convicted offender sentenced to life imprisonment ineligible for parole until the life sentence is commuted to a term of years is a permissible condition under Neb. Const. Art. IV, sec. 13, and it does not infringe on the Board of Parole's authority to grant paroles. Adams v. State, 293 Neb. 612, 879 N.W.2d 18 (2016).

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

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

A defendant must serve the mandatory minimum sentence before earning good time credit toward either the maximum or minimum sentence. State v. Castillas, 285 Neb. 174, 826 N.W.2d 255 (2013).

Good time reductions do not apply to mandatory minimum sentences. State v. Castillas, 285 Neb. 174, 826 N.W.2d 255 (2013).

Multiple mandatory minimum sentences must be served consecutively. State v. Castillas, 285 Neb. 174, 826 N.W.2d 255 (2013).

When a mandatory minimum sentence is involved, the mandatory discharge date is computed by subtracting the mandatory minimum sentence from the maximum sentence, halving the difference, and adding that difference to the mandatory minimum. State v. Castillas, 285 Neb. 174, 826 N.W.2d 255 (2013).

An inmate sentenced to life imprisonment for first degree murder is not eligible for parole until the Nebraska Board of Pardons commutes his or her sentence to a term of years. Poindexter v. Houston, 275 Neb. 863, 750 N.W.2d 688 (2008).

83-1,118.

The Department of Correctional Services acted beyond its authority when, due to a miscalculation of good-time credit, it discharged the defendant before completion of the defendant's lawful sentence. Evans v. Frakes, 293 Neb. 253, 876 N.W.2d 626 (2016).

83-1,121.

The Nebraska Board of Parole retained custody over a parolee and was empowered to revoke his parole for violating parole condition barring him from using social media. Tyrrell v. Frakes, 309 Neb. 85, 958 N.W.2d 673 (2021).

83-1,126.

Communications to the Board of Pardons are protected by absolute privilege. Kocontes v. McQuaid, 279 Neb. 335, 778 N.W.2d 410 (2010).

83-1,127.02.

This section mandates that a sentencing court must impose a 15-year operator's license revocation whenever a person restricted to operating a motor vehicle equipped with an ignition interlock device is found to have operated a vehicle without such an ignition interlock device. Such a revocation is in addition to, rather than as part of, any term of probation imposed by the sentencing court. State v. Donner, 13 Neb. App. 85, 690 N.W.2d 181 (2004).

83-365.

There is no requirement that the Department of Health and Human Services offer proof that the cost of the care, support, maintenance, and treatment is fair and reasonable. In re Guardianship of Gaube, 14 Neb. App. 259, 707 N.W.2d 16 (2005).

83-4,111.

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

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

83-4,122.

In prison disciplinary cases which involve the imposition of disciplinary isolation or the loss of good time credit, the standard of proof to sustain the charge is "substantial evidence" rather than "some evidence." Witmer v. Nebraska Dept. of Corr. Servs., 13 Neb. App. 297, 691 N.W.2d 185 (2005).

83-4,123.

An inmate's right of access to the courts in Nebraska is no greater than those rights of access to the federal courts under the U.S. Constitution. Jacob v. Nebraska Dept. of Corr. Servs., 294 Neb. 735, 884 N.W.2d 687 (2016).

83-4,145.

Defendants are to be given credit for time served at work camp programs. State v. Becker, 282 Neb. 449, 804 N.W.2d 27 (2011).

83-964.

Under former law, Nebraska's statutes specifying electrocution as the mode of inflicting the death penalty are separate, and severable, from the procedures by which the trial court sentences the defendant. State v. Mata, 275 Neb. 1, 745 N.W.2d 229 (2008).

Under former law, that a method of execution is cruel and unusual punishment bears solely on the legality of the execution of the sentence and not on the validity of the sentence itself. State v. Mata, 275 Neb. 1, 745 N.W.2d 229 (2008).

83-965.

This section is not an unconstitutional delegation of legislative power. State v. Ellis, 281 Neb. 571, 799 N.W.2d 267 (2011).

83-967.

Subsection (2) of this section does not provide a complete exception to the public records statutes and is reasonably and ordinarily understood as an exemption like those under section 84-712.05. State ex rel. BH Media Group v. Frakes, 305 Neb. 780, 943 N.W.2d 231 (2020).

Under the plain and unambiguous language of subsection (2) of this section, the Legislature intended to prevent the disclosure of the identities of execution team members. State ex rel. BH Media Group v. Frakes, 305 Neb. 780, 943 N.W.2d 231 (2020).

83-1211.

A service recipient's liability for costs shall not be determined based on a finding of whether such costs are fair and reasonable. In re Guardianship of Gaube, 14 Neb. App. 259, 707 N.W.2d 16 (2005).

84-712.

A statute qualifies as an "other statute" under subsection (1) of this section when the plain language of a statute makes it clear that a record, or portions thereof, is exempt from disclosure in response to a public records request. State ex rel. BH Media Group v. Frakes, 305 Neb. 780, 943 N.W.2d 231 (2020).

An "other statute" exemption does not allow a court to imply an exemption, but only allows a specific exemption to stand. State ex rel. BH Media Group v. Frakes, 305 Neb. 780, 943 N.W.2d 231 (2020).

A party seeking a writ of mandamus under section 84-712.03 has the burden to satisfy three elements: (1) The requesting party is a citizen of the state or the other person interested in the examination of the public records; (2) the document sought is a public record as defined by section 84-712.01; and (3) the requesting party has been denied access to the public record as guaranteed by this section. Evertson v. City of Kimball, 278 Neb. 1, 767 N.W.2d 751 (2009).

The Nebraska Department of Correctional Services had no obligation to transport an inmate in its custody to an office where a particular record was located to examine the record. Russell v. Clarke, 15 Neb. App. 221, 724 N.W.2d 840 (2006).

84-712.01.

The Legislature intended that courts liberally construe the public records statutes in favor of disclosure whenever the expenditure of public funds is involved. State ex rel. BH Media Group v. Frakes, 305 Neb. 780, 943 N.W.2d 231 (2020).

If each branch of government could shield its records simply by appealing to the fact that they were created in the course of any number of essential branch functions, then the protections of the public interest embodied in the public records statutes would be a nullity. State ex rel. Veskrna v. Steel, 296 Neb. 581, 894 N.W.2d 788 (2017).

Under subsection (1) of this section, the Judicial Branch Education advisory committee's unwritten policy of keeping its records confidential did not, in light of section 24-205.01, governing the committee's power to develop standards and policies for review by the Nebraska Supreme Court, render such records confidential under the statutory exception to the public records laws for records not to be made public according to this section, although subdivision (2)(a) of section 24-205.01 contemplated promulgation of rules regarding the confidentiality of Judicial

Branch Education records, where no such rules had been adopted by the Nebraska Supreme Court. State ex rel. Veskrna v. Steel, 296 Neb. 581, 894 N.W.2d 788 (2017).

Presentence reports are not "public records" under this section. State ex rel. Unger v. State, 293 Neb. 549, 878 N.W.2d 540 (2016).

A four-part functional equivalency test is the appropriate analytical model for determining whether a private entity which has an ongoing relationship with a governmental entity can be considered an agency, branch, or department of such governmental entity within the meaning of subsection (1) of this section, such that its records are subject to disclosure upon request under Nebraska's public records laws. The factors to be considered in applying this test are (1) whether the private entity performs a governmental function, (2) the level of governmental funding of the private entity, (3) the extent of government involvement with or regulation of the private entity, and (4) whether the private entity was created by the government. Frederick v. City of Falls City, 289 Neb. 864, 857 N.W.2d 569 (2015).

A party seeking a writ of mandamus under section 84-712.03 has the burden to satisfy three elements: (1) The requesting party is a citizen of the state or other person interested in the examination of the public records; (2) the document sought is a public record as defined by this section; and (3) the requesting party has been denied access to the public record as guaranteed by section 84-712. Evertson v. City of Kimball, 278 Neb. 1, 767 N.W.2d 751 (2009).

Subsection (1) of this section does not require a citizen to show that a public body has actual possession of a requested record. Subsection (3) of this section requires that the "of or belonging to" language be construed liberally; this broad definition includes any documents or records that a public body is entitled to possess—regardless of whether the public body takes possession. The public's right of access should not depend on where the requested records are physically located. Evertson v. City of Kimball, 278 Neb. 1, 767 N.W.2d 751 (2009).

Under subsection (1) of this section, the reference to "data" in the last sentence shows that the Legislature intended public records to include a public body's component information, not just its completed reports or documents. Evertson v. City of Kimball, 278 Neb. 1, 767 N.W.2d 751 (2009).

Under this section, requested materials in a private party's possession are public records if the following requirements are met: (1) The public body, through a delegation of its authority to perform a government function, contracted with a private party to carry out the government function; (2) the private party prepared the records under the public body's delegation of authority; (3) the public body was entitled to possess the materials to monitor the private party's performance; and (4) the records are used to make a decision affecting public interest. Evertson v. City of Kimball, 278 Neb. 1, 767 N.W.2d 751 (2009).

Records of deaths that occurred at a state-run mental institution, indicating the place of burial, are public records as defined by this section. State ex rel. Adams Cty. Historical Soc. v. Kinyoun, 277 Neb. 749, 765 N.W.2d 212 (2009).

84-712.03.

A person choosing to seek speedy relief by a writ of mandamus, pursuant to subdivision (1)(a) of this section, must follow the procedural requirements set forth in sections 25-2156 through 25-2169. State ex rel. Malone v. Baldonado-Bellamy, 307 Neb. 549, 950 N.W.2d 81 (2020).

In the context of a public records denial, a district court's jurisdiction over a writ of mandamus is governed by this section, and such jurisdiction does not turn on whether the claim advanced by the relator has merit. State ex rel. BH Media Group v. Frakes, 305 Neb. 780, 943 N.W.2d 231 (2020).

It is well-understood that the public records statutes place the burden of proof upon the public body to justify nondisclosure. State ex rel. BH Media Group v. Frakes, 305 Neb. 780, 943 N.W.2d 231 (2020).

A party seeking a writ of mandamus under this section has the burden to satisfy three elements: (1) The requesting party is a citizen of the state or other person interested in the examination of the public records, (2) the document sought is a public record as defined by section 84-712.01, and (3) the requesting party has been denied access to the public record as guaranteed by section 84-712. Huff v. Brown, 305 Neb. 648, 941 N.W.2d 515 (2020).

If the public body holding the record wishes to oppose the issuance of a writ of mandamus, the public body must show, by clear and conclusive evidence, that the public record at issue is exempt from the disclosure requirement under one of the exceptions provided by section 84-712.05 or section 84-712.08. Huff v. Brown, 305 Neb. 648, 941 N.W.2d 515 (2020).

Under subdivision (1)(a) of this section, the requesting party's initial responsibility includes demonstrating that the requested record is a public record that he or she has a clear right to access under the public records statutes and that the public body or custodian against whom mandamus is sought has a clear duty to provide such public records. Huff v. Brown, 305 Neb. 648, 941 N.W.2d 515 (2020).

A party seeking a writ of mandamus under this section has the burden to satisfy three elements: (1) The requesting party is a citizen of the state or other person interested in the examination of the public records; (2) the document sought is a public record as defined by section 84-712.01; and (3) the requesting party has been denied access to the public record as guaranteed by section 84-712. Evertson v. City of Kimball, 278 Neb. 1, 767 N.W.2d 751 (2009).

If a requesting party satisfies its prima facie claim for release of public records under this section, the public body opposing disclosure must show by clear and convincing evidence that section 84-712.05 or 84-712.08 exempts the records from disclosure. Evertson v. City of Kimball, 278 Neb. 1, 767 N.W.2d 751 (2009).

84-712.05.

Disclosure, within the meaning of the public records statutes, refers to the exposure of documents to public view. An exemption from disclosure should not be misunderstood as an exception to the laws of the public records statutes. State ex rel. BH Media Group v. Frakes, 305 Neb. 780, 943 N.W.2d 231 (2020).

Under subdivision (3) of this section, a public power district could not withhold its proprietary or commercial information that would give advantage to business competitors, because the district failed to demonstrate by clear and conclusive evidence that the information would serve no public purpose. Aksamit Resource Mgmt. v. Nebraska Pub. Power Dist., 299 Neb. 114, 907 N.W.2d 301 (2018).

Because the Legislature has expressed a strong public policy for disclosure, Nebraska courts must narrowly construe statutory exemptions shielding public records from disclosure. Evertson v. City of Kimball, 278 Neb. 1, 767 N.W.2d 751 (2009).

If a requesting party satisfies its prima facie claim for release of public records under section 84-712.03, the public body opposing disclosure must show by clear and convincing evidence that this section or section 84-712.08 exempts the records from disclosure. Evertson v. City of Kimball, 278 Neb. 1, 767 N.W.2d 751 (2009).

The investigatory record exception does not apply to protect material compiled ancillary to an agency's routine administrative functions or oversight activities. Evertson v. City of Kimball, 278 Neb. 1, 767 N.W.2d 751 (2009).

Under subdivision (5) of this section, a public body can withhold from the public records of its investigation into an employee's conduct only if the investigation focuses on specifically alleged illegal acts. Evertson v. City of Kimball, 278 Neb. 1, 767 N.W.2d 751 (2009).

Under subdivision (5) of this section, a public record is an investigatory record where (1) the activity giving rise to the document sought is related to the duty of investigation or examination with which the public body is charged and (2) the relationship between the investigation or examination and that public body's duty to investigate or examine supports a colorable claim of rationality. This two-part test provides a deferential burden-of-proof rule for a public body performing an investigation or examination with which it is charged. Evertson v. City of Kimball, 278 Neb. 1, 767 N.W.2d 751 (2009).

84-712.06.

In order for an agency to carry its burden before the district court, the agency must provide a reasonably detailed justification rather than conclusory statements to support its claim that the nonexempt material in a document is not reasonably segregable. State ex rel. BH Media Group v. Frakes, 305 Neb. 780, 943 N.W.2d 231 (2020).

The withholding of an entire document by an agency is not justifiable simply because some of the material therein is subject to an exemption. Agencies are required to disclose nonexempt portions of a document, unless those nonexempt portions are inextricably intertwined with exempt portions. State ex rel. BH Media Group v. Frakes, 305 Neb. 780, 943 N.W.2d 231 (2020).

84-712.08.

Because the Legislature has expressed a strong public policy for disclosure, Nebraska courts must narrowly construe statutory exemptions shielding public records from disclosure. Evertson v. City of Kimball, 278 Neb. 1, 767 N.W.2d 751 (2009).

If a requesting party satisfies its prima facie claim for release of public records under section 84-712.03, the public body opposing disclosure must show by clear and convincing evidence that section 84-712.05 or this section exempts the records from disclosure. Evertson v. City of Kimball, 278 Neb. 1, 767 N.W.2d 751 (2009).

84-901.

A natural resources district is not an agency within the meaning of the Administrative Procedure Act. Lingenfelter v. Lower Elkhorn NRD, 294 Neb. 46, 881 N.W.2d 892 (2016).

Under the Administrative Procedure Act, an appellate court may reverse, vacate, or modify a district court's judgment or final order for errors appearing on the record. Murray v. Neth, 17 Neb. App. 900, 773 N.W.2d 394 (2009).

Because the University of Nebraska College of Law Student-Faculty Honor Committee and the College of Law dean are not authorized by law to make rules and regulations, they are not "agencies," and thus, their decisions are not subject to judicial review under the Administrative Procedure Act. Kerr v. Board of Regents, 15 Neb. App. 907, 739 N.W.2d 224 (2007).

84-911.

Citizens lacked standing under the Administrative Procedure Act to challenge the validity of a regulation where they alleged an infringement of a procedural right to informed participation in the regulation-making process but did not show that the challenged regulation itself threatened or violated their rights. Griffith v. Nebraska Dept. of Corr. Servs., 304 Neb. 287, 934 N.W.2d 169 (2019).

Common-law exceptions to injury-in-fact standing do not apply in actions brought under the Administrative Procedure Act provision that permits the validity of any rule or regulation to be determined upon a petition for declaratory judgment if it appears that the rule or regulation or its threatened application interferes with legal rights or privileges of the petitioner, overruling *Project Extra Mile v. Nebraska Liquor Control Comm*., 283 Neb. 379, 810 N.W.2d 149 (2012). Griffith v. Nebraska Dept. of Corr. Servs., 304 Neb. 287, 934 N.W.2d 169 (2019).

A taxpayer has standing to challenge a state official's failure to comply with a clear statutory duty to assess or collect taxes—as distinguished from legitimate discretion to decide whether to tax. But the taxpayer must show that the official's unlawful failure to comply with a duty to tax would otherwise go unchallenged because no other potential party is better suited to bring the action. Under this section, a taxpayer has standing to challenge an agency's unlawful regulation that negates the agency's statutory duty to assess taxes. No other potential parties are better suited than a taxpayer to claim that a state agency or official has violated a statutory duty to assess taxes when the persons or entities directly and immediately affected by the alleged violation are beneficially, instead of adversely, affected. Project Extra Mile v. Nebraska Liquor Control Comm., 283 Neb. 379, 810 N.W.2d 149 (2012).

When this section is read consistently with the declaratory judgment statutes, the only limitations placed on the relief that a plaintiff can obtain in a declaratory judgment action under this section are the limitations imposed by sovereign immunity principles. Neither this section nor sovereign immunity bars injunctive relief in a declaratory judgment action under this section when such relief would not require state officials to expend public funds. Project Extra Mile v. Nebraska Liquor Control Comm., 283 Neb. 379, 810 N.W.2d 149 (2012).

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

84-912.01.

This section did not require a hearing before the Department of Administrative Services to decide the issues raised by the petitioners, the petition for a declaratory order did not require the department to act in a quasi-judicial manner, and the proceeding was not a contested case under the Administrative Procedure Act. Kaplan v. McClurg, 271 Neb. 101, 710 N.W.2d 96 (2006).

84-912.02.

The Administrative Procedure Act grants agencies the power to impose conditions upon an intervenor's participation, and this action is distinct from granting or denying a petition for intervention. In re Application No. OP-0003, 303 Neb. 872, 932 N.W.2d 653 (2019).

Under the Administrative Procedure Act, an agency may modify an order imposing conditions on intervention at any time. In re Application No. OP-0003, 303 Neb. 872, 932 N.W.2d 653 (2019).

84-913.03.

Whether the hearing is conducted by videoconference is permissive and discretionary. Robbins v. Neth, 15 Neb. App. 67, 722 N.W.2d 76 (2006).

84-914.

Ex parte communications that the director of the Department of Motor Vehicles had with police officers who were potential witnesses at a motorist's administrative license revocation hearing did not violate the motorist's due process rights; neither officer was a party in the license revocation proceeding nor a person outside the Department of Motor Vehicles having an interest in the motorist's case. Walz v. Neth, 17 Neb. App. 891, 773 N.W.2d 387 (2009).

84-917.

When reviewing an order of the district court under the Administrative Procedure Act for errors appearing on the record, the inquiry is whether the decision conforms to the law, is supported by competent evidence, and is neither arbitrary, capricious, nor unreasonable. Even under the ordinary standard of review for judicial review actions under the Administrative Procedure Act, an appellate court will not substitute its factual findings for those of the district court where competent evidence supports the district court's findings. An appellate court will not impose a less deferential standard for a district court's factual findings on plain error review than under ordinary standard of review for judicial review actions under the Administrative Procedure Act. Swicord v. Police Stds. Adv. Council, 309 Neb. 43, 958 N.W.2d 388 (2021).

Pursuant to subdivision (2)(a) of this section, service is required within 30 days of necessary parties to an agency action—including nongovernmental parties of record and, if the agency is a party of record, the agency through the Attorney General—in order to initiate a judicial review, and such service is an issue of subject matter jurisdiction. Omaha Expo. & Racing v. Nebraska State Racing Comm., 307 Neb. 172, 949 N.W.2d 183 (2020).

When evaluating whether an agency is a neutral fact finder, appellate courts look to the agency's actions as to the dispute at issue, the statutory basis upon which the agency was acting, and the participation of the agency in the matters surrounding the dispute. Omaha Expo. & Racing v. Nebraska State Racing Comm., 307 Neb. 172, 949 N.W.2d 183 (2020).

Service on nongovernmental entities under subdivision (2)(a)(i) of this section is required within 30 days of the filing of the petition. Candyland, LLC v. Nebraska Liquor Control Comm., 306 Neb. 169, 944 N.W.2d 740 (2020).

The Administrative Procedure Act does not limit a district court's general original jurisdiction. Webb v. Nebraska Dept. of Health & Human Servs., 301 Neb. 810, 920 N.W.2d 268 (2018).

A proceeding in district court, pursuant to the Administrative Procedure Act, for review of a decision by an administrative agency is not an "appeal" in the strict sense of the term, meaning the power and authority conferred upon a superior court to reexamine and redetermine causes tried in inferior courts, but, rather, is the institution of a suit to obtain judicial branch review of a nonjudicial branch decision. Kozal v. Nebraska Liquor Control Comm., 297 Neb. 938, 902 N.W.2d 147 (2017).

Because the Administrative Procedure Act is a procedural statute that applies to a variety of agencies and types of agency proceedings, determining which parties qualify, for purposes of this section, as "parties of record" requires looking at the nature of the administrative proceeding under review. Kozal v. Nebraska Liquor Control Comm., 297 Neb. 938, 902 N.W.2d 147 (2017).

The requirement under this section that a petitioner make all "parties of record" in the agency proceeding parties to the proceeding for review is necessary to confer subject matter jurisdiction on the district court. Kozal v. Nebraska Liquor Control Comm., 297 Neb. 938, 902 N.W.2d 147 (2017).

In a review de novo on the record, a district court is not limited to a review subject to the narrow criteria found in subdivision (6)(a) of this section, 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).

ANNOTATIONS

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).

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

An issue that has not been presented in a petition for judicial review has not been properly preserved for consideration by the district court. Skaggs v. Nebraska State Patrol, 282 Neb. 154, 804 N.W.2d 611 (2011).

Subsection (5)(b)(i) of this section permits the district court to review only matters which were not properly raised in the proceedings before an administrative agency. Skaggs v. Nebraska State Patrol, 282 Neb. 154, 804 N.W.2d 611 (2011).

A party is "aggrieved" within the meaning of subsection (1) of this section if it has standing to invoke a court's jurisdiction—that is, if it has a legal or equitable right, title, or interest in the subject matter of the controversy. Central Neb. Pub. Power Dist. v. North Platte NRD, 280 Neb. 533, 788 N.W.2d 252 (2010).

Any aggrieved party seeking judicial review of an administrative decision under the Administrative Procedure Act must file a petition within 30 days after service of that decision, pursuant to this section. The Administrative Procedure Act makes no mention of an extended or different deadline for filing a cross-petition in the district court. Ahmann v. Correctional Ctr. Lincoln, 276 Neb. 590, 755 N.W.2d 608 (2008).

In accordance with subsection (5)(a) of this section, when reviewing a final decision of an administrative agency in a contested case under the Administrative Procedure Act, a court may not take judicial notice of an adjudicative fact that was not presented to the agency, because the taking of such evidence would impermissibly expand the court's statutory scope of review de novo on the record of the agency. Betterman v. Department of Motor Vehicles, 273 Neb. 178, 728 N.W.2d 570 (2007).

Under subsection (6)(b) of this section, a district court has discretion concerning the disposition of an appeal from an administrative agency. Nebraska Liq. Distrib. v. Nebraska Liq. Cont. Comm., 272 Neb. 390, 722 N.W.2d 10 (2006).

Under subdivision (5)(b) of this section, the district court has the discretion to remand a cause to the agency for resolution of issues that were not raised before the agency if the court determines that the interest of justice would be served by resolution of such issues. Barrios v. Commissioner of Labor, 25 Neb. App. 835, 914 N.W.2d 468 (2018).

Under subdivision (5)(b) of this section, where the district court, sitting as an intermediate appellate court for an agency decision, reverses a judgment in favor of a party and remands the matter for further proceedings, that party's substantial right has been affected, so as to make that order final for purposes of appeal. Barrios v. Commissioner of Labor, 25 Neb. App. 835, 914 N.W.2d 468 (2018).

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

The Department of Banking and Finance is statutorily authorized to require payment for the costs of preparing the official record from the party seeking review of its decision prior to transmitting the record. JHK, Inc. v. Nebraska Dept. of Banking & Finance, 17 Neb. App. 186, 757 N.W.2d 515 (2008).

The district court lacked subject matter jurisdiction because the petitioner failed to timely include as a party defendant the Department of Correctional Services, a necessary party under the Administrative Procedure Act. Tlamka v. Parry, 16 Neb. App. 793, 751 N.W.2d 664 (2008).

In a true de novo review, the district court's decision is to be made independently of the agency's prior disposition and the district court is not required to give deference to the findings of fact and the decision of the agency hearing officer. DeBoer v. Nebraska Dept. of Motor Vehicles, 16 Neb. App. 760, 751 N.W.2d 651 (2008).

In an appeal under subsection (5)(a) of this section, the district court conducts a de novo review of the record of the agency. Clark v. Tyrrell, 16 Neb. App. 692, 750 N.W.2d 364 (2008).

Pursuant to subsection (2)(a) of this section, the phrase "county where the action is taken" is the site of the first adjudicated hearing of a disputed claim. Yelli v. Neth, 16 Neb. App. 639, 747 N.W.2d 459 (2008).

If petition for review filed pursuant to this section is not timely, district court does not have jurisdiction to consider merits and can properly dismiss petition. Roubal v. State, 14 Neb. App. 554, 710 N.W.2d 359 (2006).

Judgments rendered by an administrative agency acting in a quasi-judicial capacity are not subject to collateral attack in a separate action in county court challenging the validity of the underlying claim, but must be properly appealed pursuant to this section. In re Guardianship of Gaube, 14 Neb. App. 259, 707 N.W.2d 16 (2005).

84-918.

A judgment or final order rendered by a district court in a judicial review under the Administrative Procedure Act may be reversed, vacated, or modified by an appellate court for errors appearing on the record. When reviewing such an order, the inquiry is whether the decision conforms to the law, is supported by competent evidence, and is neither arbitrary, capricious, nor unreasonable. Parker v. State ex rel. Bruning, 276 Neb. 359, 753 N.W.2d 843 (2008).

84-1301.

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

84-1408.

Although a committee was a subcommittee of a natural resources district board, it was not subject to the Open Meetings Act because there was never a quorum of board members in attendance and the committee did not hold hearings, make policy, or take formal action on behalf of the board. Koch v. Lower Loup NRD, 27 Neb. App. 301, 931 N.W.2d 160 (2019).

A county board of equalization is a public body whose meetings shall be open to the public. Wolf v. Grubbs, 17 Neb. App. 292, 759 N.W.2d 499 (2009).

84-1409.

Although a committee was a subcommittee of a natural resources district board, it was not subject to the Open Meetings Act because there was never a quorum of board members in attendance and the committee did not hold hearings, make policy, or take formal action on behalf of the board. Koch v. Lower Loup NRD, 27 Neb. App. 301, 931 N.W.2d 160 (2019).

Although the Open Meetings Act does not define "subcommittee," a subcommittee is generally defined as a group within a committee to which the committee may refer business. Koch v. Lower Loup NRD, 27 Neb. App. 301, 931 N.W.2d 160 (2019).

The Open Meetings Act does not require policymakers to remain ignorant of the issues they must decide until the moment the public is invited to comment on a proposed policy. By excluding nonquorum subgroups from the definition of a public body, the Legislature has balanced the public's need to be heard on matters of public policy with a practical accommodation for a public body's need for information to conduct business. Koch v. Lower Loup NRD, 27 Neb. App. 301, 931 N.W.2d 160 (2019).

As an administrative agency of the county, a county board of equalization is a public body. Wolf v. Grubbs, 17 Neb. App. 292, 759 N.W.2d 499 (2009).

The electors of a township at their annual meeting are a public body under the Open Meetings Act. State ex rel. Newman v. Columbus Township Bd., 15 Neb. App. 656, 735 N.W.2d 399 (2007).

84-1410.

There is no absolute discovery privilege for communications that occur during a closed session. State ex rel. Upper Republican NRD v. District Judges, 273 Neb. 148, 728 N.W.2d 275 (2007).

84-1411.

Under subsection (1) of this section, the Legislature has imposed only two conditions on the public body's notification method of a public meeting: (1) It must give reasonable advance publicized notice of the time and place of each meeting and (2) it must be recorded in the public body's minutes. City of Elkhorn v. City of Omaha, 272 Neb. 867, 725 N.W.2d 792 (2007).

A county board of commissioners and a county board of equalization are not required to give separate notices when the notice states only the time and place that the boards meet and directs a citizen to where the agendas for each board can be found. Wolf v. Grubbs, 17 Neb. App. 292, 759 N.W.2d 499 (2009).

A county board of equalization is a public body which is required to give advanced publicized notice of its meetings. Wolf v. Grubbs, 17 Neb. App. 292, 759 N.W.2d 499 (2009).

Notice of recessed and reconvened meetings must be given in the same fashion as the original meeting. Wolf v. Grubbs, 17 Neb. App. 292, 759 N.W.2d 499 (2009).

True notice of a meeting is not given by burying such in the minutes of a prior board proceeding. Wolf v. Grubbs, 17 Neb. App. 292, 759 N.W.2d 499 (2009).

84-1413.

There is no requirement that a public body make a record of where notice was published or posted. Wolf v. Grubbs, 17 Neb. App. 292, 759 N.W.2d 499 (2009).

84-1414.

The Legislature has granted standing to a broad scope of its citizens for the very limited purpose of challenging meetings allegedly in violation of the Open Meetings Act, so that they may help police the public policy embodied by the act. Schauer v. Grooms, 280 Neb. 426, 786 N.W.2d 909 (2010).

Any citizen of the state may commence an action to declare a public body's action void. City of Elkhorn v. City of Omaha, 272 Neb. 867, 725 N.W.2d 792 (2007).

The reading of ordinances constitutes a formal action under subsection (1) of this section. City of Elkhorn v. City of Omaha, 272 Neb. 867, 725 N.W.2d 792 (2007).

Voiding an entire meeting is a proper remedy for violations of the Open Meetings Act. Once a meeting has been declared void pursuant to Nebraska's public meetings law, board members are prohibited from considering any information obtained at the illegal meeting. Wolf v. Grubbs, 17 Neb. App. 292, 759 N.W.2d 499 (2009).

86-135.

Subsection (1) of this section permits a person to file an application with the Public Service Commission to seek service from a telecommunications company in the local exchange area adjacent to the local exchange area in which the applicant resides, which, in this instance, meant the Public Service Commission necessarily interpreted the words "the local exchange area in which the applicant resides" to include property an applicant presently owns and on which the applicant does not presently reside, but has demonstrated an intent to reside on such property in the future. In re Application No. C-4981, 27 Neb. App. 773, 936 N.W.2d 365 (2019).

86-136.

Subsection (1) of this section relates to whether an applicant is receiving, or will receive within a reasonable time, broadband service from the telecommunications company which furnishes telecommunications service in the local exchange area in which the applicant resides; a timeframe of nearly 8 months did not meet the requirement of "within a reasonable time." Note that this section was amended effective September 1, 2019, to place the focus on when the application to change exchange boundaries is filed, rather than whether service can be made available within a reasonable time. In re Application No. C-4981, 27 Neb. App. 773, 936 N.W.2d 365 (2019).

86-140.

This section places no limitation on the right to negotiate or review access charges. AT&T Communications v. Nebraska Public Serv. Comm., 283 Neb. 204, 811 N.W.2d 666 (2012).

86-158.

All appeals from orders of the Nebraska Public Service Commission are to follow the procedural requirements of the Administrative Procedure Act. Chase 3000, Inc. v. Nebraska Pub. Serv. Comm., 273 Neb. 133, 728 N.W.2d 560 (2007).

86-291.

The requirement that the submissions of applications for intercept to the Attorney General and the court occur "[a]t the same time" necessitates that the application be submitted to the Attorney General in close enough proximity to the submission to the court that the grounds upon which the application is based are equally applicable and the Attorney General could issue its recommendation with sufficient time so the court could timely consider it in making its determination. State v. Brye, 304 Neb. 498, 935 N.W.2d 438 (2019).

86-293.

Pursuant to subsection (3) of this section, a court can authorize interception of communications within its territorial jurisdiction and this interception occurs both at the origin or point of reception and where the communication is redirected and first heard. State v. Brye, 304 Neb. 498, 935 N.W.2d 438 (2019).

86-297.

Whether reasonable attorney fees should be awarded under this section is addressed to the trial court's discretion, and a trial court is not required to provide an explanation of such an award in the absence of a party's request for specific findings. Brumbaugh v. Bendorf, 306 Neb. 250, 945 N.W.2d 116 (2020).

86-2,106.

Even if subdivision (3)(a) of this section prohibits a county attorney from obtaining a person's noncontent telecommunication records by issuing an investigative subpoena, the Legislature has not provided a remedy for a violation of this provision, and the violation of a state statute restricting searches is insufficient to show a Fourth Amendment violation under the U.S. Constitution. State v. Knutson, 288 Neb. 823, 852 N.W.2d 307 (2014).

86-324.

The Nebraska Telecommunications Universal Service Fund Act is not an unconstitutional delegation of authority to the Public Service Commission. Schumacher v. Johanns, 272 Neb. 346, 722 N.W.2d 37 (2006).

The surcharge assessed by the Public Service Commission based on the Nebraska Telecommunications Universal Service Fund Act is not a tax. Schumacher v. Johanns, 272 Neb. 346, 722 N.W.2d 37 (2006).

86-441.

This section does not waive sovereign immunity for claims alleging negligence against any provider of 911 emergency dispatch services. Edwards v. Douglas County, 308 Neb. 259, 953 N.W.2d 744 (2021).

86-457.

Subsections (1) through (3) of this section exclusively apply to postpaid wireless services, while subsections (4) through (6) apply to prepaid wireless services. TracFone Wireless v. Nebraska Pub. Serv. Comm., 279 Neb. 426, 778 N.W.2d 452 (2010).

The plain language of subsection (5) of this section permits the Public Service Commission to require compliance with the surcharges and methods for collection and remittance that it establishes. TracFone Wireless v. Nebraska Pub. Serv. Comm., 279 Neb. 426, 778 N.W.2d 452 (2010).

87-127.

The construction given the federal Trademark Act of 1946 as amended (Lanham Trade-Mark Act) should be examined as persuasive authority for interpreting and construing the Trademark Registration Act. ADT Security Servs. v. A/C Security Systems, 15 Neb. App. 666, 736 N.W.2d 737 (2007).

The Lanham Trade-Mark Act provides that a party can recover the infringer's profits, any damages sustained, and the costs of the action. ADT Security Servs. v. A/C Security Systems, 15 Neb. App. 666, 736 N.W.2d 737 (2007).

87-128.

Pursuant to subsection (1) of this section, the statutory hallmarks of an abandoned service or trademark are (a) when its use has been discontinued with intent not to resume such use, which may be inferred from the circumstances, or its nonuse for 2 consecutive years shall constitute prima facie evidence of abandonment or (b) when any course of conduct of the owner, including acts of omission as well as commission, causes the mark to lose its significance as a mark. ADT Security Servs. v. A/C Security Systems, 15 Neb. App. 666, 736 N.W.2d 737 (2007).

87-208.

"Denali Custom Builders" was a trade name of appellant Denali Custom Builders, Inc., because it was used on signs and advertising in transacting business but was not the true name of appellant. Denali Real Estate v. Denali Custom Builders, 302 Neb. 984, 926 N.W.2d 610 (2019).

87-301.

The terms of the Uniform Deceptive Trade Practices Act provide only for equitable relief consistent with general principles of equity. State ex rel. Stenberg v. Consumer's Choice Foods, 276 Neb. 481, 755 N.W.2d 583 (2008).

87-302.

Pursuant to subdivision (a)(9) of this section, a product disparagement claim alleging the disparagement of the goods, services, or business "of another" by false or misleading representation of fact requires that the offending statements be "of and concerning" a claimant's goods or services. Determining whether a statement is "of and concerning" a claimant's goods or services requires the consideration of the circumstances surrounding the statement but also requires more than general, industry-wide allegations. JB & Assocs. v. Nebraska Cancer Coalition, 303 Neb. 855, 932 N.W.2d 71 (2019).

Denali Custom Builders, Inc., engaged in a deceptive trade practice when its use of "Denali Custom Builders" in the course of its business and the similarity of the fonts and colors used on its signage and its website caused confusion regarding the source of goods or services and its affiliation or association with Denali Real Estate's entities. Denali Real Estate v. Denali Custom Builders, 302 Neb. 984, 926 N.W.2d 610 (2019).

To establish a violation of the Uniform Deceptive Trade Practices Act, there must have been a representation regarding the nature of goods or services and the representation must have been for characteristics or benefits that the goods or services did not have. State ex rel. Stenberg v. Consumer's Choice Foods, 276 Neb. 481, 755 N.W.2d 583 (2008).

87-303.

Requiring Denali Custom Builders, Inc., to remove the name "Denali" from any registration of its corporate name or trade name with the Nebraska Secretary of State was equitable relief necessary to grant complete relief to the prevailing party. Denali Real Estate v. Denali Custom Builders, 302 Neb. 984, 926 N.W.2d 610 (2019).

Ticket seller was not a "prevailing party," as would support award of attorney fees under Nebraska's Consumer Protection Act and Uniform Deceptive Trade Practices Act following dismissal of the State's consumer protection suit where the State chose to voluntarily dismiss its claims before any judicial determination could be made as to their merits. State ex rel. Peterson v. Creative Comm. Promotions, 302 Neb. 606, 924 N.W.2d 664 (2019).

Nebraska's Uniform Deceptive Trade Practices Act does not permit an injunction to prevent the copying of a product. Gengenbach v. Hawkins Mfg., 18 Neb. App. 488, 785 N.W.2d 853 (2010).

Under Nebraska's Uniform Deceptive Trade Practices Act, injunctive relief granted for the copying of an article is limited to the prevention of confusion or misunderstanding as to the source. Gengenbach v. Hawkins Mfg., 18 Neb. App. 488, 785 N.W.2d 853 (2010).

By its own terms, subsection (a) of this section provides only for equitable relief consistent with general principles of equity. Reinbrecht v. Walgreen Co., 16 Neb. App. 108, 742 N.W.2d 243 (2007).

The Uniform Deceptive Trade Practices Act, specifically this section, does not provide a private right of action for damages. Reinbrecht v. Walgreen Co., 16 Neb. App. 108, 742 N.W.2d 243 (2007).

87-303.07.

This section, which specifically lists buyers and lessees as those protected by its provisions, does not apply to guarantors. Lindsay Internat. Sales & Serv. v. Wegener, 301 Neb. 1, 917 N.W.2d 133 (2018).

87-502.

Although Nebraska's Trade Secrets Act is based on the Uniform Trade Secrets Act, Nebraska's definition of a trade secret differs significantly from the uniform act. If an alleged trade secret is ascertainable at all by any means that are not "improper," the would-be secret is peremptorily excluded from coverage under Nebraska's act. First Express Servs. Group v. Easter, 286 Neb. 912, 840 N.W.2d 465 (2013).

88-526.

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

88-530.

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

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

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

88-547.

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

NEBRASKA UNIFORM COMMERCIAL CODE

UCC 9-406.

"Assignment" and its derivatives includes both outright transfers of ownership and presently exercisable security interests. First State Bank Neb. v. MP Nexlevel, 307 Neb. 198, 948 N.W.2d 708 (2020).

UCC 9-607.

Article 9 leaves to the agreement of the parties the circumstances giving rise to a default; default is whatever the security agreement says it is. First State Bank Neb. v. MP Nexlevel, 307 Neb. 198, 948 N.W.2d 708 (2020).

"Default" is not contingent on an adjudication or agreement and occurs, instead, when determined by the terms of the security agreement. First State Bank Neb. v. MP Nexlevel, 307 Neb. 198, 948 N.W.2d 708 (2020).

CONSTITUTION OF THE STATE OF NEBRASKA OF 1875, AND SUBSEQUENT AMENDMENTS

CONSTITUTION OF THE STATE OF NEBRASKA

ARTICLE I

BILL OF RIGHTS

Section
2. Slavery prohibited.

Sec. 2 Slavery prohibited.

There shall be neither slavery nor involuntary servitude in this state.

Source: Neb. Const. art. I, sec. 2 (1875); Amended 2020, Laws 2019, LR1CA, sec. 1.

ARTICLE III

LEGISLATIVE POWER

Section
24. Games of chance, lotteries, and gift enterprises; restrictions; use of state lottery proceeds; parimutuel wagering on horseraces; bingo games; laws relating to games of chance, applicability.

Sec. 24 Games of chance, lotteries, and gift enterprises; restrictions; use of state lottery proceeds; parimutuel wagering on horseraces; bingo games; laws relating to games of chance, applicability.

(1) Except as provided in this section, the Legislature shall not authorize any game of chance or any lottery or gift enterprise when the consideration for a chance to participate involves the payment of money for the purchase of property, services, or a chance or admission ticket or requires an expenditure of substantial effort or time.

(2) The Legislature may authorize and regulate a state lottery pursuant to subsection (3) of this section and other lotteries, raffles, and gift enterprises which are intended solely as business promotions or the proceeds of which are to be used solely for charitable or community betterment purposes without profit to the promoter of such lotteries, raffles, or gift enterprises.

(3)(a) The Legislature may establish a lottery to be operated and regulated by the State of Nebraska. The proceeds of the lottery shall be appropriated by the Legislature for the costs of establishing and maintaining the lottery and for the following purposes, as directed by the Legislature:

(i) The first five hundred thousand dollars after the payment of prizes and operating expenses shall be transferred to the Compulsive Gamblers Assistance Fund;

(ii) Forty-four and one-half percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive

Gamblers Assistance Fund shall be transferred to the Nebraska Environmental Trust Fund to be used as provided in the Nebraska Environmental Trust Act;

(iii) Forty-four and one-half percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be used for education as the Legislature may direct;

(iv) Ten percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Nebraska State Fair Board if the most populous city within the county in which the fair is located provides matching funds equivalent to ten percent of the funds available for transfer. Such matching funds may be obtained from the city and any other private or public entity, except that no portion of such matching funds shall be provided by the state. If the Nebraska State Fair ceases operations, ten percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the General Fund; and

(v) One percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Compulsive Gamblers Assistance Fund.

(b) No lottery game shall be conducted as part of the lottery unless the type of game has been approved by a majority of the members of the Legislature.

(4) Nothing in this section shall be construed to prohibit (a) the enactment of laws providing for the licensing and regulation of wagering on the results of horseraces, wherever run, either within or outside of the state, by the parimutuel method, when such wagering is conducted by licensees within a licensed racetrack enclosure or (b) the enactment of laws providing for the licensing and regulation of bingo games conducted by nonprofit associations which have been in existence for a period of five years immediately preceding the application for license, except that bingo games cannot be conducted by agents or lessees of such associations on a percentage basis.

(5) This section shall not apply to any law which is enacted contemporaneously with the adoption of this subsection or at any time thereafter and which provides for the licensing, authorization, regulation, or taxation of all forms of games of chance when such games of chance are conducted by authorized gaming operators within a licensed racetrack enclosure.

Source: Neb. Const. art. III, sec. 21 (1875); Amended 1934, Initiative Measure No. 332; Amended 1958, Initiative Measure No. 302; Amended 1962, Laws 1961, c. 248, sec. 1, p. 735; Amended 1968, Laws 1967, c. 307, sec. 1, p. 832; Amended 1988, Laws 1988, LR 15, sec. 1; Amended 1992, Laws 1991, LR 24CA, sec. 1; Amended 2004, Laws 2004, LR 209CA, sec. 1; Amended 2020, Initiative Measure No. 429.

Cross References

Nebraska Environmental Trust Act, see section 81-15,167.

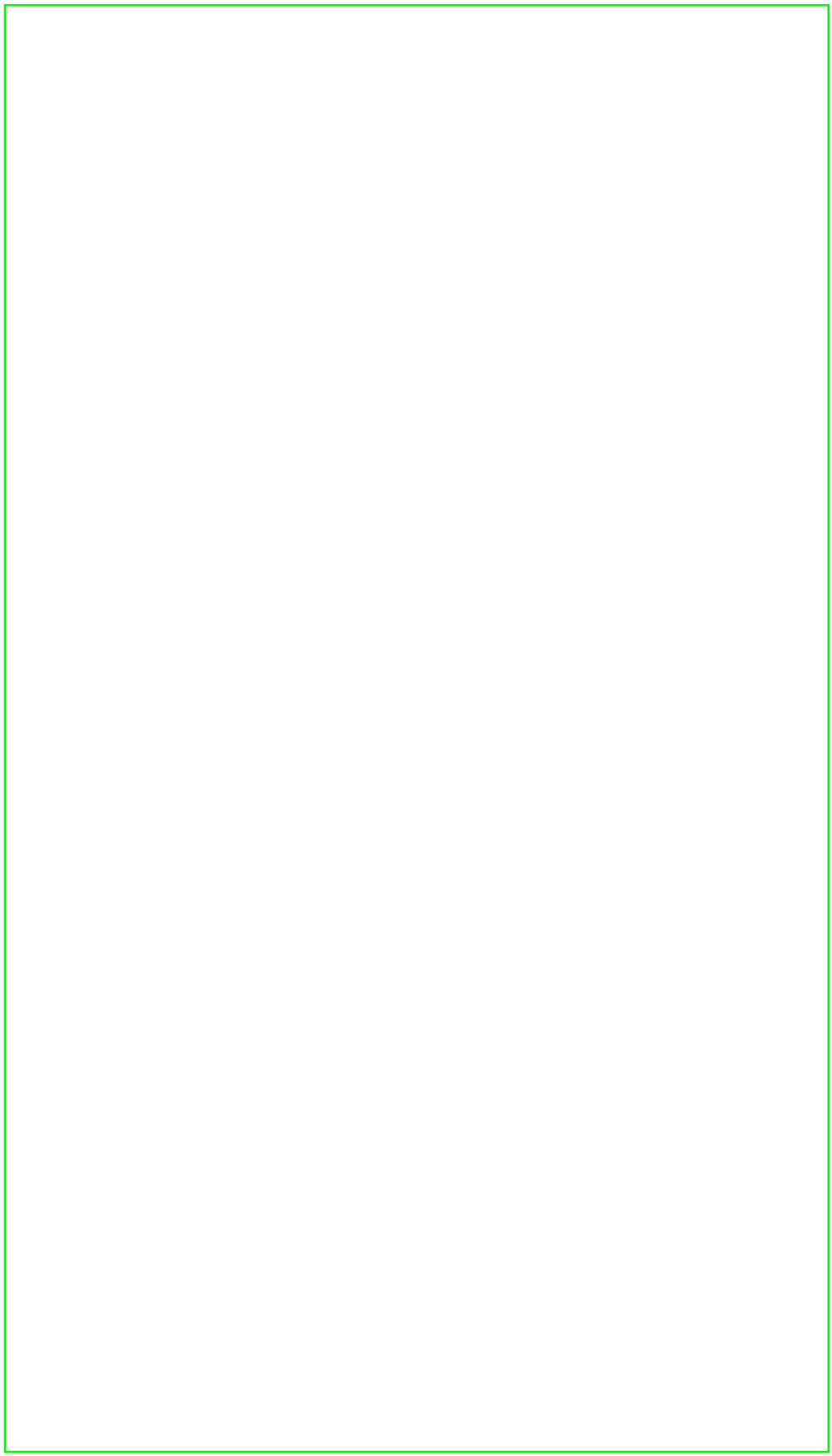
ARTICLE VIII
REVENUE

Sec. 12 Cities or villages; redevelopment project; substandard and blighted property; incur indebtedness; taxes; how treated.

For the purpose of rehabilitating, acquiring, or redeveloping substandard and blighted property in a redevelopment project as determined by law, any city or village of the state may, notwithstanding any other provision in the Constitution, and without regard to charter limitations and restrictions, incur indebtedness, whether by bond, loans, notes, advance of money, or otherwise. Notwithstanding any other provision in the Constitution or a local charter, such cities or villages may also pledge for and apply to the payment of the principal, interest, and any premium on such indebtedness all taxes levied by all taxing bodies on the assessed valuation of the property in the project area portion of a designated blighted and substandard area that is in excess of the assessed valuation of such property for the year prior to such rehabilitation, acquisition, or redevelopment. Cities and villages may pledge such taxes for a period not to exceed fifteen years, except that the Legislature may allow cities and villages to pledge such taxes for a period not to exceed twenty years if, due to a high rate of unemployment combined with a high poverty rate as determined by law, more than one-half of the property in the project area is designated as extremely blighted.

When such indebtedness and the interest thereon have been paid in full, such property thereafter shall be taxed as is other property in the respective taxing jurisdictions and such taxes applied as all other taxes of the respective taxing bodies.

Source: Neb. Const. art. VIII, sec. 12 (1978); Adopted 1978, Laws 1978, LB 469, sec. 1; Amended 1984, Laws 1984, LR 227, sec. 1; Amended 1988, Laws 1987, LR 11, sec. 1; Amended 2020, Laws 2019, LR14CA, sec. 1.



CHAPTER 24
COURTS

Article.
2. Supreme Court.
   (a) Organization. 24-201.01 to 24-201.04.
   (l) Report Regarding Eviction Proceedings. 24-232.
3. District Court.
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12. Judicial Resources Commission. 24-1203, 24-1204.

ARTICLE 2
SUPREME COURT

(a) ORGANIZATION

Section
24-201.01. Supreme Court judges; salary; amount; restriction on other employment of judges.
24-201.02. Supreme Court judicial districts; numbers; boundaries; established by maps; Clerk of Legislature; Secretary of State; duties.
24-201.04. Supreme Court judicial districts; population figures and maps; basis.

(l) REPORT REGARDING EVICTION PROCEEDINGS

24-232. Eviction proceedings; annual report; contents.

(a) ORGANIZATION

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

On July 1, 2020, the salary of the Chief Justice and the judges of the Supreme Court shall be one hundred eighty-seven thousand thirty-six dollars and one cent. On July 1, 2021, the salary of the Chief Justice and the judges of the Supreme Court shall be one hundred ninety-two thousand six hundred forty-seven dollars and nine cents. On July 1, 2022, the salary of the Chief Justice and the judges of the Supreme Court shall be one hundred ninety-eight thousand four hundred twenty-six dollars and fifty-one cents.

The Chief Justice and the judges of the Supreme Court shall hold no other public office of profit or trust during their terms of office nor accept any public appointment or employment under the authority of the government of the

United States for which they receive compensation for their services. Such salaries shall be payable in equal monthly installments.

Source: Laws 1947, c. 345, § 1, p. 1089; Laws 1951, c. 58, § 1, p. 191; Laws 1955, c. 77, § 1, p. 231; Laws 1959, c. 93, § 1, p. 406; Laws 1963, c. 127, § 1, p. 480; Laws 1963, c. 534, § 1, p. 1676; Laws 1967, c. 136, § 1, p. 421; Laws 1969, c. 173, § 1, p. 754; Laws 1969, c. 174, § 1, p. 755; Laws 1972, LB 1293, § 2; Laws 1974, LB 923, § 1; Laws 1976, LB 76, § 1; Laws 1978, LB 672, § 1; Laws 1979, LB 398, § 1; Laws 1983, LB 269, § 1; Laws 1986, LB 43, § 1; Laws 1987, LB 564, § 1; Laws 1990, LB 42, § 1; Laws 1995, LB 189, § 1; Laws 1997, LB 362, § 1; Laws 1999, LB 350, § 1; Laws 2001, LB 357, § 1; Laws 2005, LB 348, § 1; Laws 2007, LB377, § 1; Laws 2009, LB414, § 1; Laws 2012, LB862, § 1; Laws 2013, LB306, § 1; Laws 2015, LB663, § 1; Laws 2017, LB647, § 1; Laws 2019, LB300, § 1; Laws 2021, LB386, § 1.

24-201.02 Supreme Court judicial districts; numbers; boundaries; established by maps; Clerk of Legislature; Secretary of State; duties.

(1) Based on the 2020 Census of Population by the United States Department of Commerce, Bureau of the Census, the State of Nebraska is hereby divided into six Supreme Court judicial districts. Each district shall be entitled to one Supreme Court judge.

(2) The numbers and boundaries of the districts are designated and established by maps identified and labeled as maps SUP21-39001, SUP21-39001-1, SUP21-39001-2, SUP21-39001-3, SUP21-39001-3A, SUP21-39001-4, SUP21-39001-5, and SUP21-39001-6, filed with the Clerk of the Legislature, and incorporated by reference as part of Laws 2021, LB6, 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 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 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 districts.

Source: Laws 1971, LB 545, § 1; Laws 1981, LB 552, § 1; R.S.1943, (1987), § 5-109; Laws 1990, LB 822, § 9; Laws 1991, LB 616, § 1; Laws 2001, LB 853, § 1; Laws 2011, LB699, § 1; Laws 2021, First Spec. Sess., LB6, § 1.

Cross References

Constitutional provisions, see Article V, section 5, Constitution of Nebraska.

24-201.04 Supreme Court judicial districts; population figures and maps; basis.

For purposes of section 24-201.02, 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.

Source: Laws 1991, LB 616, § 2; Laws 2001, LB 853, § 2; Laws 2011, LB699, § 2; Laws 2021, First Spec. Sess., LB6, § 2.

(l) REPORT REGARDING EVICTION PROCEEDINGS

24-232 Eviction proceedings; annual report; contents.

(1) On or before January 15, 2022, and July 15, 2022, and on or before each January 15 and July 15 thereafter, the Supreme Court shall electronically submit a report to the Clerk of the Legislature that includes, for the preceding six months the following information pertaining to eviction proceedings, broken down by county:

(a) The number of eviction proceedings initiated;

(b) The number of tenants represented by counsel;

(c) The number of landlords represented by counsel;

(d) The number of orders granting restitution of the premises entered by default; and

(e) The number of orders granting restitution of the premises entered, broken down by the specific statutory authority under which possession was sought.

(2) For purposes of this section:

(a) Eviction proceeding means an action involving a claim for forcible entry and detainer involving a residential tenancy under sections 25-21,219 to 25-21,235, the Uniform Residential Landlord and Tenant Act, or the Mobile Home Landlord and Tenant Act;

(b) Landlord includes a landlord as defined in section 76-1410 and a landlord as defined in section 76-1462;

(c) Residential tenancy means a tenancy subject to the Uniform Residential Landlord and Tenant Act or the Mobile Home Landlord and Tenant Act or any other tenancy involving a dwelling unit as defined in section 76-1410;

(d) Tenant means a tenant or former tenant of a residential tenancy; and

(e) When reference in this section is made to a definition found in both the Uniform Residential Landlord and Tenant Act and the Mobile Home Landlord and Tenant Act, the definition relevant to the type of tenant at issue applies for purposes of this section.

Source: Laws 2021, LB320, § 14.

Cross References

Mobile Home Landlord and Tenant Act, see section 76-1450.
Uniform Residential Landlord and Tenant Act, see section 76-1401.

ARTICLE 3
DISTRICT COURT

(a) ORGANIZATION

(a) ORGANIZATION

24-301.02 District court judicial districts; described; number of judges.

The State of Nebraska shall be divided into the following twelve district court judicial districts:

District No. 1 shall contain the counties of Saline, Jefferson, Gage, Thayer, Johnson, Pawnee, Nemaha, Fillmore, Richardson, and Otoe;

District No. 2 shall contain the counties of Sarpy and Cass;

District No. 3 shall contain the county of Lancaster;

District No. 4 shall contain the county of Douglas;

District No. 5 shall contain the counties of Merrick, Platte, Colfax, Boone, Nance, Hamilton, Polk, York, Butler, Seward, and Saunders;

District No. 6 shall contain the counties of Dixon, Dakota, Cedar, Burt, Thurston, Dodge, and Washington;

District No. 7 shall contain the counties of Knox, Cuming, Antelope, Pierce, Wayne, Madison, and Stanton;

District No. 8 shall contain the counties of Cherry, Keya Paha, Brown, Rock, Blaine, Loup, Custer, Boyd, Holt, Garfield, Wheeler, Valley, Greeley, Sherman, and Howard;

District No. 9 shall contain the counties of Buffalo and Hall;

District No. 10 shall contain the counties of Adams, Phelps, Kearney, Harlan, Franklin, Webster, Clay, and Nuckolls;

District No. 11 shall contain the counties of Hooker, Thomas, Arthur, McPherson, Logan, Keith, Perkins, Lincoln, Dawson, Chase, Hayes, Frontier, Gosper, Dundy, Hitchcock, Red Willow, and Furnas; and

District No. 12 shall contain the counties of Sioux, Dawes, Box Butte, Sheridan, Scotts Bluff, Morrill, Garden, Banner, Kimball, Cheyenne, Grant, and Deuel.

In the fourth district there shall be eighteen judges of the district court. In the third district there shall be eight judges of the district court. In the second, fifth, ninth, eleventh, and twelfth districts there shall be four judges of the district court. In the first and sixth districts there shall be three judges of the district

court. In the seventh, eighth, and tenth districts there shall be two judges of the district court.

Source: Laws 1911, c. 5, § 1, p. 70; Laws 1913, c. 203, § 1, p. 623; R.S.1913, § 217; Laws 1915, c. 12, § 1, p. 64; Laws 1917, c. 3, § 1, p. 55; Laws 1919, c. 114, § 1, p. 278; Laws 1921, c. 146, § 1, p. 620; C.S.1922, § 199; Laws 1923, c. 119, § 1, p. 283; C.S.1929, § 5-103; R.S.1943, § 5-105; Laws 1961, c. 11, § 1, p. 99; Laws 1963, c. 24, § 1, p. 125; Laws 1965, c. 23, § 1, p. 186; Laws 1965, c. 24, § 1, p. 189; Laws 1969, c. 27, § 1, p. 229; Laws 1972, LB 1301, § 1; Laws 1975, LB 1, § 1; Laws 1980, LB 618, § 1; Laws 1983, LB 121, § 1; Laws 1985, LB 287, § 1; Laws 1986, LB 516, § 1; R.S.1943, (1987), § 5-105; Laws 1990, LB 822, § 10; Laws 1991, LB 181, § 1; Laws 1992, LB 1059, § 3; Laws 1993, LB 306, § 1; Laws 1995, LB 19, § 1; Laws 1995, LB 189, § 2; Laws 1998, LB 404, § 1; Laws 2001, LB 92, § 1; Laws 2004, LB 1207, § 1; Laws 2007, LB377, § 2; Laws 2009, LB35, § 4; Laws 2018, LB697, § 1; Laws 2019, LB309, § 1; Laws 2022, LB922, § 1. Operative date July 21, 2022.

Cross References

Constitutional provisions, see Article V, sections 10 and 11, Constitution of Nebraska.

24-303 Terms of court; when fixed; where held; assignment of judges by Supreme Court; telephonic or videoconference hearing; authorized.

(1) The judges of the district court shall, the last two months in each year, fix the time of holding terms of court in the counties composing their respective districts during the ensuing year, and cause the same to be published throughout the district, if the same can be done without expense. All jury terms of the district court shall be held at the county seat in the courthouse, or other place provided by the county board, but nothing herein contained shall preclude the district court, or a judge thereof, from rendering a judgment or other final order or from directing the entry thereof in any cause, in any county other than where such cause is pending, where the trial or hearing upon which such judgment or other final order is rendered took place in the county in which such cause is pending. Terms of court may be held at the same time in different counties in the same judicial district, by the judge of the district court thereof, if there be more than one, and upon request of the judge or judges of such court, any term in such district may be held by a judge of the district court of any other district of the state. The Supreme Court may order the assignment of judges of the district court to other districts whenever it shall appear that their services are needed to relieve a congested trial docket or to adjust judicial case loads, or on account of the disqualification, absence, disability, or death of a judge, or for other adequate cause. When necessary, a term of the district court sitting in any county may be continued into and held during the time fixed for holding such court in any other county within the district, or may be adjourned and held beyond such time.

(2) All nonevidentiary hearings, and any evidentiary hearings approved by the district court and by stipulation of all parties that have filed an appearance, may be heard by the court telephonically or by videoconferencing or similar equipment at any location within the judicial district as ordered by the court and in a manner that ensures the preservation of an accurate record. Such

hearings shall not include trials before a jury. Hearings conducted in this manner shall be consistent with the public's access to the courts.

Source: Laws 1879, § 42, p. 91; Laws 1885, c. 45, § 1, p. 242; R.S.1913, § 1162; C.S.1922, § 1085; C.S.1929, § 27-303; Laws 1935, c. 58, § 1, p. 213; C.S.Supp.,1941, § 27-303; R.S.1943, § 24-303; Laws 1955, c. 79, § 1, p. 235; Laws 1961, c. 102, § 1, p. 333; Laws 2008, LB1014, § 1; Laws 2018, LB193, § 4.

(c) CLERK

24-337 Repealed. Laws 2018, LB193, § 97.

(e) UNCALLED-FOR FUNDS; DISPOSITION

24-345 Funds uncalled for; payment to State Treasurer; clerk's liability discharged.

All money, other than witness fees, fines, penalties, forfeitures and license money, that comes into the possession of the clerk of the district court for any county in the State of Nebraska by virtue of his or her office and remains in the custody of the clerk of the district court, uncalled for by the party or parties entitled to the money for a period of three years following the close of litigation in relation to the money, shall be remitted by the clerk of the district court to the State Treasurer on the first Tuesday in January, April, July, or October, respectively, following the expiration of the three-year period, for deposit in the Unclaimed Property Trust Fund pursuant to section 69-1317. Such payment shall release the bond of the clerk of the district court making such payment from all liability for the money so paid in compliance with this section.

Source: Laws 1933, c. 33, § 1, p. 214; C.S.Supp.,1941, § 27-342; R.S. 1943, § 24-345; Laws 1980, LB 572, § 1; Laws 1992, Third Spec. Sess., LB 26, § 1; Laws 2019, LB406, § 1; Laws 2021, LB532, § 1.

Cross References

Filing of claim to property delivered to state, see section 69-1318.

24-348 Repealed. Laws 2018, LB193, § 97.

ARTICLE 5
COUNTY COURT

(a) ORGANIZATION

Section
24-517. Jurisdiction.

(a) ORGANIZATION

24-517 Jurisdiction.

Each county court shall have the following jurisdiction:

(1) Exclusive original jurisdiction of all matters relating to decedents' estates, including the probate of wills and the construction thereof, except as provided in subsection (c) of section 30-2464 and section 30-2486;

(2) Exclusive original jurisdiction in all matters relating to the guardianship of a person, except if a separate juvenile court already has jurisdiction over a

child in need of a guardian, concurrent original jurisdiction with the separate juvenile court in such guardianship;

(3) Exclusive original jurisdiction of all matters relating to conservatorship of any person, including (a) original jurisdiction to consent to and authorize a voluntary selection, partition, and setoff of a ward's interest in real estate owned in common with others and to exercise any right of the ward in connection therewith which the ward could exercise if competent and (b) original jurisdiction to license the sale of such real estate for cash or on such terms of credit as shall seem best calculated to produce the highest price subject only to the requirements set forth in section 30-3201;

(4) Concurrent jurisdiction with the district court to involuntarily partition a ward's interest in real estate owned in common with others;

(5) Concurrent original jurisdiction with the district court in all civil actions of any type when the amount in controversy is forty-five thousand dollars or less through June 30, 2005, and as set by the Supreme Court pursuant to subdivision (b) of this subdivision on and after July 1, 2005.

(a) When the pleadings or discovery proceedings in a civil action indicate that the amount in controversy is greater than the jurisdictional amount of subdivision (5) of this section, the county court shall, upon the request of any party, certify the proceedings to the district court as provided in section 25-2706. An award of the county court which is greater than the jurisdictional amount of subdivision (5) of this section is not void or unenforceable because it is greater than such amount, however, if an award of the county court is greater than the jurisdictional amount, the county court shall tax as additional costs the difference between the filing fee in district court and the filing fee in county court.

(b) The Supreme Court shall adjust the jurisdictional amount for the county court every fifth year commencing July 1, 2005. The adjusted jurisdictional amount shall be equal to the then current jurisdictional amount adjusted by the average percentage change in the unadjusted Consumer Price Index for All Urban Consumers published by the Federal Bureau of Labor Statistics for the five-year period preceding the adjustment date. The jurisdictional amount shall be rounded to the nearest one-thousand-dollar amount;

(6) Concurrent original jurisdiction with the district court in any criminal matter classified as a misdemeanor or for any infraction. The district court shall have concurrent original jurisdiction in any criminal matter classified as a misdemeanor that arises from the same incident as a charged felony;

(7) Concurrent original jurisdiction with the district court in domestic relations matters as defined in section 25-2740 and with the district court and separate juvenile court in paternity or custody determinations as provided in section 25-2740;

(8) Concurrent original jurisdiction with the district court in matters arising under the Nebraska Uniform Trust Code;

(9) Exclusive original jurisdiction in any action based on violation of a city or village ordinance, except with respect to violations committed by persons under eighteen years of age;

(10) The jurisdiction of a juvenile court as provided in the Nebraska Juvenile Code when sitting as a juvenile court in counties which have not established separate juvenile courts;

(11) Exclusive original jurisdiction in matters of adoption, except if a separate juvenile court already has jurisdiction over the child to be adopted, concurrent original jurisdiction with the separate juvenile court;

(12) Exclusive original jurisdiction in matters arising under the Nebraska Uniform Custodial Trust Act;

(13) Concurrent original jurisdiction with the district court in any matter relating to a power of attorney and the action or inaction of any agent acting under a power of attorney;

(14) Exclusive original jurisdiction in any action arising under sections 30-3401 to 30-3432;

(15) Exclusive original jurisdiction in matters arising under the Nebraska Uniform Transfers to Minors Act;

(16) Concurrent original jurisdiction with the district court in matters arising under the Uniform Principal and Income Act;

(17) Concurrent original jurisdiction with the district court in matters arising under the Uniform Testamentary Additions to Trusts Act (1991) except as otherwise provided in subdivision (1) of this section;

(18) Concurrent original jurisdiction with the district court to determine contribution rights under section 68-919; and

(19) All other jurisdiction heretofore provided and not specifically repealed by Laws 1972, Legislative Bill 1032, and such other jurisdiction as hereafter provided by law.

Source: Laws 1972, LB 1032, § 17; Laws 1973, LB 226, § 6; Laws 1977, LB 96, § 1; Laws 1979, LB 373, § 1; Laws 1983, LB 137, § 1; Laws 1984, LB 13, § 12; Laws 1986, LB 529, § 7; Laws 1986, LB 1229, § 1; Laws 1991, LB 422, § 1; Laws 1996, LB 1296, § 2; Laws 1997, LB 229, § 1; Laws 1998, LB 1041, § 1; Laws 2001, LB 269, § 1; Laws 2003, LB 130, § 114; Laws 2005, LB 361, § 29; Laws 2008, LB280, § 1; Laws 2008, LB1014, § 4; Laws 2009, LB35, § 5; Laws 2014, LB464, § 2; Laws 2015, LB314, § 1; Laws 2017, LB268, § 1.

Cross References

Nebraska Juvenile Code, see section 43-2,129.
Nebraska Uniform Custodial Trust Act, see section 30-3501.
Nebraska Uniform Transfers to Minors Act, see section 43-2701.
Nebraska Uniform Trust Code, see section 30-3801.
Uniform Principal and Income Act, see section 30-3116.
Uniform Testamentary Additions to Trusts Act (1991), see section 30-3601.

ARTICLE 7

JUDGES, GENERAL PROVISIONS

(a) JUDGES RETIREMENT

Section
24-701. Terms, defined.
24-703. Judges; contributions; deductions; fees taxed as costs; payment; late fees; funding of retirement system; actuarial valuation; transfer of funds; adjustments.
24-704. Administration of system; Public Employees Retirement Board, Auditor of Public Accounts, and Nebraska Investment Council; duties; employer education program.

(a) JUDGES RETIREMENT

24-701 Terms, defined.

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

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

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

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

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

(3) Board means the Public Employees Retirement Board;

(4)(a) Compensation means the statutory salary of a judge or the salary being received by such judge pursuant to law. Compensation does not include compensation for unused sick leave or unused vacation leave converted to cash payments, insurance premiums converted into cash payments, reimbursement for expenses incurred, fringe benefits, per diems, or bonuses for services not actually rendered, including, but not limited to, early retirement inducements,

cash awards, and severance pay, except for retroactive salary payments paid pursuant to court order, arbitration, or litigation and grievance settlements. Compensation includes overtime pay, member retirement contributions, and amounts contributed by the member to plans under sections 125 and 457 of the Internal Revenue Code as defined in section 49-801.01 or any other section of the code which defers or excludes such amounts from income.

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

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

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

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

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

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

service as a judge in which compensation was the greatest or, in the event of a judge serving less than five twelve-month periods, the average monthly compensation for such judge's period of service;

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

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

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

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

(13) Judge means and includes (a) all duly elected or appointed Chief Justices or judges of the Supreme Court and judges of the district courts of Nebraska who serve in such capacity on and after January 3, 1957, (b)(i) all duly appointed judges of the Nebraska Workmen's Compensation Court who served in such capacity on and after September 20, 1957, and prior to July 17, 1986, and (ii) judges of the Nebraska Workers' Compensation Court who serve in such capacity on and after July 17, 1986, (c) judges of separate juvenile courts, (d) judges of the county courts of the respective counties who serve in such capacity on and after January 5, 1961, (e) judges of the county court and clerk magistrates who were associate county judges and members of the fund at the time of their appointment as clerk magistrates, (f) judges of municipal courts established by Chapter 26, article 1, who served in such capacity on and after October 23, 1967, and prior to July 1, 1985, and (g) judges of the Court of Appeals;

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

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

while such judge was holding the office of judge. The board shall have the power to determine when a national emergency exists or has existed for the purpose of applying this definition and provision;

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

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

(18) Original member means a judge who first served as a judge prior to December 25, 1969, who does not elect to become a future member pursuant to section 24-710.01, and who was retired on or before December 31, 1992;

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

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

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

(22) Required beginning date means, for purposes of the deferral of distributions, April 1 of the year following the calendar year in which a member has:

(a)(i) Terminated employment with the State of Nebraska; and

(ii)(A) Attained at least seventy and one-half years of age for a member who attained seventy and one-half years of age on or before December 31, 2019; or

(B) Attained at least seventy-two years of age for a member who attained seventy and one-half years of age on or after January 1, 2020; or

(b)(i) Terminated employment with the State of Nebraska; and

(ii) Otherwise reached the date specified by section 401(a)(9) of the Internal Revenue Code and the regulations issued thereunder;

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

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

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

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

(27) Termination of employment occurs on the date on which the State Court Administrator's office determines that the judge's employer-employee relationship with the State of Nebraska is dissolved. The State Court Administrator's office shall notify the board of the date on which such a termination has occurred. Termination of employment does not include ceasing employment as a judge if the judge returns to regular employment as a judge or is employed on a regular basis by another agency of the State of Nebraska and there are less than one hundred twenty days between the date when the judge's employer-employee relationship ceased and the date when the employer-employee relationship recommences. It is the responsibility of the employer that is involved in the termination of employment to notify the board of such change in employment and provide the board with such information as the board deems necessary. If the board determines that termination of employment has not occurred and a retirement benefit has been paid to a member of the retirement system pursuant to section 24-710, the board shall require the member who has received such benefit to repay the benefit to the retirement system.

Source: Laws 1955, c. 83, § 1, p. 244; Laws 1957, c. 78, § 1, p. 315; Laws 1957, c. 79, § 1, p. 318; Laws 1959, c. 95, § 1, p. 409; Laws 1959, c. 189, § 13, p. 687; Laws 1965, c. 115, § 1, p. 440; Laws 1969, c. 178, § 1, p. 759; Laws 1971, LB 987, § 4; Laws 1972, LB 1032, § 120; Laws 1973, LB 226, § 10; Laws 1974, LB 905, § 3; Laws 1983, LB 223, § 1; Laws 1984, LB 13, § 32; Laws 1984, LB 750, § 1; Laws 1986, LB 92, § 1; Laws 1986, LB 311, § 9; Laws 1986, LB 351, § 1; Laws 1986, LB 529, § 17; Laws 1986, LB 811, § 12; Laws 1989, LB 506, § 2; Laws 1991, LB 549, § 15; Laws 1991, LB 732, § 36; Laws 1992, LB 682, § 1; Laws 1994, LB 833, § 12; Laws 1996, LB 700, § 1; Laws 1996, LB 847, § 11; Laws 1996, LB 1076, § 8; Laws 1996, LB 1273, § 19; Laws 1997, LB 624, § 9; Laws 1999, LB 674, § 1; Laws 2000, LB 1192, § 4; Laws 2001, LB 408, § 6; Laws 2003, LB 451, § 14; Laws 2011, LB6, § 1; Laws 2012, LB916, § 14; Laws 2013, LB263, § 10; Laws 2015, LB468, § 1; Laws 2016, LB790, § 2; Laws 2017, LB415, § 18; Laws 2020, LB1054, § 5; Laws 2021, LB17, § 1.

Cross References

Spousal Pension Rights Act, see section 42-1101.

24-703 Judges; contributions; deductions; fees taxed as costs; payment; late fees; funding of retirement system; actuarial valuation; transfer of funds; adjustments.

(1) Each original member shall contribute monthly four percent of his or her monthly compensation to the fund until the maximum benefit as limited in subsection (1) of section 24-710 has been earned. It shall be the duty of the Director of Administrative Services in accordance with subsection (7) of this section to make a deduction of four percent on the monthly payroll of each original member who is a judge of the Supreme Court, a judge of the Court of Appeals, a judge of the district court, a judge of a separate juvenile court, a judge of the county court, a clerk magistrate of the county court who was an associate county judge and a member of the fund at the time of his or her appointment as a clerk magistrate, or a judge of the Nebraska Workers' Compensation Court showing the amount to be deducted and its credit to the fund. The Director of Administrative Services and the State Treasurer shall credit the four percent as shown on the payroll and the amounts received from the various counties to the fund and remit the same to the director in charge of the judges retirement system who shall keep an accurate record of the contributions of each judge.

(2)(a) In addition to the contribution required under subdivision (c) of this subsection, beginning on July 1, 2004, each future member who became a member prior to July 1, 2015, and who has not elected to make contributions and receive benefits as provided in section 24-703.03 shall contribute monthly six percent of his or her monthly compensation to the fund until the maximum benefit as limited in subsection (2) of section 24-710 has been earned. After the maximum benefit as limited in subsection (2) of section 24-710 has been earned, such future member shall make no further contributions to the fund, except that (i) any time the maximum benefit is changed, a future member who has previously earned the maximum benefit as it existed prior to the change shall contribute monthly six percent of his or her monthly compensation to the fund until the maximum benefit as changed and as limited in subsection (2) of section 24-710 has been earned and (ii) such future member shall continue to make the contribution required under subdivision (c) of this subsection.

(b) In addition to the contribution required under subdivision (c) of this subsection, beginning on July 1, 2004, a judge who became a member prior to July 1, 2015, and who first serves as a judge on or after July 1, 2004, or a future member who became a member prior to July 1, 2015, and who elects to make contributions and receive benefits as provided in section 24-703.03 shall contribute monthly eight percent of his or her monthly compensation to the fund until the maximum benefit as limited by subsection (2) of section 24-710 has been earned. In addition to the contribution required under subdivision (c) of this subsection, after the maximum benefit as limited in subsection (2) of section 24-710 has been earned, such judge or future member shall contribute monthly four percent of his or her monthly compensation to the fund for the remainder of his or her active service.

(c) Beginning on July 1, 2009, a member or judge described in subdivisions (a) and (b) of this subsection shall contribute monthly an additional one percent of his or her monthly compensation to the fund.

(d) Beginning on July 1, 2015, a judge who first serves as a judge on or after such date shall contribute monthly ten percent of his or her monthly compensation to the fund.

(e) It shall be the duty of the Director of Administrative Services to make a deduction on the monthly payroll of each such future member who is a judge of the Supreme Court, a judge of the Court of Appeals, a judge of the district court, a judge of a separate juvenile court, a judge of the county court, a clerk magistrate of the county court who was an associate county judge and a member of the fund at the time of his or her appointment as a clerk magistrate, or a judge of the Nebraska Workers' Compensation Court showing the amount to be deducted and its credit to the fund. This shall be done each month. The Director of Administrative Services and the State Treasurer shall credit the amount as shown on the payroll and the amounts received from the various counties to the fund and remit the same to the director in charge of the judges retirement system who shall keep an accurate record of the contributions of each judge.

(3)(a) Except as otherwise provided in this subsection, a Nebraska Retirement Fund for Judges fee of six dollars through June 30, 2021, eight dollars beginning July 1, 2021, through June 30, 2022, nine dollars beginning July 1, 2022, through June 30, 2023, ten dollars beginning July 1, 2023, through June 30, 2024, eleven dollars beginning July 1, 2024, through June 30, 2025, and twelve dollars beginning July 1, 2025, shall be taxed as costs in each (i) civil cause of action, criminal cause of action, traffic misdemeanor or infraction, and city or village ordinance violation filed in the district courts, the county courts, and the separate juvenile courts, (ii) filing in the district court of an order, award, or judgment of the Nebraska Workers' Compensation Court or any judge thereof pursuant to section 48-188, (iii) appeal or other proceeding filed in the Court of Appeals, and (iv) original action, appeal, or other proceeding filed in the Supreme Court. In county courts a sum shall be charged which is equal to ten percent of each fee provided by sections 33-125, 33-126.02, 33-126.03, and 33-126.06, rounded to the nearest even dollar. No judges retirement fee shall be charged for filing a report pursuant to sections 33-126.02 and 33-126.06.

(b) The fee increases described in subdivision (a) of this subsection shall not be taxed as a cost in any criminal cause of action, traffic misdemeanor or infraction, or city or village ordinance violation filed in the district court or the county court. The fee on such criminal causes of action, traffic misdemeanors or infractions, or city or village ordinance violations shall remain six dollars on and after July 1, 2021.

(c) When collected by the clerk of the district or county court, such fees shall be remitted to the State Treasurer within ten days after the close of each calendar month for credit to the Nebraska Retirement Fund for Judges. In addition, information regarding collection of court fees shall be submitted to the director in charge of the judges retirement system by the State Court Administrator within ten days after the close of each calendar month.

(d) The board may charge a late administrative processing fee not to exceed twenty-five dollars if the information is not timely received or the money is delinquent. In addition, the board may charge a late fee of thirty-eight thousandths of one percent of the amount required to be submitted pursuant to this section for each day such amount has not been received. Such late fees shall be

remitted to the director who shall promptly thereafter remit such fees to the State Treasurer for credit to the fund.

(e) No Nebraska Retirement Fund for Judges fee which is uncollectible for any reason shall be waived by a county judge as provided in section 29-2709.

(4) All expenditures from the fund shall be authorized by voucher in the manner prescribed in section 24-713. The fund shall be used for the payment of all annuities and other benefits to members and their beneficiaries and for the expenses of administration.

(5)(a) Prior to July 1, 2021:

(i) Beginning July 1, 2013, and each fiscal year thereafter, the board shall cause an annual actuarial valuation to be performed that will value the plan assets for the year and ascertain the contributions required for such fiscal year. The actuary for the board shall perform an actuarial valuation of the system on the basis of actuarial assumptions recommended by the actuary, approved by the board, and kept on file with the board using the entry age actuarial cost method. Under this method, the actuarially required funding rate is equal to the normal cost rate, plus the contribution rate necessary to amortize the unfunded actuarial accrued liability on a level percentage of salary basis. The normal cost under this method shall be determined for each individual member on a level percentage of salary basis. The normal cost amount is then summed for all members;

(ii) Beginning July 1, 2006, any existing unfunded liabilities shall be reinitialized and amortized over a thirty-year period, and during each subsequent actuarial valuation through June 30, 2021, changes in the unfunded actuarial accrued liability due to changes in benefits, actuarial assumptions, the asset valuation method, or actuarial gains or losses shall be measured and amortized over a thirty-year period beginning on the valuation date of such change;

(iii) If the unfunded actuarial accrued liability under the entry age actuarial cost method is zero or less than zero on an actuarial valuation date, then all prior unfunded actuarial accrued liabilities shall be considered fully funded and the unfunded actuarial accrued liability shall be reinitialized and amortized over a thirty-year period as of the actuarial valuation date; and

(iv) If the actuarially required contribution rate exceeds the rate of all contributions required pursuant to the Judges Retirement Act, there shall be a supplemental appropriation sufficient to pay for the differences between the actuarially required contribution rate and the rate of all contributions required pursuant to the Judges Retirement Act.

(b) Beginning July 1, 2021, and each fiscal year thereafter:

(i) The board shall cause an annual actuarial valuation to be performed that will value the plan assets for the year and ascertain the contributions required for such fiscal year. The actuary for the board shall perform an actuarial valuation of the system on the basis of actuarial assumptions recommended by the actuary, approved by the board, and kept on file with the board using the entry age actuarial cost method. Under such method, the actuarially required funding rate is equal to the normal cost rate, plus the contribution rate necessary to amortize the unfunded actuarial accrued liability on a level percentage of salary basis. The normal cost under such method shall be determined for each individual member on a level percentage of salary basis. The normal cost amount is then summed for all members;

(ii) Any changes in the unfunded actuarial accrued liability due to changes in benefits, actuarial assumptions, the asset valuation method, or actuarial gains or losses shall be measured and amortized over a twenty-five-year period beginning on the valuation date of such change;

(iii) If the unfunded actuarial accrued liability under the entry age actuarial cost method is zero or less than zero on an actuarial valuation date, then all prior unfunded actuarial accrued liabilities shall be considered fully funded and the unfunded actuarial accrued liability shall be reinitialized and amortized over a twenty-five-year period as of the actuarial valuation date; and

(iv) If the actuarially required contribution rate exceeds the rate of all contributions required pursuant to the Judges Retirement Act, there shall be a supplemental appropriation sufficient to pay for the differences between the actuarially required contribution rate and the rate of all contributions required pursuant to the act.

(c) Upon the recommendation of the actuary to the board, and after the board notifies the Nebraska Retirement Systems Committee of the Legislature, the board may combine or offset certain amortization bases to reduce future volatility of the actuarial contribution rate. Such notification to the committee shall be in writing and include, at a minimum, the actuary's projection of the contributions to fund the plan if the combination or offset were not implemented, the actuary's projection of the contributions to fund the plan if the combination or offset were implemented, and the actuary's explanation of why the combination or offset is in the best interests of the plan at the proposed time.

(d) For purposes of this subsection, the rate of all contributions required pursuant to the Judges Retirement Act includes (i) member contributions, (ii) state contributions pursuant to subsection (6) of this section which shall be considered as a contribution for the plan year ending the prior June 30, (iii) court fees as provided in subsection (3) of this section, and (iv) all fees pursuant to sections 25-2804, 33-103, 33-103.01, 33-106.02, 33-123, 33-124, 33-125, 33-126.02, 33-126.03, and 33-126.06, as directed to be remitted to the fund.

(6)(a) In addition to the contributions otherwise required by this section, beginning July 1, 2023, and on July 1 of each year thereafter, or as soon thereafter as administratively possible, the State Treasurer shall transfer from the General Fund to the Nebraska Retirement Fund for Judges an amount equal to five percent of the total annual compensation of all members of the retirement system except as otherwise provided in this subsection and as such rate shall be adjusted or terminated by the Legislature. No adjustment may cause the total contribution rate established in this subsection to exceed five percent. For purposes of this subsection, (i) total annual compensation is based on the total member compensation reported in the most recent annual actuarial valuation report for the retirement system produced for the board pursuant to section 84-1503 and (ii) the contribution described in this subsection shall be considered as a contribution for the plan year ending the prior June 30.

(b) If the funded ratio on the actuarial value of assets is at or above one hundred percent for two consecutive years as reported in the annual actuarial valuation report, the actuary shall assess whether the percentage of the state contribution rate should be adjusted based on projected annual actuarial valuation report results including the funded ratio, actuarial contribution, and expected revenue sources using several assumed investment return scenarios

that the actuary deems to be reasonable, and shall make a recommendation to the board as part of the annual actuarial valuation report.

(c) If the state contribution rate has been adjusted to less than five percent and the funded ratio on the actuarial value of assets is below one hundred percent for two consecutive years as reported in the annual actuarial valuation report, the actuary shall assess whether the percentage of the state contribution rate should be adjusted based on projected annual actuarial valuation report results including the funded ratio, actuarial contribution, and expected revenue sources using several assumed investment return scenarios that the actuary deems to be reasonable, and shall make a recommendation to the board as part of the annual actuarial valuation report.

(d) If an annual actuarial valuation report includes a recommendation from the actuary to adjust the contribution rate as described in subdivision (b) or (c) of this subsection, the board shall provide written notice electronically to the Nebraska Retirement Systems Committee of the Legislature, to the Governor, and to the Supreme Court of such recommendation within seven business days after voting to approve an annual actuarial valuation report. The notice shall include the actuary's recommendation and analysis regarding such adjustment.

(e) Following receipt of the actuary's recommendation and analysis pursuant to this subsection, the Nebraska Retirement Systems Committee of the Legislature shall determine the amount of any adjustment of the contribution rate and, if necessary, shall propose any such adjustment to the Legislature.

(7) The state or county shall pick up the member contributions required by this section for all compensation paid on or after January 1, 1985, and the contributions so picked up shall be treated as employer contributions pursuant to section 414(h)(2) of the Internal Revenue Code in determining federal tax treatment under the code and shall not be included as gross income of the member until such time as they are distributed or made available. The contributions, although designated as member contributions, shall be paid by the state or county in lieu of member contributions. The state or county shall pay these member contributions from the same source of funds which is used in paying earnings to the member. The state or county shall pick up these contributions by a compensation deduction through a reduction in the compensation of the member. Member contributions picked up shall be treated for all purposes of the Judges Retirement Act in the same manner and to the extent as member contributions made prior to the date picked up.

Source: Laws 1955, c. 83, § 3, p. 246; Laws 1957, c. 79, § 2, p. 321; Laws 1959, c. 95, § 2, p. 411; Laws 1959, c. 189, § 14, p. 689; Laws 1963, c. 137, § 1, p. 513; Laws 1965, c. 115, § 2, p. 442; Laws 1965, c. 116, § 2, p. 446; Laws 1967, c. 140, § 1, p. 428; Laws 1969, c. 178, § 2, p. 957; Laws 1971, LB 987, § 5; Laws 1972, LB 1032, § 121; Laws 1972, LB 1471, § 1; Laws 1973, LB 226, § 11; Laws 1974, LB 228, § 1; Laws 1977, LB 344, § 2; Laws 1977, LB 467, § 1; Laws 1981, LB 459, § 3; Laws 1984, LB 13, § 33; Laws 1984, LB 218, § 2; Laws 1986, LB 92, § 2; Laws 1986, LB 529, § 18; Laws 1989, LB 233, § 1; Laws 1989, LB 506, § 3; Laws 1991, LB 549, § 16; Laws 1991, LB 732, § 37; Laws 1992, LB 672, § 31; Laws 1992, LB 682, § 2; Laws 1994, LB 833, § 14; Laws 1995, LB 574, § 34; Laws 2001, LB 408, § 9; Laws 2002, LB 407, § 13; Laws 2003, LB 320, § 1; Laws 2003, LB 760, § 4;

Laws 2004, LB 1097, § 11; Laws 2005, LB 348, § 2; Laws 2005, LB 364, § 7; Laws 2006, LB 1019, § 5; Laws 2009, LB414, § 2; Laws 2013, LB263, § 11; Laws 2013, LB306, § 2; Laws 2013, LB553, § 1; Laws 2015, LB468, § 3; Laws 2021, LB17, § 2.

24-704 Administration of system; Public Employees Retirement Board, Auditor of Public Accounts, and Nebraska Investment Council; duties; employer education program.

(1) The general administration of the retirement system for judges provided for in the Judges Retirement Act, except the investment of funds, is hereby vested in the board. The Auditor of Public Accounts shall make an annual audit of the retirement system and electronically file an annual report of its condition with the Clerk of the Legislature. Each member of the Legislature shall receive an electronic copy of the annual report by making a request for such report to the Auditor of Public Accounts. The board may adopt and promulgate rules and regulations as may be necessary to carry out the Judges Retirement Act.

(2)(a) The board shall employ a director and such assistants and employees as may be necessary to efficiently discharge the duties imposed by the act. The director shall keep a record of all acts and proceedings taken by the board.

(b) The director shall keep a complete record of all members with respect to name, current address, age, contributions, length of service, compensation, and any other facts as may be necessary in the administration of the act. The information in the records shall be provided by the State Court Administrator in an accurate and verifiable form, as specified by the director. The director shall, from time to time, carry out testing procedures pursuant to section 84-1512 to verify the accuracy of such information. For the purpose of obtaining such facts and information, the director shall have access to the records of the various state departments and agencies and the holder of the records shall comply with a request by the director for access by providing such facts and information to the director in a timely manner. A certified copy of a birth certificate or delayed birth certificate shall be prima facie evidence of the age of the person named in the certificate.

(c) The director shall develop and implement an employer education program using principles generally accepted by public employee retirement systems so that all employers have the knowledge and information necessary to prepare and file reports as the board requires.

(3) Information necessary to determine membership in the retirement system shall be provided by the State Court Administrator.

(4) Any funds of the retirement system available for investment shall be invested by the Nebraska Investment Council pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Payment for investment services by the council shall be charged directly against the gross investment returns of the funds. Charges so incurred shall not be a part of the board's annual budget request. The amounts of payment for such services, as of December 31 of each year, shall be reported not later than March 31 of the following year to the council, the board, and the Nebraska Retirement Systems Committee of the Legislature. The report submitted to the committee shall be submitted electronically. The state investment officer shall sell any such securi-

ties upon request from the director so as to provide money for the payment of benefits or annuities.

Source: Laws 1955, c. 83, § 4, p. 246; Laws 1971, LB 987, § 6; Laws 1979, LB 322, § 6; Laws 1986, LB 311, § 10; Laws 1991, LB 549, § 17; Laws 1994, LB 833, § 15; Laws 1994, LB 1066, § 18; Laws 1995, LB 369, § 4; Laws 1996, LB 847, § 13; Laws 2000, LB 1192, § 5; Laws 2005, LB 503, § 4; Laws 2012, LB782, § 24; Laws 2018, LB1005, § 13.

Cross References

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

24-704.01 Board; power to adjust contributions and benefits; overpayment of benefits; investigatory powers; subpoenas.

(1)(a) If the board determines that the retirement system has previously received contributions or distributed benefits which for any reason are not in accordance with the Judges Retirement Act, the board shall refund contributions, require additional contributions, adjust benefits, or require repayment of benefits paid. In the event of an overpayment of a benefit, the board may, in addition to other remedies, offset future benefit payments by the amount of the prior overpayment, together with regular interest thereon. In the event of an underpayment of a benefit, the board shall immediately make payment equal to the deficit amount plus regular interest.

(b) The board shall have the power, through the director of the Nebraska Public Employees Retirement Systems or the director's designee, to make a thorough investigation of any overpayment of a benefit, when in the judgment of the retirement system such investigation is necessary, including, but not limited to, circumstances in which benefit payments are made after the death of a member or beneficiary and the retirement system is not made aware of such member's or beneficiary's death. In connection with any such investigation, the board, through the director or the director's designee, shall have the power to compel the attendance of witnesses and the production of books, papers, records, and documents, whether in hardcopy, electronic form, or otherwise, and issue subpoenas for such purposes. Such subpoenas shall be served in the same manner and have the same effect as subpoenas from district courts.

(2) The board may adopt and promulgate rules and regulations implementing this section, which shall include, but not be limited to, the following: (a) The procedures for refunding contributions, adjusting future contributions or benefit payments, and requiring additional contributions or repayment of benefits; (b) the process for a member, member's beneficiary, employee, or employer to dispute an adjustment of contributions or benefits; and (c) notice provided to all affected persons. All notices shall be sent prior to an adjustment and shall describe the process for disputing an adjustment of contributions or benefits.

Source: Laws 1996, LB 1076, § 10; Laws 2004, LB 1097, § 12; Laws 2015, LB40, § 6; Laws 2018, LB1005, § 14.

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

(1) Except as provided in section 24-721, a judge may retire upon reaching the age of sixty-five years and upon making application to the board. Upon

retiring each such judge shall receive retirement annuities as provided in section 24-710.

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

(3) Payment of any benefit provided under the Judges Retirement Act shall not be deferred later than the required beginning date.

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

(5) The board shall make reasonable efforts to locate the member or the member's beneficiary and distribute benefits by the required beginning date. If the board is unable to make such a distribution, the benefit shall be distributed pursuant to the Uniform Disposition of Unclaimed Property Act and no amounts may be applied to increase the benefits any member would otherwise receive under the Judges Retirement Act.

Source: Laws 1955, c. 83, § 8, p. 248; Laws 1957, c. 78, § 2, p. 317; Laws 1957, c. 79, § 3, p. 322; Laws 1965, c. 115, § 3, p. 444; Laws 1972, LB 1032, § 123; Laws 1973, LB 353, § 1; Laws 1984, LB 750, § 2; Laws 1986, LB 311, § 11; Laws 1987, LB 296, § 2; Laws 1989, LB 506, § 6; Laws 1994, LB 833, § 21; Laws 1997, LB 624, § 13; Laws 2003, LB 320, § 2; Laws 2003, LB 451, § 16; Laws 2004, LB 1097, § 14; Laws 2008, LB1147, § 5; Laws 2017, LB415, § 19; Laws 2020, LB1054, § 6.

Cross References

Uniform Disposition of Unclaimed Property Act, see section 69-1329.

24-710 Judges; retirement annuity; amount; how computed; cost-of-living adjustment.

(1) The retirement annuity of a judge who is an original member, who has not made the election provided for in section 24-710.01, and who retires under section 24-708 or 24-709 shall be computed as follows: Each such judge shall

be entitled to receive an annuity, each monthly payment of which shall be in an amount equal to three and one-third percent of his or her final average compensation as such judge, multiplied by the number of his or her years of creditable service. The amount stated in this section shall be supplemental to any benefits received by such judge under the Nebraska and federal old age and survivors' insurance acts at the date of retirement, but the monthly combined benefits received thereunder and by the Judges Retirement Act shall not exceed sixty-five percent of the final average compensation such judge was receiving when he or she last served as such judge. The amount of retirement annuity of a judge who retires under section 24-708 or 24-709 shall not be less than twenty-five dollars per month if he or she has four years or more of service credit.

(2) The retirement annuity of a judge who is a future member and who retires after July 1, 1986, under section 24-708 or 24-709 shall be computed as follows: Each such judge shall be entitled to receive an annuity, each monthly payment of which shall be in an amount equal to three and one-half percent of his or her final average compensation as such judge, multiplied by the number of his or her years of creditable service, except that prior to an actuarial factor adjustment for purposes of calculating an optional form of annuity benefits under subsection (3) of this section, the monthly benefits received under this subsection shall not exceed seventy percent of the final average compensation such judge was receiving when he or she last served as such judge.

(3) Except as provided in section 42-1107, any member may, when filing an application as provided by the retirement system, elect to receive, in lieu of the normal form annuity benefits to which the member or his or her beneficiary may otherwise be entitled under the Judges Retirement Act, an optional form of annuity benefits which the board may by rules and regulations provide, the value of which, determined by accepted actuarial methods and on the basis of actuarial assumptions recommended by the actuary, approved by the board, and kept on file in the office of the director, is equal to the value of the benefit replaced. The board may (a) adopt and promulgate appropriate rules and regulations to establish joint and survivorship annuities, with and without reduction on the death of the first annuitant, and such other forms of annuities as may in its judgment be appropriate and establishing benefits as provided in sections 24-707 and 24-707.01, (b) prescribe appropriate forms for making the election by the members, and (c) provide for the necessary actuarial services to make the required valuations.

(4) A one-time cost-of-living adjustment shall be made for each retired judge and each surviving beneficiary who is receiving a retirement annuity as provided for in this section. The annuity shall be adjusted by the increase in the cost of living or wage levels between the effective date of retirement and June 30, 1992, except that such increases shall not exceed three percent per year of retirement and the total increase shall not exceed two hundred fifty dollars per month.

Source: Laws 1955, c. 83, § 10, p. 249; Laws 1957, c. 79, § 4, p. 323; Laws 1959, c. 95, § 4, p. 413; Laws 1965, c. 116, § 3, p. 448; Laws 1965, c. 117, § 1, p. 489; Laws 1969, c. 178, § 4, p. 766; Laws 1973, LB 478, § 2; Laws 1974, LB 740, § 1; Laws 1975, LB 49, § 1; Laws 1977, LB 467, § 2; Laws 1977, LB 344, § 5; Laws 1981, LB 459, § 4; Laws 1981, LB 462, § 4; Laws 1986, LB 92, § 5; Laws 1986, LB 311, § 13; Laws 1989, LB 506, § 7; Laws

1991, LB 549, § 18; Laws 1992, LB 672, § 32; Laws 1992, LB 682, § 3; Laws 1994, LB 833, § 22; Laws 1996, LB 1273, § 21; Laws 1997, LB 624, § 15; Laws 2004, LB 1097, § 15; Laws 2011, LB509, § 11; Laws 2018, LB1005, § 15; Laws 2021, LB17, § 3.

24-710.01 Judges; alternative contribution rate and retirement benefit; election; notice.

Any original member, as defined in subdivision (18) of section 24-701, who has not previously retired, may elect to make contributions and receive benefits pursuant to subsection (2) of section 24-703 and subsection (2) of section 24-710, instead of those provided by subsection (1) of section 24-703 and subsection (1) of section 24-710. Such election shall be by written notice delivered to the board not later than November 1, 1981. Such member shall thereafter be considered a future member.

Source: Laws 1977, LB 344, § 1; Laws 1981, LB 459, § 5; Laws 1986, LB 92, § 6; Laws 2016, LB790, § 3; Laws 2017, LB415, § 20.

24-710.04 Reemployment; military service; credit; effect.

(1) Any judge who returns to service as a judge for the State of Nebraska pursuant to 38 U.S.C. 4301 et seq., shall be treated as not having incurred a break in service by reason of the judge's period of military service. Such military service shall be credited for purposes of determining the nonforfeitability of the member's accrued benefits and the accrual of benefits under the plan.

(2) The state shall be liable for funding any obligation of the plan to provide benefits based upon such period of military service. To satisfy the liability, the State Court Administrator shall pay to the retirement system an amount equal to:

(a) The sum of the judge's contributions that would have been paid during such period of military service; and

(b) Any actuarial costs necessary to fund the obligation of the plan to provide benefits based upon such period of military service. For the purposes of determining the amount of such liability and obligation of the plan, earnings and forfeitures, gains and losses, regular interest, or interest credits that would have accrued on the judge's contributions that are paid by the State Court Administrator pursuant to this section shall not be included.

(3) The amount required in subsection (2) of this section shall be paid to the retirement system as soon as reasonably practicable following the date the judge returns to service as a judge for the State of Nebraska, but must be paid within eighteen months of the date the board notifies the State Court Administrator of the amount due. If the State Court Administrator fails to pay the required amount within such eighteen-month period, then the State Court Administrator is also responsible for any actuarial costs and interest on actuarial costs that accrue from eighteen months after the date the State Court Administrator is notified by the board until the date the amount is paid.

(4) The board may adopt and promulgate rules and regulations to carry out this section, including, but not limited to, rules and regulations on:

(a) How and when the judge and State Court Administrator must notify the retirement system of a period of military service;

(b) The acceptable methods of payment;

(c) Determining the service and compensation upon which the contributions must be made;

(d) Accelerating the payment from the State Court Administrator due to unforeseen circumstances that occur before payment is made pursuant to this section, including, but not limited to, the judge's termination or retirement or the court's reorganization, consolidation, or merger; and

(e) The documentation required to substantiate that the judge returned to service as a judge for the State of Nebraska pursuant to 38 U.S.C. 4301 et seq.

(5) This section only applies to military service that falls within the definition of uniformed service under 38 U.S.C. 4301 et seq. Military service does not include service provided pursuant to sections 55-101 to 55-181.

Source: Laws 1996, LB 847, § 14; Laws 2017, LB415, § 21.

24-710.05 Direct rollover; terms, defined; distributee; powers; board; powers.

(1) For purposes of this section and section 24-710.06:

(a) Direct rollover means a payment by the retirement system to the eligible retirement plan or plans specified by the distributee;

(b) Distributee means the member, the member's surviving spouse, or the member's former spouse who is an alternate payee under a qualified domestic relations order as defined in section 414(p) of the Internal Revenue Code;

(c) Eligible retirement plan means (i) an individual retirement account described in section 408(a) of the Internal Revenue Code, (ii) an individual retirement annuity described in section 408(b) of the code, except for an endowment contract, (iii) a qualified plan described in section 401(a) of the code, (iv) an annuity plan described in section 403(a) or 403(b) of the code, (v) except for purposes of section 24-710.06, an individual retirement plan described in section 408A of the code, and (vi) a plan described in section 457(b) of the code and maintained by a governmental employer. For eligible rollover distributions to a surviving spouse, an eligible retirement plan means subdivisions (1)(c)(i) through (vi) of this section; and

(d) Eligible rollover distribution means any distribution to a distributee of all or any portion of the balance to the credit of the distributee in the plan, except such term shall not include any distribution which is one of a series of substantially equal periodic payments, not less frequently than annually, made for the life of the distributee or joint lives of the distributee and the distributee's beneficiary or for the specified period of ten years or more and shall not include any distribution to the extent such distribution is required under section 401(a)(9) of the Internal Revenue Code.

(2) For distributions made to a distributee on or after January 1, 1993, a distributee may elect to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee.

(3) A member's surviving spouse or former spouse who is an alternate payee under a qualified domestic relations order and, on or after July 1, 2010, any designated beneficiary of a member who is not a surviving spouse or former spouse who is entitled to receive an eligible rollover distribution from the retirement system may, in accordance with such rules, regulations, and limitations as may be established by the board, elect to have such distribution made

in the form of a direct transfer to a retirement plan eligible to receive such transfer under the provisions of the Internal Revenue Code.

(4) An eligible rollover distribution on behalf of a designated beneficiary of a member who is not a surviving spouse or former spouse of the member may be transferred to an individual retirement account or annuity described in section 408(a) or section 408(b) of the Internal Revenue Code that is established for the purpose of receiving the distribution on behalf of the designated beneficiary and that will be treated as an inherited individual retirement account or individual retirement annuity described in section 408(d)(3)(C) of the Internal Revenue Code.

(5) The board may adopt and promulgate rules and regulations for direct rollover procedures which are consistent with section 401(a)(31) of the Internal Revenue Code and which include, but are not limited to, the form and time of direct rollover distributions.

Source: Laws 1996, LB 847, § 15; Laws 2002, LB 407, § 14; Laws 2012, LB916, § 17; Laws 2018, LB1005, § 16.

24-710.06 Retirement system; accept payments and rollovers; limitations; board; powers.

(1) The retirement system may accept cash rollover contributions from a member who is making payment pursuant to section 24-706 if the contributions do not exceed the amount of payment required for the service credits purchased by the member pursuant to such section and the contributions represent (a) all or any portion of the balance of the member's interest in a qualified plan under section 401(a) of the Internal Revenue Code or (b) the interest of the member from an individual retirement account or an individual retirement annuity, the entire amount of which is attributable to a qualified total distribution, as defined in the Internal Revenue Code, from a qualified plan under section 401(a) of the code and qualified as a tax-free rollover amount. The member's interest under subdivision (a) or (b) of this subsection must be transferred to the retirement system within sixty days from the date of the distribution from the qualified plan, individual retirement account, or individual retirement annuity.

(2) Cash transferred to the retirement system as a rollover contribution shall be deposited as other payments for service credits.

(3) Under the same conditions as provided in subsection (1) of this section, the retirement system may accept eligible rollover distributions from (a) an annuity contract described in section 403(b) of the Internal Revenue Code, (b) a plan described in section 457(b) of the code which is maintained by a state, a political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state, or (c) the portion of a distribution from an individual retirement account or annuity described in section 408(a) or 408(b) of the code that is eligible to be rolled over and would otherwise be includable in gross income. Amounts accepted pursuant to this subsection shall be deposited as all other payments under this section.

(4) The retirement system may accept direct rollover distributions made from a qualified plan pursuant to section 401(a)(31) of the Internal Revenue Code. The direct rollover distribution shall be deposited as all other payments under this section.

(5) The board may adopt and promulgate rules and regulations defining procedures for acceptance of rollovers which are consistent with sections 401(a)(31) and 402 of the Internal Revenue Code.

Source: Laws 1996, LB 847, § 16; Laws 2002, LB 407, § 15; Laws 2018, LB1005, § 17.

24-710.15 Judges who became members on and after July 1, 2015; cost-of-living payment.

(1) Beginning July 1, 2015, for judges who become members on and after July 1, 2015, if the annual valuation made by the actuary, as approved by the board, indicates that the system is fully funded and has sufficient actuarial surplus to provide for a supplemental lump-sum cost-of-living payment, the board may, in its discretion, elect to pay a maximum one and one-half percent supplemental lump-sum cost-of-living payment to each retired member or beneficiary based on the retired member's or beneficiary's total monthly benefit through June 30 of the year for which the supplemental lump-sum cost-of-living payment is being calculated. The supplemental lump-sum cost-of-living payment shall be paid within sixty days after the board's decision. In no event shall the board declare a supplemental lump-sum cost-of-living payment if such payment would cause the plan to be less than fully funded.

(2) For purposes of this section, fully funded means the unfunded actuarial accrued liability, based on the lesser of the actuarial value and the market value, under the entry age actuarial cost method is less than zero on the most recent actuarial valuation date.

(3) Any decision or determination by the board to declare or not declare a cost-of-living payment or as to whether the annual valuation indicates a sufficient actuarial surplus to provide for a cost-of-living payment shall be made in the sole, absolute, and final discretion of the board and shall not be subject to challenge by any member or beneficiary. In no event shall the Legislature be constrained or limited in amending the system notwithstanding the effect of any such change upon the actuarial surplus of the system and the ability of the board to declare future cost-of-living payments.

Source: Laws 2015, LB468, § 6; Laws 2017, LB415, § 22.

(c) RETIRED JUDGES

24-729 Judges; retired; assignment; when; retired judge, defined.

The Supreme Court of Nebraska is empowered, with the consent of the retired judge, (1) to assign judges of the Supreme Court, Court of Appeals, and district court who are now retired or who may be retired hereafter to (a) sit in any court in the state to relieve congested trial dockets or to prevent the trial docket of such court from becoming congested or (b) sit for the judge of any court who may be incapacitated or absent for any reason whatsoever and (2) to assign any judge of the separate juvenile court, county court, or Nebraska Workers' Compensation Court who is now retired or who may be retired hereafter to (a) sit in any court having the same jurisdiction as one in which any such judge may have previously served to relieve congested trial dockets or to prevent the trial docket of any such court from becoming congested or (b) sit for the judge of any such court who may be incapacitated or absent for any

reason. Any judge who has retired on account of disability may not be so assigned.

For purposes of sections 24-729 to 24-733, retired judge shall include a judge who, before, on, or after March 31, 1993, has retired upon the attainment of age fifty-five and has elected to defer the commencement of his or her retirement annuity to a later date.

Source: Laws 1974, LB 832, § 1; Laws 1976, LB 296, § 1; Laws 1979, LB 240, § 1; Laws 1991, LB 732, § 39; Laws 1993, LB 363, § 2; Laws 2018, LB193, § 5.

(d) GENERAL POWERS

24-734 Judges; powers; enumerated.

(1) A judge of any court established under the laws of the State of Nebraska shall, in any case in which that judge is authorized to act, have power to exercise the powers conferred upon the judge and court, and specifically to:

(a) Upon the stipulation of the parties to an action, hear and determine any matter, including the trial of an equity case or case at law in which a jury has been waived;

(b) Hear and determine pretrial and posttrial matters in civil cases not involving testimony of witnesses by oral examination;

(c) With the consent of the defendant, receive pleas of guilty and pass sentences in criminal cases;

(d) With the consent of the defendant, hear and determine pretrial and posttrial matters in criminal cases;

(e) Hear and determine cases brought by petition in error or appeal not involving testimony of witnesses by oral examination;

(f) Hear and determine any matter in juvenile cases with the consent of the guardian ad litem or attorney for the minor, the other parties to the proceedings, and the attorneys for those parties, if any; and

(g) Without notice, make any order and perform any act which may lawfully be made or performed by him or her ex parte in any action or proceeding which is on file in any district of this state.

(2) A judgment or order made pursuant to this section shall be deemed effective when the judgment is entered in accordance with the provisions of subsection (3) of section 25-1301.

(3) The judge, in his or her discretion, may in any proceeding authorized by the provisions of this section not involving testimony of witnesses by oral examination, use telephonic, videoconferencing, or similar methods to conduct such proceedings. The court may require the parties to make reimbursement for any charges incurred.

(4) In any criminal case, with the consent of the parties, a judge may permit any witness who is to be examined by oral examination to appear by telephonic, videoconferencing, or similar methods, with any costs thereof to be taxed as costs.

(5)(a) Unless an objection under subdivision (5)(c) of this section is sustained, in any civil case, a judge shall, for good cause shown, permit any witness who

is to be examined by oral examination to appear by telephonic, videoconferencing, or similar methods.

(b) Unless the court orders otherwise for good cause shown, all costs of testimony taken by telephone, videoconferencing, or similar methods shall be provided and paid by the requesting party and may not be charged to any other party. A court may find that there is good cause to allow the testimony of a witness to be taken by telephonic, videoconferencing or similar methods if:

(i) The witness is otherwise unavailable to appear because of age, infirmity, or illness;

(ii) The personal appearance of the witness cannot be secured by subpoena or other reasonable means;

(iii) A personal appearance would be an undue burden or expense to a party or witness; or

(iv) There are any other circumstances that constitute good cause for allowing the testimony of the witness to be taken by telephonic, videoconferencing, or similar methods.

(c) A party may object to examination by telephonic, videoconferencing, or similar methods under subdivision (5)(a) of this section on grounds of unreliability or unfairness. The objecting party has the burden of proving unreliability or unfairness by a preponderance of the evidence.

(d) Nothing in this section shall prohibit an award of expenses, including attorney fees, pursuant to Neb. Ct. R. of Discovery 6-337.

(6) The enumeration of the powers in subsections (1), (2), (3), (4), and (5) of this section shall not be construed to deny the right of a party to trial by jury in the county in which the action was first filed if such right otherwise exists.

(7) Nothing in this section shall be construed to exempt proceedings under this section from the provisions of the Guidelines for Use by Nebraska Courts in Determining When and Under What Conditions a Hearing Before Such Court May Be Closed in Whole or in Part to the Public, adopted by the Supreme Court of the State of Nebraska September 8, 1980, and any amendments to those provisions.

Source: Laws 1879, § 39, p. 90; Laws 1913, c. 209, § 1, p. 635; R.S.1913, § 1176; Laws 1921, c. 177, § 1, p. 676; C.S.1922, § 1099; C.S. 1929, § 27-317; R.S.1943, § 24-317; Laws 1953, c. 64, § 1, p. 208; Laws 1965, c. 111, § 1, p. 435; R.S.1943, (1979), § 24-317; Laws 1983, LB 272, § 1; Laws 1999, LB 43, § 1; Laws 2013, LB103, § 1; Laws 2020, LB912, § 10.

ARTICLE 8

SELECTION AND RETENTION OF JUDGES

(a) JUDICIAL NOMINATING COMMISSIONS

Section
24-803. Judicial nominating commission; members; term; appointments by Governor; elections by lawyers.

(a) JUDICIAL NOMINATING COMMISSIONS

24-803 Judicial nominating commission; members; term; appointments by Governor; elections by lawyers.

(1) Except as provided in subsection (3) of this section, as the term of a member of a judicial nominating commission initially appointed or selected expires, the term of office of each successor member shall be for a period of four years. The Governor shall appoint all successor members of each nominating commission who are judges of the Supreme Court and citizen members or alternate citizen members. The Governor shall appoint two alternate citizen members, not of the same political party, to each nominating commission. The term of office of an alternate citizen member of a commission shall be for a period of four years except that the initial appointments shall terminate on December 31, 1999. The lawyers residing in the judicial district or area of the state served by a judicial nominating commission shall select all successor and alternate lawyer members of such commission in the manner prescribed in section 24-806. The term of office of an alternate lawyer member of a commission shall be for a period of four years. No member of any nominating commission, including the Supreme Court member of any such commission, shall serve more than a total of eight consecutive years as a member of the commission, and if such member has served for more than six years as a member of the commission, he or she shall not be eligible for reelection or reappointment. Alternate lawyer and citizen members shall be selected to fill vacancies in their order of election or appointment.

(2) For purposes of this section and Article V, section 21, of the Constitution of Nebraska, a member of a judicial nominating commission shall be deemed to have served on such commission if he or she was a member of the commission at the time of the publication of the notice required by subsection (1) of section 24-810.

(3) Members of the judicial nominating commissions for the office of judge of the district court shall also serve as members of the judicial nominating commissions for the office of judge of the county court for counties located within the district court judicial districts served, except that members of the judicial nominating commissions for district judge and county judge in districts 1, 2, 3, 4, and 10 shall be appointed or selected separately to serve on such commissions.

Source: Laws 1963, c. 124, § 3, p. 472; Laws 1973, LB 110, § 2; Laws 1991, LB 251, § 2; Laws 1992, LB 1059, § 6; Laws 1995, LB 189, § 3; Laws 1995, LB 303, § 2; Laws 2019, LB339, § 1.

ARTICLE 10

COURTS, GENERAL PROVISIONS

Section

24-1003 Evidence; recording and preservation; court reporters; appointment; uniform salary schedules; expenses; payment.

The Supreme Court shall provide by rule for the recording and preservation of evidence in all cases in the district and separate juvenile courts and for the preparation of transcripts and bills of exceptions. Court reporters and other

persons employed to perform the duties required by such rules shall be appointed by the judge under whose direction they work. The Supreme Court shall prescribe uniform salary schedules for such employees, based on their experience and training and the methods used by them in recording and preserving evidence and preparing transcripts and bills of exceptions. Salaries and expenses of such employees shall be paid by the State of Nebraska from funds appropriated to the Supreme Court. Such employees shall be reimbursed for expenses as provided in sections 81-1174 to 81-1177.

Source: Laws 1974, LB 647, § 1; Laws 1981, LB 204, § 34; R.S.1943, (1985), § 24-342.02; Laws 2020, LB381, § 18.

24-1004 Records and exhibits; preservation; disposition.

The Supreme Court shall provide by rule for the preservation of all records and of all exhibits offered or received in evidence in the trial of any action. When the records of the district court do not show any unfinished matter pending in the action, a judge of the district court if satisfied they are no longer valuable for any purpose may, upon such notice as the judge may direct, order the destruction, return, or other disposition of such exhibits as the judge deems appropriate when approval is given by the State Records Administrator pursuant to the Records Management Act.

Source: Laws 1957, c. 75, § 1, p. 311; Laws 1969, c. 105, § 4, p. 480; Laws 1974, LB 647, § 3; R.S.1943, (1985), § 24-342.01; Laws 2020, LB1028, § 1.

Cross References

Records Management Act, see section 84-1220.

24-1005 Records; preservation duplicate; admissible in evidence; destruction of original record.

The clerk of any district court or of any other court of record may maintain any court record as a preservation duplicate in the manner provided in section 84-1208. The original record may be destroyed only with the approval of the State Records Administrator pursuant to the Records Management Act. The reproduction of the preservation duplicate shall be admissible as evidence in any court of record in the State of Nebraska.

Source: Laws 1967, c. 134, § 1, p. 419; Laws 1969, c. 105, § 2, p. 480; Laws 1971, LB 128, § 2; R.S.1943, (1985), § 24-337.02; Laws 2020, LB1028, § 2.

Cross References

Records Management Act, see section 84-1220.

ARTICLE 11

COURT OF APPEALS

Section
24-1103. Active or retired judges; assignment; expenses.
24-1105. Cases pending on September 6, 1991; assignment to Court of Appeals.
24-1106. Jurisdiction; direct review by Supreme Court; when; removal of case.

24-1103 Active or retired judges; assignment; expenses.

(1) The Chief Justice of the Supreme Court may call active judges of the district court to serve on the Court of Appeals in case of incapacity or absence for any reason whatsoever or temporary vacancy in the office of a judge of the Court of Appeals. Any active judge designated to serve on the Court of Appeals shall be reimbursed for expenses as provided in sections 81-1174 to 81-1177.

(2) The number of retired judges assigned to serve pursuant to subdivision (1) of section 24-729 may not at any one time exceed three, and no panel of the Court of Appeals may contain a majority of retired judges so assigned. Payments to a retired judge shall be made in the manner prescribed in sections 24-730 to 24-733.

Source: Laws 1991, LB 732, § 3; Laws 2020, LB381, § 19.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 12

JUDICIAL RESOURCES COMMISSION

Section
24-1203. Judicial Resources Commission; expenses.
24-1204. Existence of judicial vacancy; determination.

24-1203 Judicial Resources Commission; expenses.

Members of the Judicial Resources Commission shall be reimbursed for expenses as provided in sections 81-1174 to 81-1177.

Source: Laws 1992, LB 1059, § 9; R.S.Supp.,1994, § 24-809.03; Laws 2020, LB381, § 20.

24-1204 Existence of judicial vacancy; determination.

In the event of the death, retirement, resignation, or removal of a district, county, or separate juvenile judge or the failure of a district, county, or separate juvenile judge to be retained in office or upon the request of a majority of the members of the Judicial Resources Commission, the commission shall, after holding a public hearing, determine whether a judicial vacancy exists in the affected district or any other judicial district or whether a new judgeship or change in number of judicial districts or boundaries is appropriate. If the commission determines a vacancy exists in a district or county court district, the commission may also make a recommendation to the Supreme Court of the site for a primary office location. The public hearing may include virtual conferencing or, if the judicial workload statistics compiled pursuant to section 24-1007 indicate a need for a number of judges equal to or greater than the number currently authorized by law, the commission may conduct a hearing by telephone conference. If a telephone conference is used, a recording shall be made of the telephone conference and maintained by the commission for at least one year, and the commission shall only determine whether a judicial vacancy exists in the affected district and make no other determinations.

Source: Laws 1995, LB 189, § 6; Laws 1997, LB 229, § 4; Laws 1999, LB 47, § 1; Laws 2021, LB83, § 2.

CHAPTER 25
COURTS; CIVIL PROCEDURE

Article.
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3. Parties. 25-307, 25-309.
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ARTICLE 2

COMMENCEMENT AND LIMITATION OF ACTIONS

25-213 Tolling of statutes of limitation; when.

Except as provided in sections 76-288 to 76-298, if a person entitled to bring any action mentioned in Chapter 25, the Political Subdivisions Tort Claims Act, the Nebraska Hospital-Medical Liability Act, the State Contract Claims Act, the State Tort Claims Act, the State Miscellaneous Claims Act, or the Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act, except for a penalty or forfeiture, for the recovery of the title or possession of lands, tenements, or hereditaments, or for the foreclosure of mortgages thereon, is, at the time the cause of action accrued, within the age of twenty years, a person with a mental disorder, or imprisoned, every such person shall be entitled to bring such action within the respective times limited by Chapter 25 after such disability is removed. For the recovery of the title or possession of lands, tenements, or hereditaments or for the foreclosure of mortgages thereon, every such person shall be entitled to bring such action within twenty years from the accrual thereof but in no case longer than ten years after the termination of such disability. Absence from the state, death, or other disability shall not operate to extend the period within which actions in rem are to be commenced by and against a nonresident or his or her representative.

Source: R.S.1867, Code § 17, p. 396; R.S.1913, § 7576; C.S.1922, § 8519; Laws 1925, c. 64, § 2, p. 221; C.S.1929, § 20-213; R.S.1943,

§ 25-213; Laws 1947, c. 243, § 12, p. 766; Laws 1972, LB 1049, § 1; Laws 1974, LB 949, § 2; Laws 1984, LB 692, § 2; Laws 1986, LB 1177, § 5; Laws 1988, LB 864, § 5; Laws 2007, LB339, § 1; Laws 2019, LB680, § 10.

Cross References

Nebraska Hospital-Medical Liability Act, see section 44-2855.
Political Subdivisions Tort Claims Act, see section 13-901.
State Contract Claims Act, see section 81-8,302.
State Miscellaneous Claims Act, see section 81-8,294.
State Tort Claims Act, see section 81-8,235.
Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act, see section 25-3501.

25-217 Action; commencement; defendant not properly served; effect.

(1) An action is commenced on the day the complaint is filed with the court.

(2) Each defendant in the action must be properly served within one hundred eighty days of the commencement of the action. If the action is stayed or enjoined during the one-hundred-eighty-day period, then any defendant who was not properly served before the action was stayed or enjoined must be properly served within ninety days after the stay or injunction is terminated or modified so as to allow the action to proceed.

(3) If any defendant is not properly served within the time specified by subsection (2) of this section then the action against that defendant is dismissed by operation of law. The dismissal is without prejudice and becomes effective on the day after the time for service expires.

Source: R.S.1867, Code § 19, p. 396; R.S.1913, § 7580; C.S.1922, § 8523; C.S.1929, § 20-217; R.S.1943, § 25-217; Laws 1979, LB 510, § 1; Laws 1986, LB 529, § 21; Laws 2002, LB 876, § 5; Laws 2019, LB308, § 1.

Cross References

For commencement of action, see section 25-501.

25-223 Action on breach of warranty on improvements to real property.

(1) Any action to recover damages based on any alleged breach of warranty on improvements to real property or based on any alleged deficiency in the design, planning, supervision, or observation of construction, or construction of an improvement to real property, except improvements to real property subject to the Nebraska Condominium Act, shall be commenced within four years after any alleged act or omission constituting such breach of warranty or deficiency. If such cause of action is not discovered and could not be reasonably discovered within such four-year period, or within one year preceding the expiration of such four-year period, then the cause of action may be commenced within two years from the date of such discovery or from the date of discovery of facts which would reasonably lead to such discovery, whichever is earlier. In no event may any action be commenced to recover damages for an alleged breach of warranty on improvements to real property or deficiency in the design, planning, supervision, or observation of construction, or construction of an improvement to real property more than ten years beyond the time of the act giving rise to the cause of action.

(2)(a) Any action to recover damages based on any alleged breach of warranty on improvements to real property or based on any alleged deficiency in the design, planning, supervision, or observation of construction, or construction of

an improvement to real property that is a condominium or part of a condominium project subject to the Nebraska Condominium Act shall be commenced within two years after any alleged act or omission constituting such breach of warranty or deficiency. If such cause of action is not discovered and could not be reasonably discovered within such two-year period, or within one year preceding the expiration of such two-year period, then the cause of action may be commenced within one year from the date of such discovery or from the date of discovery of facts which would reasonably lead to such discovery, whichever is earlier. In no event may any action be commenced to recover damages for an alleged breach of warranty on improvements to real property or deficiency in the design, planning, supervision, or observation of construction, or construction of an improvement to real property more than five years beyond the time of the act giving rise to the cause of action.

(b) Any action brought under this section shall also comply with section 76-890.

Source: Laws 1976, LB 495, § 1; Laws 2020, LB808, § 40.

Cross References

Nebraska Condominium Act, see section 76-825.

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

(1) Notwithstanding any other provision of law:

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

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

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

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

25-229 Action against real estate licensee; when.

(1) For purposes of this section, real estate licensee means a broker or salesperson who is licensed under the Nebraska Real Estate License Act.

(2) Any action to recover damages based on any act or omission of a real estate licensee relating to real estate brokerage services shall be commenced within two years after whichever of the following occurs first with respect to such brokerage services: (a) A transaction is completed or closed; (b) an agency agreement is terminated; or (c) an unconsummated transaction is terminated or expires. Such two-year period shall not be reduced by agreement and shall not apply to disciplinary actions initiated by the State Real Estate Commission.

(3) If the cause of action described in subsection (2) of this section is not discovered and could not be reasonably discovered within the two-year period described in such subsection, then the action may be commenced within one year from the date of such discovery or from the date of discovery of facts

which would reasonably lead to such discovery, whichever is earlier, except that in no event may any such action be commenced more than ten years after the date of rendering or failing to render the brokerage services which provide the basis for the cause of action.

Source: Laws 2017, LB257, § 1.

Cross References

Nebraska Real Estate License Act, see section 81-885.

ARTICLE 3
PARTIES

Section
25-307. Suit by infant, guardian, or next friend; exception; substitution by court.
25-309. Suit against infant; guardian for suit; when appointed; exception.

25-307 Suit by infant, guardian, or next friend; exception; substitution by court.

Except as provided by the Nebraska Probate Code, section 43-104.05, and sections 43-4801 to 43-4812, the action of an infant shall be commenced, maintained, and prosecuted by his or her guardian or next friend. Such actions may be dismissed with or without prejudice by the guardian or next friend only with approval of the court. When the action is commenced by his or her next friend, the court has power to dismiss it, if it is not for the benefit of the infant, or to substitute the guardian of the infant, or any person, as the next friend. Any action taken pursuant to this section shall be binding upon the infant.

Source: R.S.1867, Code § 36, p. 398; R.S.1913, § 7588; C.S.1922, § 8531; C.S.1929, § 20-307; R.S.1943, § 25-307; Laws 1975, LB 480, § 1; Laws 1975, LB 481, § 10; Laws 2006, LB 1115, § 10; Laws 2018, LB714, § 13; Laws 2022, LB741, § 1.
Effective date July 21, 2022.

Cross References

Nebraska Probate Code, see section 30-2201.

25-309 Suit against infant; guardian for suit; when appointed; exception.

Except as provided by the Nebraska Probate Code and section 43-104.05, the defense of an infant must be by a guardian for the suit, who may be appointed by the court in which the action is prosecuted, or by a judge thereof, or by a county judge. The appointment cannot be made until after service of the summons in the action as directed by this code.

Source: R.S.1867, Code § 38, p. 399; R.S.1913, § 7590; C.S.1922, § 8533; C.S.1929, § 20-309; R.S.1943, § 25-309; Laws 1975, LB 481, § 12; Laws 2022, LB741, § 2.
Effective date July 21, 2022.

Cross References

Nebraska Probate Code, see section 30-2201.

ARTICLE 4
COMMENCEMENT OF ACTIONS; VENUE

(a) GENERAL PROVISIONS

(a) GENERAL PROVISIONS

25-410 Transfer of actions; clerk of transferor court; duties; clerk of transferee court; duties; certain support orders; how treated.

(1) For the convenience of the parties and witnesses or in the interest of justice, a district court of any county, the transferor court, may transfer any civil action to the district court of any other county in this state, the transferee court. The transfer may occur before or after the entry of judgment, and there shall be no additional fees required for the transfer.

(2) To transfer a civil action, the transferor court shall order transfer of the action to the specific transferee court requested. The clerk of the transferor court shall file with the transferee court within ten days after the entry of the transfer order a certification of the case file and costs. The clerk of the transferor court shall certify any judgment and payment records of such judgments in the action maintained by the transferor court.

(3) Upon the filing of such documents by the clerk of the transferor court, the clerk of the transferee court shall enter any judgment in the action on the judgment index of the transferee court. The judgment, once filed and entered on the judgment index of the transferee court, shall be a lien on the property of the debtor in any county in which such judgment is filed. Transfer of the action shall not change the obligations of the parties under any judgment entered in the action regardless of the status of the transfer.

(4) If the transferred civil action involves a support order that has payment records maintained by the Title IV-D Division as defined in section 43-3341, the transferor court order shall notify the division to make the necessary changes in the support payment records. Support payments shall commence in the transferee court on the first day of the month following the order of transfer, payments made prior to such date shall be considered payment on a judgment entered by the transferor court, and payments made on and after such date shall be considered payment on a judgment entered by the transferee court.

Source: R.S.1867, Code § 61, p. 402; G.S.1873, c. 57, § 61, p. 532; R.S.1913, § 7621; C.S.1922, § 8564; C.S.1929, § 20-410; R.S.1943, § 25-410; Laws 1971, LB 576, § 8; Laws 2010, LB712, § 1; Laws 2018, LB193, § 6.

Cross References

For disqualification of judge, see sections 24-723.01, 24-739, and 24-740.

25-412 Change of venue in local actions involving real estate; transfer and entry of judgment.

When an action affecting the title or possession of real estate has been brought in or transferred to any court of a county, other than the county in which the real estate or some portion of it is situated, the clerk of such court must, after final judgment therein, certify such judgment under his or her seal of office, and transmit the same to the corresponding court of the county in which the real estate affected by the action is situated. The clerk receiving such copy must file and record such judgment in the records of the court, briefly designating it as a judgment transferred from ..... court (naming the proper court).

Source: G.S.1873, c. 57, § 4, p. 712; R.S.1913, § 7623; C.S.1922, § 8566; C.S.1929, § 20-412; R.S.1943, § 25-412; Laws 2018, LB193, § 7.

25-412.04 Criminal and civil trials; agreements for change of venue; jury; selection.

The jury for any case to be tried pursuant to an agreement entered into under section 25-412.03 shall be selected from the county in which the case was first filed. The jury shall be selected in the manner prescribed in the Jury Selection Act. The summons shall direct attendance before the court by which the case is to be tried and the return thereof shall be made to the same court.

Source: Laws 1975, LB 97, § 4; R.S.1943, (1985), § 24-904; Laws 2020, LB387, § 36.

ARTICLE 5

COMMENCEMENT OF ACTIONS; PROCESS

(b) SERVICE AND RETURN OF SUMMONS

(b) SERVICE AND RETURN OF SUMMONS

25-511 Service on employee of the state.

Any employee of the state, as defined in section 81-8,210, sued in an individual capacity for an act or omission occurring in connection with duties performed on the state's behalf, regardless of whether the employee is also sued in an official capacity, must be served by serving the employee under section 25-508.01 and also by serving the state under section 25-510.02.

Source: Laws 2017, LB204, § 2.

25-516.01 Service; voluntary appearance; defenses.

(1) The voluntary appearance of the party is equivalent to service.

(2) A defense of lack of personal jurisdiction, insufficiency of process, or insufficiency of service of process may be asserted only under the procedure provided in the pleading rules adopted by the Supreme Court. If any of those

defenses are asserted either by motion or in a responsive pleading and the court overrules the defense, an objection that the court erred in its ruling will be waived and not preserved for appellate review if the party asserting the defense either (a) thereafter files a demand for affirmative relief by way of counterclaim, cross-claim, or third-party claim or (b) fails to dismiss a demand for such affirmative relief that was previously filed. If any of those defenses are asserted either by motion or in a responsive pleading and the court overrules the defense, an objection that the court erred in its ruling on any issue, except an objection to the court's ruling on personal jurisdiction, will be waived and not preserved for appellate review if the party asserting the defense thereafter participates in proceedings on any issue other than those defenses.

(3) The filing of a suggestion of bankruptcy is not an appearance and does not waive the defense of lack of personal jurisdiction, insufficiency of process, or insufficiency of service of process.

Source: Laws 1983, LB 447, § 32; Laws 2002, LB 876, § 15; Laws 2019, LB308, § 2.

(c) CONSTRUCTIVE SERVICE

25-520.01 Service by publication; mailing of published notice; requirements; waiver; when mailing not required.

(1) Except as provided in subsection (3) of this section, in any action or proceeding of any kind or nature, as defined in section 25-520.02, where a notice by publication is given as authorized by law, a party instituting or maintaining the action or proceeding with respect to notice or such party's attorney shall within five days after the first publication of notice send by United States mail a copy of such published notice or, if applicable, the notice described in subsection (4) of this section, to each and every party appearing to have a direct legal interest in such action or proceeding whose name and post office address are known to such party or attorney.

(2) Proof by affidavit of the mailing of such notice shall be made by the party or such party's attorney and shall be filed with the officer with whom filings are required to be made in such action or proceeding within ten days after mailing of such notice. Such affidavit of mailing of notice shall further be required to state that such party and such party's attorney, after diligent investigation and inquiry, were unable to ascertain and do not know the post office address of any other party appearing to have a direct legal interest in such action or proceeding other than those to whom notice has been mailed in writing.

(3) It shall not be necessary to serve the notice prescribed by this section upon any competent person, fiduciary, partnership, or corporation, who has waived notice in writing, has entered a voluntary appearance, or has been personally served with summons or notice in such proceeding.

(4) In the case of a lien for a special assessment imposed by any city or village, in lieu of sending a copy of published notice, the city or village may instead send by United States mail, to each and every party appearing to have a direct legal interest in such action or proceeding whose name and post office address are known to the city or village or its attorney, a notice containing the amount owed, the date due, and the date the board of equalization meets in case of an appeal.

Source: Laws 1957, c. 80, § 1, p. 325; Laws 1959, c. 97, § 1, p. 416; Laws 2021, LB58, § 1.

(e) LIS PENDENS

25-533 Attachment and execution issued from another county; sheriff file notice.

No levy of attachment or execution on real estate issued from any other county shall be notice to a subsequent vendee or encumbrancer in good faith, unless the sheriff has filed a notice on the record that the land, describing it, has been so attached or levied on, the cause in which it was so attached, and when it was done.

Source: Laws 1895, c. 73, § 2, p. 314; R.S.1913, § 7653; C.S.1922, § 8597; C.S.1929, § 20-533; R.S.1943, § 25-533; Laws 2018, LB193, § 8.

ARTICLE 6

DISMISSAL OF ACTIONS

Section
25-602. Dismissal without prejudice; by plaintiff in vacation; exceptions; payment of costs.

25-602 Dismissal without prejudice; by plaintiff in vacation; exceptions; payment of costs.

The plaintiff in any case pending in the district court or Supreme Court of the state, when no counterclaim or setoff has been filed by the opposite party, has the right in the vacation of any of such courts to dismiss such action without prejudice, upon payment of costs, which dismissal shall be, by the clerk of any of such courts, entered upon the record and take effect from and after the date thereof.

Source: Laws 1867, § 1, p. 51; R.S.1913, § 7655; C.S.1922, § 8599; C.S.1929, § 20-602; R.S.1943, § 25-602; Laws 2018, LB193, § 9.

ARTICLE 9

MISCELLANEOUS PROCEEDINGS; MOTIONS AND ORDERS

(a) OFFER TO COMPROMISE

Section
25-901. Offer of judgment before trial; procedure; effect.

(d) MOTIONS AND ORDERS

25-915. Orders out of court; record.

(a) OFFER TO COMPROMISE

25-901 Offer of judgment before trial; procedure; effect.

The defendant in an action for the recovery of money only may, at any time before the trial, serve upon the plaintiff or the plaintiff's attorney an offer in writing to allow judgment to be taken against the defendant for the sum specified therein. If the plaintiff accepts the offer and gives notice thereof to the defendant or the defendant's attorney, within five days after the offer was served, the offer and an affidavit that the notice of acceptance was delivered in the time limited may be filed by the plaintiff or the defendant may file the acceptance, with a copy of the offer verified by affidavit. In either case, the offer

and acceptance shall be entered upon the record, and judgment shall be rendered accordingly. If the notice of acceptance is not given in the period limited, the offer shall be deemed withdrawn and shall not be given in evidence or mentioned on the trial. If the plaintiff fails to obtain judgment for more than was offered by the defendant, the plaintiff shall pay the defendant's cost from the time of the offer.

Source: R.S.1867, Code § 565, p. 493; R.S.1913, § 7717; C.S.1922, § 8661; C.S.1929, § 20-901; R.S.1943, § 25-901; Laws 2018, LB193, § 10.

(d) MOTIONS AND ORDERS

25-915 Orders out of court; record.

Orders made out of court shall be forthwith entered by the clerk in the record of the court in the same manner as orders made in term.

Source: R.S.1867, Code § 579, p. 495; R.S.1913, § 7731; C.S.1922, § 8675; C.S.1929, § 20-915; R.S.1943, § 25-915; Laws 2018, LB193, § 11.

ARTICLE 10
PROVISIONAL REMEDIES

(a) ATTACHMENT AND GARNISHMENT

(e) REPLEVIN

(a) ATTACHMENT AND GARNISHMENT

25-1031.02 Garnishment; costs; fee.

(1) The party seeking garnishment shall advance the costs of transcript and filing the matter in the district court.

(2) The district court shall be entitled to the following fee in civil matters: For issuance of a writ of execution, restitution, garnishment, attachment, and examination in aid of execution, a fee of five dollars each.

Source: Laws 1955, c. 86, § 3, p. 259; Laws 1988, LB 1030, § 16; Laws 2018, LB193, § 12.

(e) REPLEVIN

25-1093.03 Affidavit; temporary order; notice; hearing; summons; service.

If filed at the commencement of suit, such affidavit and request for delivery and such temporary order containing the notice of hearing shall be served by the sheriff or other officer with the summons. If filed after the commencement of suit but before answer, they shall be served separately from the summons, but as soon after their filing and issuance as practicable. The summons shall be served within three days, excluding nonjudicial days, after the date of issuance.

Source: Laws 1973, LB 474, § 4; Laws 2021, LB355, § 2.

ARTICLE 11
TRIAL

(b) TRIAL BY JURY

(b) TRIAL BY JURY

25-1107.01 Jurors; permitted to take notes; use; destruction.

Jurors shall be permitted, but not required, to take notes. The notes may be used during the jury's deliberations and shall be treated as confidential between the juror making them and the other jurors. The notes shall not be preserved in any form. The trial judge shall ensure the confidentiality of the notes during the course of the trial and the jury's deliberations and shall instruct the bailiff to immediately mutilate and destroy such notes upon return of the verdict.

Source: Laws 2008, LB1014, § 71; Laws 2020, LB387, § 37.

25-1108 View of property or place by jury.

Whenever, in the opinion of the court, it is proper for the jury to have a view of property which is the subject of litigation, or of the place in which any material fact occurred, it may order them to be conducted in a body, under charge of the bailiff, to the place, which shall be shown to them by the bailiff, an individual appointed by the court for that purpose, or both. While the jury are thus absent, no person other than the bailiff or individual so appointed shall speak to them on any subject connected with the trial.

Source: R.S.1867, Code § 284, p. 442; R.S.1913, § 7847; C.S.1922, § 8791; C.S.1929, § 20-1108; R.S.1943, § 25-1108; Laws 2020, LB387, § 38.

(c) VERDICT

25-1121 Special verdicts; when allowed; procedure; filing; record.

In every action for the recovery of money only or specific real property, the jury, in their discretion, may render a general or special verdict. In all other cases the court may direct the jury to find a special verdict, in writing, upon all or any of the issues and in all cases may instruct them, if they render a general

verdict, to find upon particular questions of fact to be stated in writing, and may direct a written finding thereon. The special verdict or finding must be filed with the clerk and entered upon the record.

Source: R.S.1867, Code § 293, p. 443; R.S.1913, § 7860; C.S.1922, § 8804; C.S.1929, § 20-1121; R.S.1943, § 25-1121; Laws 2018, LB193, § 13.

(d) TRIAL BY COURT

25-1126 Jury trial; waiver.

The trial by jury may be waived by the parties in actions arising on contract and with assent of the court in other actions (1) by the consent of the party appearing, when the other party fails to appear at the trial by himself or herself or by attorney, (2) by written consent, in person or by attorney, filed with the clerk, and (3) by oral consent in open court entered upon the record.

Source: R.S.1867, Code § 296, p. 444; R.S.1913, § 7864; C.S.1922, § 8809; C.S.1929, § 20-1126; R.S.1943, § 25-1126; Laws 2018, LB193, § 14.

(e) TRIAL BY REFEREE

25-1129 Reference by consent; when allowed.

All or any of the issues in the action, whether of fact or law or both, may be referred to a referee upon the written consent of the parties or upon their oral consent in court entered upon the record.

Source: R.S.1867, Code § 298, p. 444; R.S.1913, § 7867; C.S.1922, § 8812; C.S.1929, § 20-1129; R.S.1943, § 25-1129; Laws 2008, LB1014, § 10; Laws 2018, LB193, § 15.

(f) EXCEPTIONS

25-1140.09 Bill of exceptions; preparation; court reporter; fees; procedure for preparation; taxation of cost.

On the application of the county attorney or any party to a suit in which a record of the proceedings has been made, upon receipt of the notice provided in section 29-2525, or upon the filing of a praecipe for a bill of exceptions by an appealing party in the office of the clerk of the district court as provided in section 25-1140, the court reporter shall prepare a transcribed copy of the proceedings so recorded or any part thereof. The reporter shall be entitled to receive, in addition to his or her salary, a per-page fee as prescribed by the Supreme Court for the original copy and each additional copy, to be paid by the party requesting the same except as otherwise provided in this section.

When the transcribed copy of the proceedings is required by the county attorney, the fee therefor shall be paid by the county in the same manner as other claims are paid. When the defendant in a criminal case, after conviction, makes an affidavit that he or she is unable by reason of his or her poverty to pay for such copy, the court or judge thereof may, by order endorsed on such affidavit, direct delivery of such transcribed copy to such defendant, and the fee shall be paid by the county in the same manner as other claims are allowed and paid. When such copy is prepared in any criminal case in which the sentence

adjudged is capital, the fees therefor shall be paid by the county in the same manner as other claims are allowed or paid.

The fee for preparation of a bill of exceptions and the procedure for preparation, settlement, signature, allowance, certification, filing, and amendment of a bill of exceptions shall be regulated and governed by rules of practice prescribed by the Supreme Court. The fee paid shall be taxed, by the clerk of the district court, to the party against whom the judgment or decree is rendered except as otherwise ordered by the presiding district judge.

Source: Laws 1879, § 49, p. 93; Laws 1907, c. 43, § 1, p. 182; R.S.1913, § 1200; C.S.1922, § 1123; Laws 1925, c. 67, § 1, p. 225; C.S. 1929, § 27-339; R.S.1943, § 24-342; Laws 1949, c. 45, § 1, p. 150; Laws 1957, c. 107, § 5, p. 380; Laws 1961, c. 104, § 1, p. 336; Laws 1961, c. 105, § 1, p. 337; Laws 1961, c. 106, § 1, p. 338; Laws 1971, LB 357, § 1; Laws 1973, LB 146, § 1; Laws 1973, LB 268, § 2; Laws 1974, LB 647, § 2; Laws 1978, LB 271, § 1; Laws 1982, LB 722, § 1; R.S.1943, (1985), § 24-342; Laws 1991, LB 37, § 1; Laws 2005, LB 348, § 3; Laws 2015, LB268, § 4; Referendum 2016, No. 426.

Note: The changes made to section 25-1140.09 by Laws 2015, LB 268, section 4, have been omitted because of the vote on the referendum at the November 2016 general election.

(h) GENERAL PROVISIONS

25-1149 Issues; order in which tried; time of hearing.

The trial of an issue of fact and the assessment of damages in any case shall be in the order in which they are placed on the trial docket, unless by consent of parties or the order of the court they are continued, placed at the heel of the trial docket, or temporarily postponed. The time of hearing all other cases shall be in the order in which they are placed on the trial docket, unless the court shall otherwise direct. The court may in its discretion hear at any time a motion, may by rule prescribe the time for hearing motions, and may provide for dismissing actions without prejudice for want of prosecution.

Source: R.S.1867, Code § 324, p. 448; Laws 1887, c. 94, § 2, p. 648; Laws 1899, c. 83, § 2, p. 339; R.S.1913, § 7890; C.S.1922, § 8832; C.S.1929, § 20-1149; R.S.1943, § 25-1149; Laws 2018, LB193, § 16.

ARTICLE 12

EVIDENCE

(c) MEANS OF PRODUCING WITNESSES

Section

(c) MEANS OF PRODUCING WITNESSES

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

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

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

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

(4) A subpoena shall state the name of the court from which it is issued, the title of the action, and the case number and shall command each person to whom it is directed to appear and testify at the time and place specified in the subpoena.

(5) Except as provided in subsection (6) of this section, a trial subpoena that is issued in a civil action or proceeding (a) at the request of an agency of state government or (b) pursuant to section 25-2304 shall contain the following statement: As a witness in [insert name of court], you are entitled to receive a witness fee in the amount of [insert amount from section 33-139] for each day that you are required to be in court and, if you live more than one mile from the courthouse, you are also entitled to receive mileage at the rate that state employees receive. Ask the lawyer or party who subpoenaed you or the clerk of the court for information about what you should do to receive the fees and mileage to which you are entitled.

(6) A trial subpoena in a civil action or proceeding that commands testimony by an employee of the State of Nebraska or a political subdivision thereof or a privately employed security guard, under the circumstances described in section 33-139.01, shall contain the following statement: As a witness in [insert name of court], you are entitled to be compensated for your actual and necessary expenses if you are required to travel outside of your county of residence to testify. Ask the lawyer or party who subpoenaed you or the clerk of the court for information about what you should do to receive compensation, if any, to which you are entitled.

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

clerk of the court for information about what you should do to receive the additional fees, if any, and mileage to which you are entitled.

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

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

Source: R.S.1867, Code § 350, p. 452; R.S.1913, § 7915; C.S.1922, § 8857; C.S.1929, § 20-1223; R.S.1943, § 25-1223; Laws 2017, LB509, § 1; Laws 2020, LB912, § 12.

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

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

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

Source: R.S.1867, Code § 351, p. 452; R.S.1913, § 7916; C.S.1922, § 8858; C.S.1929, § 20-1224; R.S.1943, § 25-1224; Laws 2017, LB509, § 2; Laws 2020, LB912, § 13.

25-1225 Repealed. Laws 2017, LB509, § 8.

25-1226 Subpoena; manner of service; time.

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

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

Source: R.S.1867, Code § 353, p. 452; R.S.1913, § 7918; Laws 1915, c. 148, § 2, p. 318; C.S.1922, § 8860; C.S.1929, § 20-1226; R.S.

1943, § 25-1226; Laws 1953, c. 69, § 1, p. 220; Laws 1957, c. 242, § 16, p. 830; Laws 2017, LB509, § 3; Laws 2020, LB912, § 14.

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

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

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

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

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

Source: R.S.1867, Code § 355, p. 453; R.S.1913, § 7920; C.S.1922, § 8862; C.S.1929, § 20-1228; R.S.1943, § 25-1228; Laws 1976, LB 750, § 1; Laws 2017, LB509, § 4; Laws 2020, LB912, § 15.

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

25-1237 Foreign jurisdiction; civil action; subpoena for discovery in Nebraska; powers.

(1) When authorized by rules promulgated by the Supreme Court, the clerk of the district court may issue a subpoena for discovery in Nebraska for a civil proceeding pending in a foreign jurisdiction. Such a subpoena may command a person to testify at a deposition or command a nonparty to provide discovery without a deposition.

(2) The Supreme Court may promulgate rules for subpoenas under this section. The rules may specify the amount of a fee, if any, that must be paid to the clerk of the district court for the issuance of such subpoenas. Any such rules shall not conflict with laws governing such matters.

Source: Laws 2020, LB912, § 11.

ARTICLE 13

JUDGMENTS

(a) JUDGMENTS IN GENERAL

Section
25-1301. Judgment, rendition of judgment, entry of judgment, decree, or final order, defined; records; clerk; duties.
25-1301.01. Civil judgment or final order; duty of clerk; exception.

Section

(b) LIENS

(e) MANNER OF ENTERING JUDGMENT

(h) SUMMARY JUDGMENTS

(i) UNIFORM FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT

(j) UNIFORM REGISTRATION OF CANADIAN MONEY JUDGMENTS ACT

(a) JUDGMENTS IN GENERAL

25-1301 Judgment, rendition of judgment, entry of judgment, decree, or final order, defined; records; clerk; duties.

(1) A judgment is the final determination of the rights of the parties in an action.

(2) Rendition of a judgment is the act of the court, or a judge thereof, in signing a single written document stating all of the relief granted or denied in an action.

(3) The entry of a judgment, decree, or final order occurs when the clerk of the court places the file stamp and date upon the judgment, decree, or final order. For purposes of determining the time for appeal, the date stamped on the judgment, decree, or final order shall be the date of entry.

(4) The clerk shall prepare and maintain the records of judgments, decrees, and final orders that are required by statute and rule of the Supreme Court.

Whenever any judgment is paid and discharged or when a satisfaction of judgment is filed, the clerk shall enter such fact upon the judgment index.

Source: R.S.1867, Code § 428, p. 465; R.S.1913, § 7994; C.S.1922, § 8935; C.S.1929, § 20-1301; R.S.1943, § 25-1301; Laws 1961, c. 111, § 1, p. 350; Laws 1999, LB 43, § 3; Laws 2018, LB193, § 17; Laws 2020, LB1028, § 3.

Cross References

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

25-1301.01 Civil judgment or final order; duty of clerk; exception.

Within three working days after the entry of any civil judgment or final order, except judgments by default when service has been obtained by publication or interlocutory orders styled as judgments, the clerk of the court shall send the judgment or final order by United States mail or by service through the court's electronic case management system to each party whose address appears in the records of the action or to the party's attorney or attorneys of record.

Source: Laws 1961, c. 111, § 2, p. 350; Laws 1969, c. 186, § 1, p. 778; Laws 1977, LB 124, § 1; Laws 1999, LB 43, § 4; Laws 2018, LB193, § 18; Laws 2020, LB1028, § 4.

(b) LIENS

25-1303 Transcript of judgment to other county; effect.

The transcript of a judgment of any district court in this state may be filed in the office of the clerk of the district court in any county. Such transcript, when so filed and entered on the judgment index, shall be a lien on the property of the debtor in any county in which such transcript is so filed, in the same manner and under the same conditions only as in the county where such judgment was rendered, and execution may be issued on such transcript in the same manner as on the original judgment. Such transcript shall at no time have any greater validity or effect than the original judgment.

Source: Laws 1869, § 1, p. 158; R.S.1913, § 7796; C.S.1922, § 8937; Laws 1929, c. 83, § 1, p. 332; C.S.1929, § 20-1303; R.S.1943, § 25-1303; Laws 2018, LB193, § 19.

Cross References

County court judgment, transcript to district court for lien, see section 25-2721.

25-1305 Federal court judgment; transcript to other county; effect.

A transcript of any judgment or decree rendered in a circuit or district court of the United States within the State of Nebraska, may be filed in the office of the clerk of the district court in any county in this state. Such transcript, when so filed and entered on the judgment index, shall be a lien on the property of the debtor in any county in which such transcript is so filed, in the same manner and under the same conditions only as if such judgment or decree had been rendered by the district court of such county. Such transcript shall at no time have a greater validity or effect than the original judgment. The lands and tenements of the debtor within the county where the judgment is entered shall be bound for the satisfaction thereof from the day on which such judgment is rendered without the filing of a transcript. Orders reviving dormant judgments

shall become liens upon the lands and tenements of the judgment debtor only when such order is entered on the judgment index in the same manner as an original judgment.

Source: Laws 1889, c. 30, § 1, p. 377; R.S.1913, § 7998; C.S.1922, § 8939; Laws 1929, c. 83, § 1, p. 332; C.S.1929, § 20-1305; R.S.1943, § 25-1305; Laws 2018, LB193, § 20.

(e) MANNER OF ENTERING JUDGMENT

25-1313 Jury trial; judgment by court; entry of order.

When a trial by jury has been had, judgment must be ordered by the court and entered upon the record in conformity to the verdict, unless it is special, or the court orders the case to be reserved for future argument or consideration.

Source: R.S.1867, Code § 438, p. 467; R.S.1913, § 8006; C.S.1922, § 8947; C.S.1929, § 20-1313; R.S.1943, § 25-1313; Laws 1961, c. 111, § 3, p. 350; Laws 2020, LB387, § 39.

25-1318 Judgments and orders; record.

All judgments and orders must be entered on the record of the court and specify clearly the relief granted or order made in the action.

Source: R.S.1867, Code § 443, p. 467; R.S.1913, § 8011; C.S.1922, § 8952; C.S.1929, § 20-1318; R.S.1943, § 25-1318; Laws 2018, LB193, § 21.

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

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

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

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

(h) SUMMARY JUDGMENTS

25-1332 Motion for summary judgment; proceedings.

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

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

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

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

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

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

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

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

(d) Issue any other appropriate order.

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

(i) UNIFORM FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT

25-1337 Short title.

Sections 25-1337 to 25-1348 shall be known and may be cited as the Uniform Foreign-Country Money Judgments Recognition Act.

Source: Laws 2021, LB501, § 1.

25-1338 Definitions.

In the Uniform Foreign-Country Money Judgments Recognition Act:

(1) Foreign country means a government other than:

(A) the United States;

(B) a state, district, commonwealth, territory, or insular possession of the United States; or

(C) any other government with regard to which the decision in this state as to whether to recognize a judgment of that government's courts is initially subject to determination under the Full Faith and Credit Clause of the United States Constitution.

(2) Foreign-country judgment means a judgment of a court of a foreign country.

Source: Laws 2021, LB501, § 2.

25-1339 Applicability.

(a) Except as otherwise provided in subsection (b) of this section, the Uniform Foreign-Country Money Judgments Recognition Act applies to a foreign-country judgment to the extent that the judgment:

(1) grants or denies recovery of a sum of money; and

(2) under the law of the foreign country where rendered, is final, conclusive, and enforceable.

(b) The Uniform Foreign-Country Money Judgments Recognition Act does not apply to a foreign-country judgment, even if the judgment grants or denies recovery of a sum of money, to the extent that the judgment is:

(1) a judgment for taxes;

(2) a fine or other penalty; or

(3) a judgment for divorce, support, or maintenance, or other judgment rendered in connection with domestic relations.

(c) A party seeking recognition of a foreign-country judgment has the burden of establishing that the Uniform Foreign-Country Money Judgments Recognition Act applies to the foreign-country judgment.

Source: Laws 2021, LB501, § 3.

25-1340 Standards for recognition of foreign-country judgment.

(a) Except as otherwise provided in subsections (b) and (c) of this section, a court of this state shall recognize a foreign-country judgment to which the Uniform Foreign-Country Money Judgments Recognition Act applies.

(b) A court of this state may not recognize a foreign-country judgment if:

(1) the judgment was rendered under a judicial system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law;

(2) the foreign court did not have personal jurisdiction over the defendant; or

(3) the foreign court did not have jurisdiction over the subject matter.

(c) A court of this state need not recognize a foreign-country judgment if:

(1) the defendant in the proceeding in the foreign court did not receive notice of the proceeding in sufficient time to enable the defendant to defend;

(2) the judgment was obtained by fraud that deprived the losing party of an adequate opportunity to present its case;

(3) the judgment or the cause of action or claim for relief on which the judgment is based is repugnant to the public policy of this state or of the United States;

(4) the judgment conflicts with another final and conclusive judgment;

(5) the proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be determined otherwise than by proceedings in that foreign court;

(6) in the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action;

(7) the judgment was rendered in circumstances that raise substantial doubt about the integrity of the rendering court with respect to the judgment; or

(8) the specific proceeding in the foreign court leading to the judgment was not compatible with the requirements of due process of law.

(d) A party resisting recognition of a foreign-country judgment has the burden of establishing that a ground for nonrecognition stated in subsection (b) or (c) of this section exists.

Source: Laws 2021, LB501, § 4.

25-1341 Personal jurisdiction.

(a) A foreign-country judgment may not be refused recognition for lack of personal jurisdiction if:

(1) the defendant was served with process personally in the foreign country;

(2) the defendant voluntarily appeared in the proceeding, other than for the purpose of protecting property seized or threatened with seizure in the proceeding or of contesting the jurisdiction of the court over the defendant;

(3) the defendant, before the commencement of the proceeding, had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved;

(4) the defendant was domiciled in the foreign country when the proceeding was instituted or was a corporation or other form of business organization that had its principal place of business in, or was organized under the laws of, the foreign country;

(5) the defendant had a business office in the foreign country and the proceeding in the foreign court involved a cause of action or claim for relief arising out of business done by the defendant through that office in the foreign country; or

(6) the defendant operated a motor vehicle or airplane in the foreign country and the proceeding involved a cause of action or claim for relief arising out of that operation.

(b) The list of bases for personal jurisdiction in subsection (a) of this section is not exclusive. The courts of this state may recognize bases of personal jurisdiction other than those listed in subsection (a) of this section as sufficient to support a foreign-country judgment.

Source: Laws 2021, LB501, § 5.

25-1342 Procedure for recognition of foreign-country judgment.

(a) If recognition of a foreign-country judgment is sought as an original matter, the issue of recognition shall be raised by filing an action seeking recognition of the foreign-country judgment.

(b) If recognition of a foreign-country judgment is sought in a pending action, the issue of recognition may be raised by counterclaim, cross-claim, or affirmative defense.

Source: Laws 2021, LB501, § 6.

25-1343 Effect of recognition of foreign-country judgment.

If the court in a proceeding under section 25-1342 finds that the foreign-country judgment is entitled to recognition under the Uniform Foreign-Country Money Judgments Recognition Act then, to the extent that the foreign-country judgment grants or denies recovery of a sum of money, the foreign-country judgment is:

(1) conclusive between the parties to the same extent as the judgment of a sister state entitled to full faith and credit in this state would be conclusive; and

(2) enforceable in the same manner and to the same extent as a judgment rendered in this state.

Source: Laws 2021, LB501, § 7.

25-1344 Stay of proceedings pending appeal of foreign-country judgment.

If a party establishes that an appeal from a foreign-country judgment is pending or will be taken, the court may stay any proceedings with regard to the foreign-country judgment until the appeal is concluded, the time for appeal

expires, or the appellant has had sufficient time to prosecute the appeal and has failed to do so.

Source: Laws 2021, LB501, § 8.

25-1345 Statute of limitations.

An action to recognize a foreign-country judgment must be commenced within the earlier of the time during which the foreign-country judgment is effective in the foreign country or fifteen years from the date that the foreign-country judgment became effective in the foreign country.

Source: Laws 2021, LB501, § 9.

25-1346 Uniformity of interpretation.

In applying and construing the Uniform Foreign-Country Money Judgments Recognition 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 2021, LB501, § 10.

25-1347 Saving clause.

The Uniform Foreign-Country Money Judgments Recognition Act does not prevent the recognition under principles of comity or otherwise of a foreign-country judgment not within the scope of the Uniform Foreign-Country Money Judgments Recognition Act.

Source: Laws 2021, LB501, § 11.

25-1348 Act; applicability.

The Uniform Foreign-Country Money Judgments Recognition Act applies to all actions commenced on or after August 28, 2021, in which the issue of recognition of a foreign-country judgment is raised.

Source: Laws 2021, LB501, § 12.

(j) UNIFORM REGISTRATION OF CANADIAN MONEY JUDGMENTS ACT

25-1349 Short title.

Sections 25-1349 to 25-1359 shall be known and may be cited as the Uniform Registration of Canadian Money Judgments Act.

Source: Laws 2021, LB501, § 13.

25-1350 Definitions.

In the Uniform Registration of Canadian Money Judgments Act:

(1) Canada means the sovereign nation of Canada and its provinces and territories. Canadian has a corresponding meaning.

(2) Canadian judgment means a judgment of a court of Canada, other than a judgment that recognizes the judgment of another foreign country.

Source: Laws 2021, LB501, § 14.

25-1351 Applicability.

(a) The Uniform Registration of Canadian Money Judgments Act applies to a Canadian judgment to the extent the judgment is within the scope of section 25-1339, if recognition of the judgment is sought to enforce the judgment.

(b) A Canadian judgment that grants both recovery of a sum of money and other relief may be registered under the Uniform Registration of Canadian Money Judgments Act, but only to the extent of the grant of recovery of a sum of money.

(c) A Canadian judgment regarding subject matter both within and not within the scope of the Uniform Registration of Canadian Money Judgments Act may be registered under the act, but only to the extent the judgment is with regard to subject matter within the scope of the act.

Source: Laws 2021, LB501, § 15.

25-1352 Registration of Canadian judgment.

(a) A person seeking recognition of a Canadian judgment described in section 25-1351 to enforce the judgment may register the judgment in the office of the clerk of a court in which an action for recognition of the judgment could be filed under section 25-1342.

(b) A registration under subsection (a) of this section must be executed by the person registering the judgment or the person's attorney and include:

(1) a copy of the Canadian judgment authenticated in the same manner as a copy of a foreign judgment is authenticated in an action under section 25-1342 as an accurate copy by the court that entered the judgment;

(2) the name and address of the person registering the judgment;

(3) if the person registering the judgment is not the person in whose favor the judgment was rendered, a statement describing the interest the person registering the judgment has in the judgment which entitles the person to seek its recognition and enforcement;

(4) the name and last-known address of the person against whom the judgment is being registered;

(5) if the judgment is of the type described in subsection (b) or (c) of section 25-1351, a description of the part of the judgment being registered;

(6) the amount of the judgment or part of the judgment being registered, identifying:

(A) the amount of interest accrued as of the date of registration on the judgment or part of the judgment being registered, the rate of interest, the part of the judgment to which interest applies, and the date when interest began to accrue;

(B) costs and expenses included in the judgment or part of the judgment being registered, other than an amount awarded for attorney's fees; and

(C) the amount of an award of attorney's fees included in the judgment or part of the judgment being registered;

(7) the amount, as of the date of registration, of postjudgment costs, expenses, and attorney's fees claimed by the person registering the judgment or part of the judgment;

(8) the amount of the judgment or part of the judgment being registered which has been satisfied as of the date of registration;

(9) a statement that:

(A) the judgment is final, conclusive, and enforceable under the law of the Canadian jurisdiction in which it was rendered;

(B) the judgment or part of the judgment being registered is within the scope of the Uniform Registration of Canadian Money Judgments Act; and

(C) if a part of the judgment is being registered, the amounts stated in the registration under subdivisions (6), (7), and (8) of this subsection relate to the part;

(10) if the judgment is not in English, a certified translation of the judgment into English; and

(11) a registration fee determined by the Supreme Court.

(c) On receipt of a registration that includes the documents, information, and registration fee required by subsection (b) of this section, the clerk shall file the registration, assign a docket number, and enter the Canadian judgment in the court's docket.

(d) A registration substantially in the following form complies with the registration requirements under subsection (b) of this section if the registration includes the attachments specified in the form:

REGISTRATION OF CANADIAN MONEY JUDGMENT

Complete and file this form, together with the documents required by Part V of this form, with the Clerk of Court. When stating an amount of money, identify the currency in which the amount is stated.

PART I. IDENTIFICATION OF CANADIAN JUDGMENT

Canadian Court Rendering the Judgment: . . . . . .

Case/Docket Number in Canadian Court: . . . . . .

Name of Plaintiff(s): . . . . . .

Name of Defendant(s): . . . . . .

The Canadian Court entered the judgment on . . . . . [Date] in . . . . . [City] in . . . . . [Province or Territory]. The judgment includes an award for the payment of money in favor of . . . . . in the amount of . . . . . .

If only part of the Canadian judgment is subject to registration (see subsections (b) and (c) of section 25-1351), describe the part of the judgment being registered: . . . . . .

PART II. IDENTIFICATION OF PERSON REGISTERING JUDGMENT AND PERSON AGAINST WHOM JUDGMENT IS BEING REGISTERED

Provide the following information for all persons seeking to register the judgment under this registration and all persons against whom the judgment is being registered under this registration.

Name of Person(s) Registering Judgment: . . . . . .

If a person registering the judgment is not the person in whose favor the judgment was rendered, describe the interest the person registering the judgment has in the judgment which entitles the person to seek its recognition and enforcement: . . . . . .

Address of Person(s) Registering Judgment: . . . . . .

Additional Contact Information for Person(s) Registering Judgment (Optional): . . . . . .

Telephone Number: . . . . . .

FAX Number: . . . . . .

Email Address: . . . . . .

Name of Attorney for Person(s) Registering Judgment, if any: . . . . . .

Address: . . . . . .

Telephone Number: . . . . . .

FAX Number: . . . . . .

Email Address: . . . . . .

Name of Person(s) Against Whom Judgment is Being Registered: . . . . . .

Address of Person(s) Against Whom Judgment is Being Registered: . . . . . (provide the most recent address known)

Additional Contact Information for Person(s) Against Whom Judgment is Being Registered (Optional) (provide most recent information known):

Telephone Number: . . . . . .

FAX Number: . . . . . .

Email Address: . . . . . .

PART III. CALCULATION OF AMOUNT FOR WHICH ENFORCEMENT IS SOUGHT

Identify the currency or currencies in which each amount is stated.

The amount of the Canadian judgment or part of the judgment being registered is . . . . . .

The amount of interest accrued as of the date of registration on the part of the judgment being registered is . . . . . .

The applicable rate of interest is . . . . . .

The date when interest began to accrue is . . . . . .

The part of the judgment to which the interest applies is . . . . . .

The Canadian Court awarded costs and expenses relating to the part of the judgment being registered in the amount of . . . . . (exclude any amount included in the award of costs and expenses which represents an award of attorney's fees).

The person registering the Canadian judgment claims postjudgment costs and expenses in the amount of . . . . . and postjudgment attorney's fees in the amount of . . . . . relating to the part of the judgment being registered (include only costs, expenses, and attorney's fees incurred before registration).

The Canadian Court awarded attorney's fees relating to the part of the judgment being registered in the amount of . . . . . .

The amount of the part of the judgment being registered which has been satisfied as of the date of registration is . . . . . .

The total amount for which enforcement of the part of the judgment being registered is sought is . . . . . .

PART IV. STATEMENT OF PERSON REGISTERING JUDGMENT

I, ... [Person Registering Judgment or Attorney for Person Registering Judgment] state:

1. The Canadian judgment is final, conclusive, and enforceable under the law of the Canadian jurisdiction in which it was rendered.

2. The Canadian judgment or part of the judgment being registered is within the scope of the Uniform Registration of Canadian Money Judgments Act.

3. If only a part of the Canadian judgment is being registered, the amounts stated in Part III of this form relate to that part.

PART V. ITEMS REQUIRED TO BE INCLUDED WITH REGISTRATION

Attached are (check to signify required items are included):

. . . . . A copy of the Canadian judgment authenticated in the same manner a copy of a foreign judgment is authenticated in an action under section 25-1342 as an accurate copy by the Canadian court that entered the judgment.

. . . . . If the Canadian judgment is not in English, a certified translation of the judgment into English.

. . . . . A registration fee determined by the Supreme Court.

I declare that the information provided on this form is true and correct to the best of my knowledge and belief.

Submitted by: . . . . . .

Signature of [Person Registering Judgment]

[Attorney for Person Registering Judgment]

[specify whether signer is the person registering the judgment or that person's attorney]

Date of submission: . . . . . .

Source: Laws 2021, LB501, § 16.

25-1353 Effect of registration.

(a) Subject to subsection (b) of this section, a Canadian judgment registered under section 25-1352 has the same effect provided in section 25-1343 for a judgment a court determines to be entitled to recognition.

(b) A Canadian judgment registered under section 25-1352 may not be enforced by sale or other disposition of property, or by seizure of property or garnishment, until thirty-one days after notice under section 25-1354 of registration is served. The court for cause may provide for a shorter or longer time. This subsection does not preclude use of relief available under law of this state other than the Uniform Registration of Canadian Money Judgments Act to prevent dissipation, disposition, or removal of property.

Source: Laws 2021, LB501, § 17.

25-1354 Notice of registration.

(a) A person that registers a Canadian judgment under section 25-1352 shall cause notice of registration to be served on the person against whom the judgment has been registered.

(b) Notice under this section must be served in the same manner that a summons and complaint must be served in an action seeking recognition under section 25-1342 of a foreign-country money judgment.

(c) Notice under this section must include:

(1) the date of registration and court in which the judgment was registered;

(2) the docket number assigned to the registration;

(3) the name and address of:

(A) the person registering the judgment; and

(B) the person's attorney, if any;

(4) a copy of the registration, including the documents required under subsection (b) of section 25-1352; and

(5) a statement that:

(A) the person against whom the judgment has been registered, not later than thirty days after the date of service of notice, may motion the court to vacate the registration; and

(B) the court for cause may provide for a shorter or longer time.

(d) Proof of service of notice under this section must be filed with the clerk of the court.

Source: Laws 2021, LB501, § 18.

25-1355 Motion to vacate registration.

(a) Not later than thirty days after notice under section 25-1354 is served, the person against whom the judgment was registered may motion the court to vacate the registration. The court for cause may provide for a shorter or longer time for filing the motion.

(b) A motion under this section may assert only:

(1) a ground that could be asserted to deny recognition of the judgment under the Uniform Foreign-Country Money Judgments Recognition Act; or

(2) a failure to comply with a requirement of the Uniform Registration of Canadian Money Judgments Act for registration of the judgment.

(c) A motion filed under this section does not itself stay enforcement of the registered judgment.

(d) If the court grants a motion under this section, the registration is vacated, and any act under the registration to enforce the registered judgment is void.

(e) If the court grants a motion under this section on a ground under subdivision (b)(1) of this section, the court also shall render a judgment denying recognition of the Canadian judgment. A judgment rendered under this subsection has the same effect as a judgment denying recognition to a judgment on the same ground under the Uniform Foreign-Country Money Judgments Recognition Act.

Source: Laws 2021, LB501, § 19.

Cross References

Uniform Foreign-Country Money Judgments Recognition Act, see section 25-1337.

25-1356 Stay of enforcement of judgment pending determination of motion.

A person that files a motion under subsection (a) of section 25-1355 to vacate registration of a Canadian judgment may request the court to stay enforcement of the judgment pending determination of the motion. The court shall grant the stay if the person establishes a likelihood of success on the merits with regard

to a ground listed in subsection (b) of section 25-1355 for vacating a registration. The court may require the person to provide security in an amount determined by the court as a condition of granting the stay.

Source: Laws 2021, LB501, § 20.

25-1357 Relationship to Uniform Foreign-Country Money Judgments Recognition Act.

(a) The Uniform Registration of Canadian Money Judgments Act supplements the Uniform Foreign-Country Money Judgments Recognition Act and that act, other than section 25-1342, applies to a registration under the Uniform Registration of Canadian Money Judgments Act.

(b) A person may seek recognition of a Canadian judgment described in section 25-1351 either:

(1) by registration under the Uniform Registration of Canadian Money Judgments Act; or

(2) under section 25-1342.

(c) Subject to subsection (d) of this section, a person may not seek recognition in this state of the same judgment or part of a judgment described in subsection (b) or (c) of section 25-1351 with regard to the same person under both the Uniform Registration of Canadian Money Judgments Act and section 25-1342.

(d) If the court grants a motion to vacate a registration solely on a ground under subdivision (b)(2) of section 25-1355, the person seeking registration may:

(1) if the defect in the registration can be cured, file a new registration under the Uniform Registration of Canadian Money Judgments Act; or

(2) seek recognition of the judgment under section 25-1342.

Source: Laws 2021, LB501, § 21.

Cross References

Uniform Foreign-Country Money Judgments Recognition Act, see section 25-1337.

25-1358 Uniformity of application and interpretation.

In applying and construing the Uniform Registration of Canadian Money Judgments 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 2021, LB501, § 22.

25-1359 Act; applicability.

The Uniform Registration of Canadian Money Judgments Act applies to the registration of a Canadian judgment entered in a proceeding that is commenced in Canada on or after August 28, 2021.

Source: Laws 2021, LB501, § 23.

ARTICLE 14

ABATEMENT AND REVIVOR

(b) REVIVOR OF ACTION

(b) REVIVOR OF ACTION

25-1415 Abatement of actions by death or cessation of powers of representative; duty of court.

When it appears to the court by affidavit that either party to an action has been dead, or where a party sues or is sued as a personal representative, that his or her powers have ceased for a period so long that the action cannot be revived in the names of his or her representatives or successor, without the consent of both parties, it shall order the action to be stricken from the trial docket.

Source: R.S.1867, Code § 468, p. 471; R.S.1913, § 8036; C.S.1922, § 8977; C.S.1929, § 20-1415; R.S.1943, § 25-1415; Laws 2018, LB193, § 22.

25-1416 Death of plaintiff; right of defendant to compel revivor.

At any term of the court succeeding the death of the plaintiff, while the action remains on the trial docket, the defendant, having given to the plaintiff's proper representatives in whose names the action might be revived ten days' notice of the application therefor, may have an order to strike the action from the trial docket and for costs against the estate of the plaintiff, unless the action is forthwith revived.

Source: R.S.1867, Code § 469, p. 471; R.S.1913, § 8037; C.S.1922, § 8978; C.S.1929, § 20-1416; R.S.1943, § 25-1416; Laws 2018, LB193, § 23.

ARTICLE 15

EXECUTIONS AND EXEMPTIONS

(a) EXECUTIONS

(b) EXEMPTIONS

(c) PROCEEDINGS IN AID OF EXECUTION

(a) EXECUTIONS

25-1504 Lien of judgment; when attaches; lands within county where entered; other lands; chattels.

The lands and tenements of the debtor within the county where the judgment is entered shall be bound for the satisfaction thereof only from the day on which such judgments are rendered. All other lands, as well as goods and chattels of the debtor, shall be bound from the time they shall be seized in execution. A judgment shall be considered as rendered when such judgment has been entered on the judgment index.

Source: R.S.1867, Code § 477, p. 473; R.S.1913, § 8045; C.S.1922, § 8986; Laws 1927, c. 59, § 1, p. 221; Laws 1929, c. 83, § 3, p. 333; C.S.1929, § 20-1504; R.S.1943, § 25-1504; Laws 2018, LB193, § 24.

25-1510 Stay of execution; sureties; approval; bond tantamount to judgment confessed.

The sureties for the stay of execution may be taken and approved by the clerk, the bond shall be recorded on the register of actions and have the force and effect of a judgment confessed from the date thereof against the property of the sureties, and the clerk shall enter such sureties on the judgment index, as in the case of other judgments.

Source: Laws 1875, § 6, p. 50; R.S.1913, § 8051; C.S.1922, § 8992; C.S.1929, § 20-1510; R.S.1943, § 25-1510; Laws 2018, LB193, § 25.

25-1521 Intervening claimants; proceedings to ascertain title.

If the officer, by virtue of any writ of execution issued from any court of record in this state, shall levy the same on any goods and chattels claimed by any person other than the defendant, such officer shall give notice in writing to the court, in which shall be set forth the names of the plaintiff and defendant, together with the name of the claimant. At the same time such officer shall furnish the court with a schedule of the property claimed. Immediately upon the filing of such notice and schedule, the court shall determine the right of the claimant to the property in controversy.

Source: R.S.1867, Code § 486, p. 474; R.S.1913, § 8062; C.S.1922, § 9003; C.S.1929, § 20-1521; R.S.1943, § 25-1521; Laws 1972, LB 1032, § 131; Laws 1973, LB 226, § 13; Laws 2018, LB193, § 26.

25-1531 Mortgage foreclosure; confirmation of sale; grounds for refusing to confirm; time; motion; notice.

If the court, upon the return of any writ of execution or order of sale for the satisfaction of which any lands and tenements have been sold, after having carefully examined the proceedings of the officer, is satisfied that the sale has in all respects been made in conformity to the provisions of this chapter and that the property was sold for fair value, under the circumstances and conditions of the sale, or that a subsequent sale would not realize a greater amount, the court shall enter upon the record an order that the court is satisfied of the legality of such sale, and an order that the officer make the purchaser a deed of such lands and tenements. Prior to the confirmation of sale pursuant to this section, the party seeking confirmation of sale shall, except in the circumstances described in section 40-103, provide notice to the debtor informing him or her of the homestead exemption procedure available pursuant to Chapter 40, article 1. The notice shall be given by certified mailing at least ten days prior to any hearing on confirmation of sale. The officer on making such sale may retain the purchase money in his or her hands until the court has examined his or her proceedings as aforesaid, when he or she shall pay the same to the person entitled thereto, agreeable to the order of the court. If such sale pertains to mortgaged premises being sold under foreclosure proceedings and the amount of such sale is less than the amount of the decree rendered in such proceedings, the court may refuse to confirm such sale, if, in its opinion, such mortgaged premises have a fair and reasonable value equal to or greater than the amount of the decree. The court shall in any case condition the confirmation of such sale upon such terms or under such conditions as may be just and equitable. The judge of any district court may confirm any sale at any time after such officer has made his or her return, on motion and ten days' notice to the adverse party or his or her attorney of record, if made in vacation, and such notice shall include information on the homestead exemption procedure available pursuant to Chapter 40, article 1. When any sale is confirmed in vacation the judge confirming the same shall cause his or her order to be entered on the record by the clerk. Upon application to the court by the judgment debtor within sixty days after the confirmation of any sale confirmed pursuant to this section, such sale shall be set aside if the court finds that the party seeking confirmation of sale failed to provide notice to the judgment debtor regarding homestead exemption procedures at least ten days prior to the confirmation of sale as required by this section.

Source: R.S.1867, Code § 498, p. 478; Laws 1875, § 1, p. 38; R.S.1913, § 8077; Laws 1915, c. 149, § 3, p. 319; C.S.1922, § 9013; C.S. 1929, § 20-1531; Laws 1933, c. 45, § 1, p. 254; C.S.Supp.,1941, § 20-1531; R.S.1943, § 25-1531; Laws 1983, LB 107, § 1; Laws 1983, LB 447, § 42; Laws 2018, LB193, § 27.

(b) EXEMPTIONS

25-1552 Personal property except wages; debtors; claim of exemption; procedure; adjustment by Department of Revenue.

(1) Each natural person residing in this state shall have exempt from forced sale on execution the sum of five thousand dollars in personal property, except wages. The provisions of this section do not apply to the exemption of wages, that subject being fully provided for by section 25-1558. In proceedings involving a writ of execution, the exemption from execution under this section shall be claimed in the manner provided by section 25-1516. The debtor desiring to

claim an exemption from execution under this section shall, at the time the request for hearing is filed, file a list of the whole of the property owned by the debtor and an indication of the items of property which he or she claims to be exempt from execution pursuant to this section and section 25-1556, along with a value for each item listed. The debtor or his or her authorized agent may select from the list an amount of property not exceeding the value exempt from execution under this section according to the debtor's valuation or the court's valuation if the debtor's valuation is challenged by a creditor.

(2) The dollar limitations in this section shall be adjusted by the Department of Revenue every fifth year beginning with the year 2023 to reflect the cumulative percentage change over the preceding five years in the Consumer Price Index for All Urban Consumers, as prepared by the United States Department of Labor, Bureau of Labor Statistics.

Source: R.S.1867, Code § 521, p. 484; Laws 1913, c. 52, § 1, p. 158; R.S.1913, § 8099; C.S.1922, § 9035; C.S.1929, § 20-1553; R.S.1943, § 25-1552; Laws 1973, LB 16, § 1; Laws 1977, LB 60, § 1; Laws 1980, LB 940, § 2; Laws 1993, LB 458, § 12; Laws 1997, LB 372, § 1; Laws 2018, LB105, § 1.

25-1556 Specific exemptions; personal property; selection by debtor; adjustment by Department of Revenue.

(1) No property hereinafter mentioned shall be liable to attachment, execution, or sale on any final process issued from any court in this state, against any person being a resident of this state: (a) The immediate personal possessions of the debtor and his or her family; (b) all necessary wearing apparel of the debtor and his or her family; (c) the debtor's interest, not to exceed an aggregate fair market value of three thousand dollars, in household furnishings, household goods, household computers, household appliances, books, or musical instruments which are held primarily for personal, family, or household use of such debtor or the dependents of such debtor; (d) the debtor's interest, not to exceed an aggregate fair market value of five thousand dollars, in implements, tools, or professional books or supplies, other than a motor vehicle, held for use in the principal trade or business of such debtor or his or her family; (e) the debtor's interest, not to exceed five thousand dollars, in a motor vehicle; and (f) the debtor's interest in any professionally prescribed health aids for such debtor or the dependents of such debtor. The specific exemptions in this section shall be selected by the debtor or his or her agent, clerk, or legal representative in the manner provided in section 25-1552.

(2) The dollar limitations in this section shall be adjusted by the Department of Revenue every fifth year beginning with the year 2023 to reflect the cumulative percentage change over the preceding five years in the Consumer Price Index for All Urban Consumers, as prepared by the United States Department of Labor, Bureau of Labor Statistics.

Source: R.S.1867, Code § 530, p. 485; R.S.1913, § 8103; C.S.1922, § 9039; C.S.1929, § 20-1557; R.S.1943, § 25-1556; Laws 1969, c. 187, § 1, p. 778; Laws 1973, LB 16, § 2; Laws 1977, LB 60, § 2; Laws 1997, LB 372, § 2; Laws 2018, LB105, § 2.

Cross References

For other provisions for exempting burial lots and mausoleums, see sections 12-517, 12-520, and 12-605.

(c) PROCEEDINGS IN AID OF EXECUTION

25-1577 Discovery of property of debtor; disobedience of order of court; penalty.

(1) Except as provided in subsection (2) of this section, if any person, party, or witness disobeys an order of the judge or referee, duly served, such person, party, or witness may be punished by the judge as for contempt, and if a party, he or she shall be committed to the jail of the county wherein the proceedings are pending until he or she complies with such order; or, in case he or she has, since the service of such order upon him or her, rendered it impossible for him or her to comply therewith, until he or she has restored to the opposite party what such party has lost by such disobedience, or until discharged by due course of law.

(2) No imprisonment related to the debt collection process shall be allowed unless, after a hearing, a judgment debtor is found to be in willful contempt of court. A judgment debtor shall not be committed to jail for failing to appear pursuant to section 25-1565 unless, after service of an order to appear and show cause as to why the judgment debtor should not be found in contempt for failing to appear, the judgment debtor is found to be in willful contempt.

Source: R.S.1867, Code § 546, p. 489; Laws 1875, § 1, p. 39; R.S.1913, § 8125; C.S.1922, § 9061; C.S.1929, § 20-1579; R.S.1943, § 25-1577; Laws 2017, LB259, § 1.

25-1578 Discovery of property of debtor; orders to judgment debtors and witnesses; service; filing; record.

The orders to judgment debtors and witnesses provided for in sections 25-1564 to 25-1580 shall be signed and filed by the judge making the same and shall be served in the same manner as a summons in other cases. The judge shall sign all such orders. Such orders shall be filed with the clerk of the court of the county in which the judgment is rendered or the transcript of the judgment filed, and the clerk shall enter on the record the date and time of filing the same.

Source: R.S.1867, Code § 547, p. 489; R.S.1913, § 8126; C.S.1922, § 9062; C.S.1929, § 20-1580; R.S.1943, § 25-1578; Laws 2018, LB193, § 28.

(f) NEBRASKA UNIFORM ENFORCEMENT OF FOREIGN JUDGMENTS ACT

25-1587.04 Notice of filing.

(a) At the time of the filing of the foreign judgment, the judgment creditor or his or her lawyer shall make and file with the clerk of the court an affidavit setting forth the name and last-known post office address of the judgment debtor and the judgment creditor.

(b) Promptly upon the filing of the foreign judgment and the affidavit, the clerk shall mail notice of the filing of the foreign judgment to the judgment debtor at the address given and shall file notice of the mailing on the record. The notice shall include the name and address of the judgment creditor and the judgment creditor's lawyer, if any, in this state. In addition, the judgment creditor may mail a notice of the filing of the judgment to the judgment debtor

and may file proof of mailing with the clerk. Lack of mailing notice of filing by the clerk shall not affect the enforcement proceedings if proof of mailing by the judgment creditor has been filed.

Source: Laws 1993, LB 458, § 4; Laws 2018, LB193, § 29.

25-1587.06 Fees.

Any person filing a foreign judgment or a judgment from another court in this state shall pay to the clerk of the district or county court a fee as provided in section 33-106 or 33-123 for filing a transcript of judgment. Fees for filing, transcription, or other enforcement proceedings shall be as provided for judgments of the courts of this state.

Source: Laws 1993, LB 458, § 6; Laws 1995, LB 270, § 1; Laws 2018, LB193, § 30.

ARTICLE 16

JURY

Section

25-1601. Transferred to section 25-1650.
25-1601.03. Transferred to section 25-1645.
25-1602. Transferred to section 25-1651.
25-1603. Transferred to section 25-1649.
25-1606. Transferred to section 25-1660.
25-1607. Transferred to section 25-1661.
25-1609. Repealed. Laws 2020, LB387, § 49.
25-1611. Transferred to section 25-1675.
25-1612. Transferred to section 25-1677.
25-1625. Transferred to section 25-1647.
25-1626. Transferred to section 25-1648.
25-1626.02. Repealed. Laws 2020, LB387, § 49.
25-1627. Transferred to section 25-1653.
25-1627.01. Repealed. Laws 2020, LB387, § 49.
25-1628. Transferred to section 25-1654.
25-1629. Transferred to section 25-1659.
25-1629.01. Transferred to section 25-1657.
25-1629.02. Transferred to section 25-1658.
25-1629.03. Repealed. Laws 2020, LB387, § 49.
25-1629.04. Repealed. Laws 2020, LB387, § 49.
25-1630. Transferred to section 25-1676.
25-1631. Transferred to section 25-1671.
25-1631.03. Transferred to section 25-1663.
25-1632. Transferred to section 25-1662.
25-1632.01. Transferred to section 25-1664.
25-1633. Transferred to section 25-1669.
25-1633.01. Repealed. Laws 2020, LB387, § 49.
25-1634. Transferred to section 25-1665.
25-1634.01. Transferred to section 25-1667.
25-1634.02. Transferred to section 25-1666.
25-1634.03. Repealed. Laws 2020, LB387, § 49.
25-1635. Transferred to section 25-1673.
25-1636. Transferred to section 25-1652.
25-1637. Transferred to section 25-1678.
25-1639. Transferred to section 25-1670.
25-1640. Transferred to section 25-1674.
25-1641. Transferred to section 25-1656.
25-1642. Repealed. Laws 2020, LB387, § 49.
25-1643. Repealed. Laws 2020, LB387, § 49.
25-1644. Act, how cited.

Section

25-1601 Transferred to section 25-1650.

25-1601.03 Transferred to section 25-1645.

25-1602 Transferred to section 25-1651.

25-1603 Transferred to section 25-1649.

25-1606 Transferred to section 25-1660.

25-1607 Transferred to section 25-1661.

25-1609 Repealed. Laws 2020, LB387, § 49.

25-1611 Transferred to section 25-1675.

25-1612 Transferred to section 25-1677.

25-1625 Transferred to section 25-1647.

25-1626 Transferred to section 25-1648.

25-1626.02 Repealed. Laws 2020, LB387, § 49.

25-1627 Transferred to section 25-1653.

25-1627.01 Repealed. Laws 2020, LB387, § 49.

25-1628 Transferred to section 25-1654.

25-1629 Transferred to section 25-1659.

25-1629.01 Transferred to section 25-1657.

25-1629.02 Transferred to section 25-1658.

25-1629.03 Repealed. Laws 2020, LB387, § 49.

25-1629.04 Repealed. Laws 2020, LB387, § 49.

25-1630 Transferred to section 25-1676.

25-1631 Transferred to section 25-1671.

25-1631.03 Transferred to section 25-1663.

25-1632 Transferred to section 25-1662.

25-1632.01 Transferred to section 25-1664.

25-1633 Transferred to section 25-1669.

25-1633.01 Repealed. Laws 2020, LB387, § 49.

25-1634 Transferred to section 25-1665.

25-1634.01 Transferred to section 25-1667.

25-1634.02 Transferred to section 25-1666.

25-1634.03 Repealed. Laws 2020, LB387, § 49.

25-1635 Transferred to section 25-1673.

25-1636 Transferred to section 25-1652.

25-1637 Transferred to section 25-1678.

25-1639 Transferred to section 25-1670.

25-1640 Transferred to section 25-1674.

25-1641 Transferred to section 25-1656.

25-1642 Repealed. Laws 2020, LB387, § 49.

25-1643 Repealed. Laws 2020, LB387, § 49.

25-1644 Act, how cited.

Sections 25-1644 to 25-1678 shall be known and may be cited as the Jury Selection Act.

Source: Laws 2020, LB387, § 1.

25-1645 Act; intent and purpose.

The Legislature hereby declares that it is the intent and purpose of the Jury Selection Act to create a jury system which will ensure that:

(1) All persons selected for jury service are selected at random from a fair cross section of the population of the area served by the court;

(2) All qualified citizens have the opportunity to be considered for jury service;

(3) All qualified citizens fulfill their obligation to serve as jurors when summoned for that purpose; and

(4) No citizen is excluded from jury service in this state as a result of discrimination based upon race, color, religion, sex, national origin, or economic status.

Source: Laws 1979, LB 234, § 1; R.S.1943, (2016), § 25-1601.03; Laws 2020, LB387, § 2.

25-1646 Terms, defined.

For purposes of the Jury Selection Act:

(1) Combined list means the list created pursuant to section 25-1654 by merging the lists of names from the Department of Motor Vehicles and from election records into one list;

(2) Grand jury means a body of people who are chosen to sit permanently for at least a month and up to a year and who, in ex parte proceedings, decide whether to issue indictments in criminal cases;

(3) Jury commissioner means the person designated in section 25-1647;

(4) Jury list means a list or lists of names of potential jurors drawn from the master key list for possible service on grand and petit juries;

(5) Jury management system means an electronic process in which individuals are randomly selected to serve as grand or petit jurors and for which the presence of a district court judge or other designated official is not required. A jury management system may also provide an electronic process for a potential juror to complete and submit a juror qualification form and to receive summonses and notifications regarding jury service;

(6) Jury panel means the persons summoned to serve as grand or petit jurors for such period of a jury term as determined by the judge or judges;

(7) Jury term means a month, calendar quarter, year, or other period of time as determined by the judge or judges during which grand or petit jurors are selected for service from a master key list. A jury term shall not extend beyond the time by which a new combined list is required to be prepared pursuant to section 25-1654, except by order of the court;

(8) Manual jury selection process means a process in which individuals are randomly selected to serve on a grand or petit jury by drawing names from a wheel or box while in the presence of a district court judge or other official designated by the judge;

(9) Master key list means the list of names selected using the key number pursuant to section 25-1654;

(10) One-step qualifying and summoning system means a process for selecting and summoning grand or petit jurors in which a juror qualification form and summons, or instructions to complete a jury qualification form through a jury management system and a summons, are sent to a potential juror at the same time;

(11) Petit jury means a group of jurors who may be summoned and empaneled in the trial of a specific case;

(12) Tales juror means a person selected from among the bystanders in court or the people of the county to serve as a juror when the original jury panel has become deficient in number; and

(13) Two-step qualifying and summoning system means a process for selecting and summoning grand or petit jurors in which a juror qualification form, or instructions to complete a jury qualification form through a jury management system, is sent to a potential juror and, if the juror is qualified and drawn for jury service, a summons is sent.

Source: Laws 2020, LB387, § 3.

25-1647 Jury commissioner; designation; salary; expenses; duties; salary increase, when effective.

(1) In each county of the State of Nebraska, the clerk of the district court shall serve as the jury commissioner.

(2) In counties having a population in excess of one hundred seventy-five thousand inhabitants, the judges of the district court within such counties shall determine whether the clerk of the district court will receive additional compensation to perform the duties of jury commissioner. The amount of any such additional compensation shall be fixed by the judges of the district court in an amount not to exceed three thousand dollars per annum.

(3) In all counties the necessary expenses incurred in the performance of the duties of jury commissioner shall be paid by the county board of the county out of the general fund, upon proper claims approved by one of the district judges in the judicial district and duly filed with the county board.

(4) In all counties the jury commissioner shall prepare and file the annual inventory statement with the county board of the county of all county personal property in his or her custody or possession, as provided in sections 23-346 to 23-350.

(5) This section shall be so interpreted as to effectuate its general purpose, to provide, in the public interest, adequate compensation for the jury commissioner and to permit a change in such salary as soon as the change may become operative under the Constitution of Nebraska.

Source: Laws 1915, c. 248, § 1, p. 568; C.S.1922, § 9095; C.S.1929, § 20-1625; Laws 1931, c. 65, § 5, p. 178; Laws 1939, c. 28, § 20, p. 159; C.S.Supp.,1941, § 20-1625; R.S.1943, § 25-1625; Laws 1947, c. 62, § 9, p. 202; Laws 1953, c. 72, § 6, p. 227; Laws 1961, c. 113, § 1, p. 352; Laws 1971, LB 547, § 1; Laws 1975, LB 527, § 1; Laws 1979, LB 234, § 6; Laws 2003, LB 19, § 4; Laws 2010, LB712, § 2; Laws 2013, LB169, § 1; R.S.1943,

(2016), § 25-1625; Laws 2020, LB387, § 4; Laws 2022, LB922, § 2.
Operative date January 1, 2023.

25-1648 Jury commissioner; deputy; appointment; powers.

(1) The jury commissioner shall appoint a deputy jury commissioner from the regular employees of his or her office who shall serve ex officio and who shall hold office during the pleasure of the jury commissioner. The deputy jury commissioner shall be approved by the judge or judges of the district court before taking office. The deputy jury commissioner, during the absence of the jury commissioner from the county or during the sickness or disability of the jury commissioner, with the consent of such judge or judges, may perform any or all of the duties of the jury commissioner.

(2) If there are no regular employees of the office of jury commissioner, he or she may appoint some other county officer or employee thereof as deputy jury commissioner.

Source: Laws 1915, c. 248, § 1, p. 568; C.S.1922, § 9096; C.S.1929, § 20-1626; R.S.1943, § 25-1626; Laws 1951, c. 69, § 1, p. 224; Laws 1953, c. 72, § 7, p. 227; Laws 1955, c. 90, § 2, p. 265; Laws 1955, c. 91, § 1, p. 268; Laws 1965, c. 123, § 1, p. 460; R.S.1943, (2016), § 25-1626; Laws 2020, LB387, § 5; Laws 2022, LB922, § 3.
Operative date January 1, 2023.

25-1649 Jurors; selection.

In each of the county and district courts of this state, the lists of grand and petit jurors shall be made up and jurors selected for jury duty in the manner prescribed in the Jury Selection Act.

Source: R.S.1867, Code § 658, p. 510; R.S.1913, § 8137; C.S.1922, § 9073; C.S.1929, § 20-1603; Laws 1931, c. 36, § 1, p. 129; Laws 1939, c. 18, § 23, p. 113; C.S.Supp.,1941, § 20-1603; R.S.1943, § 25-1603; Laws 1953, c. 72, § 2, p. 225; Laws 1979, LB 234, § 3; Laws 1980, LB 733, § 2; R.S.1943, (2016), § 25-1603; Laws 2020, LB387, § 6.

25-1650 Jurors; qualifications; disqualifications; excused or exempt, when.

(1) All citizens of the United States residing in any of the counties of this state who are over the age of nineteen years, able to read, speak, and understand the English language, and free from all disqualifications set forth under this section and from all other legal exceptions are qualified to serve on all grand and petit juries in their respective counties. Persons disqualified to serve as either grand or petit jurors are: (a) Judges of any court, (b) clerks of the Supreme or district courts, (c) sheriffs, (d) jailers, (e) persons, or the spouse of any such persons, who are parties to suits pending in the county of his, her, or their residence for trial to that jury panel, (f) persons who have been convicted of a felony when such conviction has not been set aside or a pardon issued, and (g) persons who are subject to liability for the commission of any offense which by special provision of law disqualifies them. Spouses shall not serve as jurors on the same panel. Persons who are incapable, by reason of physical or mental disability, of rendering satisfactory jury service shall not be qualified to serve on

a jury, but a person claiming this disqualification shall be required to submit a physician's certificate as to the disability and the certifying physician is subject to inquiry by the court at its discretion. A nursing mother who requests to be excused shall be excused from jury service until she is no longer nursing her child, but the mother shall be required to submit a physician's certificate in support of her request. A person who is serving on active duty as a member of the United States Armed Forces who requests to be exempt shall be exempt from jury service, but such person shall be required to submit documentation of his or her active-duty status in support of his or her request.

(2) The district court or any judge thereof may exercise the power of excusing any grand or petit juror or any person summoned for grand or petit jury service upon a showing of undue hardship, extreme inconvenience, or public necessity for such period as the court deems necessary. At the conclusion of such period the person shall reappear for jury service in accordance with the court's direction. All excuses and the grounds for such excuses shall be entered upon the record of the court. In districts having more than one judge of the district court, the court may by rule or order assign or delegate to the presiding judge or any one or more judges the sole authority to grant such excuses.

(3) No qualified potential juror is exempt from jury service, except that any person seventy years of age or older who makes a request to be exempt to the court at the time the juror qualification form is filed with the jury commissioner or who makes such a request in writing after being qualified and summoned shall be exempt from serving on grand and petit juries.

(4) A physician's certificate or other documentation or information submitted by a person in support of a claim of disqualification by reason of physical or mental disability or due to such person's status as a nursing mother is not a public record as defined in section 84-712.01 and is not subject to disclosure under sections 84-712 to 84-712.09.

Source: R.S.1867, Code § 657, p. 509; Laws 1911, c. 171, § 1, p. 548; R.S.1913, § 8135; Laws 1917, c. 139, § 1, p. 325; C.S.1922, § 9071; C.S.1929, § 20-1601; Laws 1939, c. 18, § 1, p. 98; C.S.Supp.,1941, § 20-1601; Laws 1943, c. 45, § 1, p. 191; R.S.1943, § 25-1601; Laws 1953, c. 72, § 1, p. 224; Laws 1955, c. 90, § 1, p. 264; Laws 1959, c. 106, § 1, p. 433; Laws 1959, c. 143, § 1, p. 551; Laws 1969, c. 189, § 1, p. 780; Laws 1979, LB 234, § 2; Laws 1980, LB 733, § 1; Laws 1985, LB 113, § 1; Laws 1993, LB 31, § 2; Laws 2003, LB 19, § 3; R.S.1943, (2016), § 25-1601; Laws 2020, LB387, § 7.

Cross References

For exemption of National Guard, see section 55-173.

25-1651 Jurors; actions to which county or other municipal corporation a party; inhabitants and taxpayers; serve, when.

On the trial of any suit in which a county or any other municipal corporation is a party, the inhabitants and taxpayers of such county or municipal corporation shall be qualified to serve as jurors if otherwise qualified according to law.

Source: Laws 1877, § 1, p. 16; R.S.1913, § 8136; C.S.1922, § 9072; C.S.1929, § 20-1602; R.S.1943, (2016), § 25-1602; Laws 2020, LB387, § 8.

25-1652 Jurors; challenge for cause; grounds.

(1) It shall be ground for challenge for cause that any potential juror: (a) Does not possess the qualifications of a juror as set forth in section 25-1650 or is excluded by the terms of section 25-1650; (b) has requested or solicited any officer of the court or officer charged in any manner with the duty of selecting the jury to place such juror upon the jury panel; or (c) otherwise lacks any of the qualifications provided by law.

(2) It shall not be a ground for challenge for cause that a potential juror has read, heard, or watched in news media an account of the commission of a crime with which a defendant is charged, if such juror states under oath that he or she can render an impartial verdict according to the law and the evidence and the court is satisfied as to the truth of such statement. In the trial of any criminal cause, the fact that a person called as a juror has formed an opinion based upon rumor or statements or reports in news media, and as to the truth of which the person has formed no opinion, shall not disqualify the person to serve as a juror on such cause, if the person states under oath that he or she can fully and impartially render a verdict in accordance with the law and the evidence and the court is satisfied as to the truth of such statement.

Source: Laws 1915, c. 248, § 12, p. 573; Laws 1921, c. 113, § 2, p. 394; C.S.1922, § 9106; C.S.1929, § 20-1636; Laws 1939, c. 18, § 18, p. 110; C.S.Supp.,1941, § 20-1636; Laws 1943, c. 45, § 3, p. 193; R.S.1943, § 25-1636; Laws 1953, c. 72, § 15, p. 236; R.S.1943, (2016), § 25-1636; Laws 2020, LB387, § 9.

25-1653 Jury list; key number; determination; record.

(1) The jury commissioner, at such times as may be necessary or as he or she may be ordered to do so by the district judge, shall draw a number to be known as a key number. The drawing of a key number shall be done in a manner which will ensure that the number drawn is the result of chance. The key number shall be drawn from among the numbers one to ten. Except as otherwise provided in this section, only one key number need be drawn.

(2) In a county with a population of less than three thousand inhabitants, the jury commissioner shall draw two key numbers or such larger number of key numbers as the district judge or judges may order instead of only one.

(3) In a county with a population of three thousand inhabitants or more, where experience demonstrates that the use of only one key number does not produce a list of names of sufficient number to make the system of practical use, the district judge or judges may, in their discretion, order the selecting of two key numbers.

(4) The jury commissioner shall make a record of the manner in which the key number or numbers were drawn and the date and the hour of the drawing, the same to be certified by the jury commissioner, and such records shall be entered upon the record of the court.

Source: Laws 1915, c. 248, § 3, p. 569; C.S.1922, § 9097; C.S.1929, § 20-1627; R.S.1943, § 25-1627; Laws 1953, c. 72, § 8(1), p. 228; Laws 1977, LB 283, § 1; Laws 1979, LB 234, § 7; R.S.1943, (2016), § 25-1627; Laws 2020, LB387, § 10.

25-1654 Combined list; master key list; how produced.

(1) Each December, the Department of Motor Vehicles shall make available to each jury commissioner a list in magnetic, optical, digital, or other electronic format mutually agreed to by the jury commissioner and the department containing the names, dates of birth, addresses, and motor vehicle operator license numbers or state identification card numbers of all licensed motor vehicle operators and state identification card holders nineteen years of age or older in the county. If a jury commissioner requests similar lists at other times from the department, the cost of processing such lists shall be paid by the county which the requesting jury commissioner serves. Upon request of the jury commissioner, the election commissioner or county clerk having charge of the election records shall furnish to the jury commissioner a complete list of the names, dates of birth, addresses, and motor vehicle operator license numbers or state identification card numbers of all registered voters nineteen years of age or older in the county.

(2) When required pursuant to subsection (3) of this section or when otherwise necessary or as directed by the judge or judges, the jury commissioner shall create a combined list by merging the separate lists described in subsection (1) of this section and reducing any duplication to the best of his or her ability.

(3) In counties having a population of seven thousand inhabitants or more, the jury commissioner shall produce a combined list at least once each calendar year. In counties having a population of three thousand inhabitants but less than seven thousand inhabitants, the jury commissioner shall produce a combined list at least once every two calendar years. In counties having a population of less than three thousand inhabitants, the jury commissioner shall produce a combined list at least once every five calendar years.

(4) The jury commissioner shall then create a master key list by selecting from the combined list the name of the person whose numerical order on such list corresponds with the key number and each successive tenth name thereafter. The jury commissioner shall certify that the master key list has been made in accordance with the Jury Selection Act.

(5) Any unintentional duplication of names on a combined list or master key list shall not be grounds for quashing any panel or jury list pursuant to section 25-1678 or for the disqualification of any juror.

Source: Laws 1915, c. 248, § 4, p. 569; C.S.1922, § 9098; C.S.1929, § 20-1628; R.S.1943, § 25-1628; Laws 1957, c. 88, § 1, p. 337; Laws 1971, LB 11, § 1; Laws 1985, LB 113, § 2; Laws 1988, LB 111, § 1; Laws 1989, LB 82, § 1; Laws 2003, LB 19, § 5; Laws 2005, LB 402, § 1; Laws 2009, LB35, § 10; Laws 2010, LB712, § 3; R.S.1943, (2016), § 25-1628; Laws 2020, LB387, § 11.

25-1655 Potential jurors; how selected.

(1) Prior to the jury term or at any time during the jury term, the jury commissioner may draw potential jurors from the master key list for service on petit jury panels that will be needed throughout the jury term. The jury commissioner shall draw such number of potential jurors from the master key list as the judge or judges direct.

(2) In drawing the names of potential jurors, the jury commissioner may use a manual jury selection process or a jury management system. The jury commissioner shall investigate the potential jurors so drawn pursuant to the

two-step qualifying and summoning system or the one-step qualifying and summoning system.

(3)(a) If the jury commissioner uses the two-step qualifying and summoning system, he or she shall deliver to each potential juror a juror qualification form pursuant to section 25-1657.

(b) If the jury commissioner uses the one-step qualifying and summoning system, he or she shall deliver to each potential juror a juror qualification form pursuant to section 25-1657 and shall serve the potential juror with a summons pursuant to section 25-1660.

Source: Laws 2020, LB387, § 12.

25-1656 Petit jurors; how selected; summons or notice to report.

(1) Unless the judge or judges order that no jury be drawn, the jury commissioner shall draw petit jurors for a regular jury panel pursuant to this section.

(2) If the jury commissioner has previously drawn and investigated potential jurors for service during the jury term as provided in section 25-1655, the jury commissioner shall draw by chance the names of thirty such qualified jurors, or such other number as the judge or judges may otherwise direct, for each judge sitting with a jury, as petit jurors for such regular jury panel.

(3) If the jury commissioner has not previously drawn and investigated potential jurors for service during the jury term as provided in section 25-1655, the jury commissioner shall draw and investigate potential jurors from the master key list in the same manner as provided in section 25-1655. The jury commissioner shall draw and investigate such number of potential jurors as the jury commissioner deems necessary to arrive at a list of thirty qualified jurors or such other number of qualified jurors as the judge or judges shall direct for each judge sitting with a jury.

(4) After drawing the names pursuant to subsection (2) or (3) of this section, the jury commissioner shall:

(a) Serve a summons pursuant to section 25-1660 on each person whose name was drawn if the jury commissioner uses the two-step qualifying and summoning system; or

(b) If the jury commissioner has not already done so in the summons or by another method of notification, notify each person whose name was drawn of the date and time to report for jury service if the jury commissioner uses the one-step qualifying and summoning system.

Source: Laws 1980, LB 733, § 5; Laws 1983, LB 329, § 1; Laws 1984, LB 13, § 39; R.S.1943, (2016), § 25-1641; Laws 2020, LB387, § 13.

25-1657 Juror qualification form; potential juror; complete; return; when.

(1) Except as provided in subsection (2) of this section, the jury commissioner shall deliver a juror qualification form to each potential juror drawn for jury service. The delivery may be by first-class mail or personal service or through a jury management system. The jury commissioner shall include instructions to complete and return the form to the jury commissioner within ten days after its receipt. The form may be returned to the jury commissioner by mail or through a jury management system.

(2)(a) In lieu of the juror qualification form delivery process described in subsection (1) of this section, a jury commissioner may send to a potential juror a notice or summons which includes instructions to complete a juror qualification form through a jury management system. The notice or summons may be sent by first-class mail or personal service or through a jury management system. The jury commissioner shall include instructions to complete and submit the juror qualification form within ten days after receipt of the notice or summons.

(b) If a potential juror fails to complete the qualification form as instructed within such ten days, the jury commissioner shall deliver to such potential juror, by first-class mail or personal service, a revised notice or summons and juror qualification form with instructions to complete and return the form to the jury commissioner within ten days after its receipt.

(3) The juror qualification form shall be in the form prescribed by the Supreme Court. Notarization of the juror qualification form shall not be required. If the potential juror is unable to complete the form, another person may do it for the potential juror and shall indicate that such other person has done so and the reason therefor.

(4) If it appears that there is an omission, ambiguity, or error in a returned form, the jury commissioner shall again send the form with instructions to the potential juror to make the necessary addition, clarification, or correction and to return the form to the jury commissioner within ten days after its second receipt.

Source: Laws 1979, LB 234, § 12; Laws 2005, LB 105, § 1; R.S.1943, (2016), § 25-1629.01; Laws 2020, LB387, § 14.

25-1658 Juror qualification form; failure to return; effect; contempt of court.

(1) Any potential juror who fails to return a completed juror qualification form as instructed shall be directed by the jury commissioner to appear before him or her to fill out the juror qualification form. At the time of the potential juror's appearance for jury service or at the time of any interview before the court or jury commissioner, any potential juror may be required to fill out another juror qualification form, at which time the potential juror may be questioned with regard to his or her responses to questions contained on the form and grounds for his or her excuse or disqualification. Any information thus acquired by the court or jury commissioner shall be noted on the juror qualification form.

(2) Any person who knowingly fails to complete and return or who willfully misrepresents a material fact on a juror qualification form for the purpose of avoiding or securing service as a juror shall be guilty of contempt of court.

Source: Laws 1979, LB 234, § 13; R.S.1943, (2016), § 25-1629.02; Laws 2020, LB387, § 15.

25-1659 Master key list; juror qualification form; review; names stricken.

(1) If the jury commissioner finds, after reviewing a completed juror qualification form, that a potential juror does not possess the qualifications of a juror as set forth in section 25-1650 or is excluded by the terms of section 25-1650, the jury commissioner shall strike such potential juror's name from the master key list and make a record of each name stricken, which record shall be kept in

the jury commissioner's office subject to inspection by the court and attorneys of record in cases triable to a jury pending before the court, under such rules as the court may prescribe.

(2) Any person entitled to access to the list of names stricken may make a request to the judge of the district court, in accordance with section 25-1673, for an explanation of the reasons a name has been stricken. If the judge is satisfied that such request is made in good faith and in accordance with section 25-1673, the judge shall direct the jury commissioner to appear before the judge at chambers and, in the presence of the requesting person, state his or her reasons for striking such name.

Source: Laws 1915, c. 248, § 5, p. 570; C.S.1922, § 9099; C.S.1929, § 20-1629; Laws 1939, c. 18, § 14, p. 106; C.S.Supp.,1941, § 20-1629; R.S.1943, § 25-1629; Laws 1953, c. 7, § 1, p. 221; Laws 1953, c. 72, § 9, p. 229; Laws 1955, c. 9, § 4, p. 266; Laws 1977, LB 283, § 2; Laws 1979, LB 234, § 9; Laws 1985, LB 113, § 3; R.S.1943, (2016), § 25-1629; Laws 2020, LB387, § 16.

25-1660 Jurors; how summoned; notice; deadlines, applicability.

(1) The summons of grand and petit jurors for the courts of this state shall be served by the jury commissioner, the clerk of such court, or any other person authorized by the court by delivering such summons by first-class mail or personal service or through a jury management system to the person whose name has been drawn.

(2)(a) If the jury commissioner uses the two-step qualifying and summoning system, the summons shall be delivered not less than ten days before the day such juror is to appear as a juror in such court.

(b) If the jury commissioner uses the one-step qualifying and summoning system, the summons shall be delivered:

(i) Not less than ten days before the first day of the jury term, if the jury commissioner is summoning jurors for service throughout the jury term; or

(ii) Not less than ten days before the day such juror is to appear as a juror in such court, if the jury commissioner is summoning a juror for service on a specific jury panel.

(c) The deadlines in this subsection shall not apply to summons delivered to extra jurors pursuant to section 25-1665 or tales jurors pursuant to section 25-1666. Summons to such jurors shall be delivered at the earliest possible time under the circumstances and as directed by the judge or judges.

(3)(a) If the jury commissioner uses the two-step qualifying and summoning system, a summons sent under this section shall include the day, time, place, and name of the court where the juror is to report for jury service.

(b) If the jury commissioner uses the one-step qualifying and summoning system, a summons sent under this section shall include such details as to the day, time, place, and name of the court where the juror is to report for jury service as are known at the time the summons is sent along with additional instructions regarding the manner in which the juror shall contact the court or will be notified by the court of any additional details.

Source: R.S.1867, Code §§ 661, 662, p. 510; Laws 1885, c. 97, § 1, p. 381; R.S.1913, § 8141; Laws 1915, c. 148, § 1, p. 318; C.S.1922,

§ 9076; C.S.1929, § 20-1606; R.S.1943, § 25-1606; Laws 1953, c. 72, § 3, p. 225; Laws 1957, c. 242, § 18, p. 831; Laws 1982, LB 677, § 1; R.S.1943, (2016), § 25-1606; Laws 2020, LB387, § 17.

25-1661 Jurors; appearance; failure to appear or serve without good cause; contempt of court.

(1) Each grand juror and petit juror summoned shall appear before the court on the day and at the hour specified in the summons or as further directed by the court.

(2) Any person summoned for jury service who fails to appear or to complete jury service as directed may be ordered by the court to appear forthwith and show cause for such failure to comply with the summons. If such person fails to show good cause for noncompliance with the summons, he or she shall be guilty of contempt of court.

(3) No person shall be guilty of contempt of court under this section for failing to respond to a summons sent:

(a) By first-class mail, if sent pursuant to a one-step qualifying and summoning system, and if the person has (i) returned a juror qualification form and the jury commissioner has determined that such person is not qualified; (ii) been excused from jury service; or (iii) had his or her jury service postponed; or

(b) Through a jury management system.

Source: R.S.1867, Code § 663, p. 511; R.S.1913, § 8142; C.S.1922, § 9077; C.S.1929, § 20-1607; R.S.1943, (2016), § 25-1607; Laws 2020, LB387, § 18.

25-1662 Petit jury for subsequent periods; how drawn; how notified.

Subsequent panels of petit jurors shall be called as the judge or judges may determine during the jury term. If it is determined that a subsequent panel or panels are necessary, the judge or judges, as the case may be, shall order the jury commissioner to draw by chance such number of potential jurors as such judge or judges shall direct as petit jurors for such subsequent jury panel. The persons so drawn shall be notified or summoned the same as those drawn for the regular jury panel under section 25-1656.

Source: Laws 1915, c. 248, § 8, p. 571; C.S.1922, § 9102; C.S.1929, § 20-1632; R.S.1943, § 25-1632; Laws 1953, c. 71, § 1, p. 222; Laws 1953, c. 72, § 11(1), p. 231; R.S.1943, (2016), § 25-1632; Laws 2020, LB387, § 19.

25-1663 Petit jury; examination by judge; excess jurors.

The judge shall examine all jurors who appear for jury service. If, after all excuses have been allowed, there remain more than twenty-four petit jurors for each judge sitting with a jury who are qualified and not excluded by the terms of section 25-1650, the court may excuse by lot such number in excess of twenty-four as the court may see fit. Those jurors who have been discharged in excess of twenty-four for each judge, but are qualified, shall not be discharged permanently, but shall remain subject to be resummoned for jury service upon the same jury panel.

Source: Laws 1915, c. 248, § 7, p. 570; C.S.1922, § 9101; C.S.1929, § 20-1631; Laws 1939, c. 18, § 16, p. 107; C.S.Supp.,1941,

§ 20-1631; R.S.1943, § 25-1631; Laws 1953, c. 72, § 10(4), p. 231; Laws 1979, LB 234, § 10; R.S.1943, (2016), § 25-1631.03; Laws 2020, LB387, § 20.

25-1664 Petit jury; special jury panel in criminal cases.

Whenever there is pending in the criminal court any case in which the defendant is charged with a felony and the judge holding the court is convinced from the circumstances of the case that a jury cannot be obtained from the regular jury panel to try the case, the judge may, in his or her discretion, prior to the day fixed for the trial of the case, direct the jury commissioner to draw, in the same manner as described in section 25-1656, such number of names as the judge or judges may direct as a special jury panel from which a jury may be selected to try such case, which jury panel shall be summoned for such day in the same manner as the regular jury panel.

Source: Laws 1915, c. 248, § 8, p. 571; C.S.1922, § 9102; C.S.1929, § 20-1632; R.S.1943, § 25-1632; Laws 1953, c. 72, § 11(2), p. 232; R.S.1943, (2016), § 25-1632.01; Laws 2020, LB387, § 21.

25-1665 Petit jury; extra jurors to complete jury panel; tales jurors.

(1) If for any reason it appears to the judge that the jury panel of petit jurors will not be adequate at any time during the jury term, the jury commissioner shall, when ordered by the judge, draw, in the same manner as the drawing of a regular jury panel under section 25-1656, such number of potential jurors as the judge directs to fill such jury panel or as extra jurors, and those drawn shall be notified and summoned in the same manner as described in section 25-1656 or as the court may direct. This shall also apply to the selection of tales jurors for particular causes after the regular jury panel is exhausted.

(2) Each person summoned under subsection (1) of this section shall forthwith appear before the court and if qualified shall serve on the jury panel unless such person is excused from service or lawfully challenged. If necessary, jurors shall continue to be so drawn from time to time until the jury panel is filled.

Source: Laws 1915, c. 248, § 10, p. 572; C.S.1922, § 9104; C.S.1929, § 20-1634; R.S.1943, § 25-1634; Laws 1953, c. 72, § 13(1), p. 234; R.S.1943, (2016), § 25-1634; Laws 2020, LB387, § 22.

25-1666 Petit jury; tales jurors; how chosen.

(1) When it is deemed necessary, the judge shall direct the jury commissioner or the sheriff of the county or such other person as may be designated by the judge to summon from the bystanders or the body of the county a sufficient number of persons having the qualifications of jurors, as provided in section 25-1650, to serve as tales jurors to fill the jury panel, in order that a jury may be obtained.

(2) The persons summoned under subsection (1) of this section who are not chosen to serve on the jury shall be discharged from the jury panel as soon as the judge so determines. Such persons shall not thereafter be disqualified from service as jurors when regularly drawn from the jury list pursuant to the Jury Selection Act unless excused by the judge.

Source: Laws 1915, c. 248, § 10, p. 572; C.S.1922, § 9104; C.S.1929, § 20-1634; R.S.1943, § 25-1634; Laws 1953, c. 72, § 13(3), p. 235; R.S.1943, (2016), § 25-1634.02; Laws 2020, LB387, § 23.

25-1667 Petit jury; postponement of service.

The court may postpone service of a petit juror from one jury panel to a specific future jury panel. A written form may be completed for each such juror, giving the juror's name and address and the reason for the postponement and bearing the signature of the district judge. Such form shall be entered upon the record of the court. The names of jurors transferred from one jury panel to another shall be added to the names drawn for a particular jury panel as drawn under section 25-1662.

Source: Laws 1915, c. 248, § 10, p. 572; C.S.1922, § 9104; C.S.1929, § 20-1634; R.S.1943, § 25-1634; Laws 1953, c. 72, § 13(2), p. 235; Laws 1965, c. 124, § 1, p. 461; R.S.1943, (2016), § 25-1634.01; Laws 2020, LB387, § 24.

25-1668 Grand jury; potential jurors; how and when drawn; juror qualification form.

(1) Unless the judge or judges order that no grand jury be drawn, after creating the master key list under section 25-1654, the jury commissioner shall draw potential jurors from the master key list for service on grand juries for the jury term in the manner and number provided in this section or as the judge or judges otherwise direct. In drawing names, the jury commissioner may use a manual jury selection process or a jury management system.

(2) If the judge or judges initially order that no grand jury be drawn, such judge or judges may at any time thereafter order the drawing of a grand jury.

(3) The jury commissioner shall draw such number of potential jurors for grand jury service:

(a) As the jury commissioner deems necessary to arrive at a list of eighty persons who possess the qualifications of jurors set forth in section 25-1650; or

(b) As the judge or judges may otherwise direct.

(4)(a) If the jury commissioner uses the two-step qualifying and summoning system, he or she shall deliver to each potential juror a juror qualification form pursuant to section 25-1657.

(b) If the jury commissioner uses the one-step qualifying and summoning system, he or she shall deliver to each potential juror a juror qualification form pursuant to section 25-1657 and shall serve the potential juror with a summons pursuant to section 25-1660.

Source: Laws 2020, LB387, § 25.

25-1669 Grand jury; how drawn; alternate jurors.

(1) When the law requires that a grand jury be empaneled or when ordered by the judge or judges, the jury commissioner shall draw grand jurors pursuant to this section.

(2) The jury commissioner shall draw by chance forty names, or such other number as directed by the judge or judges, of persons the jury commissioner has investigated and determined to be qualified pursuant to section 25-1668. The jury commissioner shall then prepare a list of such names. Such list shall also contain the place of residence and occupation of each person on the list.

(3) The jury commissioner shall notify or summon persons selected under subsection (2) of this section as directed by the judge or judges.

(4) The list of names drawn pursuant to subsection (2) of this section shall then be turned over by the jury commissioner to a board to consist of the jury commissioner, the presiding judge of the district court, and one other person whom the presiding judge shall designate. The presiding judge shall be the chairperson. Such board shall select from such list the names of sixteen persons to serve as grand jurors and the names of three additional persons to serve as alternate jurors.

(5) The alternate jurors shall sit with the grand jury and participate in all investigative proceedings to the same extent as the regular grand jurors. Alternate grand jurors shall be permitted to question witnesses, review evidence, and participate in all discussions of the grand jury which occur prior to the conclusion of presentation of evidence. When the grand jury has determined that no additional evidence is necessary for its investigation, the alternate grand jurors shall be separated from the regular grand jurors and shall not participate in any further discussions, deliberations, or voting of the grand jury unless one or more of the regular grand jurors is or are excused because of illness or other sufficient reason. Such alternate jurors shall fill vacancies in the order of their selection.

Source: Laws 1915, c. 248, § 9, p. 572; Laws 1921, c. 113, § 1, p. 393; C.S.1922, § 9103; C.S.1929, § 20-1633; Laws 1939, c. 18, § 17, p. 108; C.S.Supp.,1941, § 20-1633; R.S.1943, § 25-1633; Laws 1953, c. 72, § 12(1), p. 232; Laws 1999, LB 72, § 1; R.S.1943, (2016), § 25-1633; Laws 2020, LB387, § 26.

25-1670 Juror; serve; limitations.

In any five-year period no person shall be required to:

(1) Serve as a petit juror for more than four calendar weeks, except if necessary to complete service in a particular case;

(2) Serve on more than one grand jury; or

(3) Serve as both a grand and petit juror.

Source: Laws 1979, LB 234, § 16; Laws 1980, LB 733, § 3; R.S.1943, (2016), § 25-1639; Laws 2020, LB387, § 27.

25-1671 County court; advance jury selection; when authorized.

All parties to an action which is filed with a county court of this state may agree that the jury may be selected up to thirty-one days prior to the date of trial. The stipulation must be unanimous among all parties and evidenced by a joint stipulation to the court.

Source: Laws 1996, LB 1249, § 1; R.S.1943, (2016), § 25-1631; Laws 2020, LB387, § 28.

25-1672 Jury trial; notice to jury commissioner; waiver.

The clerk magistrate shall provide written notice of a jury trial to the jury commissioner not less than thirty days prior to trial. The notice shall set forth the number of petit jurors to be summoned and the day and hour the petit jurors are to appear before the court. The requirements of this section may be waived upon an agreement between the jury commissioner and the clerk magistrate or judicial administrator.

Source: Laws 2020, LB387, § 29.

25-1673 Jurors; disclosing names; when permissible; penalty; access to juror qualification forms.

(1) It shall be unlawful for a jury commissioner, any clerk or deputy thereof, or any person who may obtain access to any record showing the names of persons drawn to serve as grand or petit jurors to disclose to any person, except to other officers in carrying out official duties or as provided in the Jury Selection Act, the name of any person so drawn or to permit any person to examine such record or to make a list of such names, except under order of the court. The application for such an order shall be filed in the form of a motion in the office of the clerk of the district court, containing the signature and residence of the applicant or his or her attorney and stating all the grounds on which the request for such order is based. Such order shall not be made except for good cause shown in open court and it shall be spread upon the record of the court. Any person violating any of the provisions of this section shall be guilty of a Class IV felony. Notwithstanding the foregoing provisions of this section, the judge or judges in any district may, in his, her, or their discretion, provide by express order for the disclosure of the names of persons drawn for actual service as grand or petit jurors.

(2) Notwithstanding subsection (1) of this section, the Supreme Court or an agent of the Supreme Court acting under the direction and supervision of the Chief Justice shall have access to juror qualification forms for research purposes. The Supreme Court and its agent shall treat such information as confidential, and nothing identifying any individual shall be released.

Source: Laws 1915, c. 248, § 11, p. 573; C.S.1922, § 9105; C.S.1929, § 20-1635; R.S.1943, § 25-1635; Laws 1949, c. 56, § 1, p. 167; Laws 1953, c. 72, § 14, p. 235; Laws 1977, LB 40, § 102; Laws 2005, LB 105, § 2; Laws 2018, LB193, § 31; R.S.Supp.,2018, § 25-1635; Laws 2020, LB387, § 30.

25-1674 Employee; penalized due to jury service; prohibited; penalty.

Any person who is summoned to serve on jury duty shall not be subject to discharge from employment, loss of pay, loss of sick leave, loss of vacation time, or any other form of penalty as a result of his or her absence from employment due to such jury duty upon giving reasonable notice to his or her employer of such summons. Any person who is summoned to serve on jury duty shall be excused upon request from any shift work for those days required to serve as a juror without loss of pay. No employer shall subject an employee to discharge, loss of pay, loss of sick leave, loss of vacation time, or any other form of penalty on account of his or her absence from employment by reason of jury duty, except that an employer may reduce the pay of an employee by an amount equal to any compensation, other than expenses, paid by the court for jury duty. Any person violating this section shall be guilty of a Class IV misdemeanor.

Source: Laws 1979, LB 234, § 17; Laws 1980, LB 733, § 4; R.S.1943, (2016), § 25-1640; Laws 2020, LB387, § 31.

25-1675 Act; neglect or failure by officers; contempt of court.

If any jury commissioner or deputy jury commissioner, sheriff or deputy sheriff, or person having charge of election records neglects or fails to perform

the duties imposed by the Jury Selection Act, the person so offending shall be guilty of contempt of court.

Source: R.S.1867, Code § 667, p. 511; R.S.1913, § 8146; C.S.1922, § 9081; C.S.1929, § 20-1611; R.S.1943, § 25-1611; Laws 1953, c. 72, § 5, p. 226; Laws 1979, LB 234, § 5; R.S.1943, (2016), § 25-1611; Laws 2020, LB387, § 32.

25-1676 Jury list; tampering; solicitation; penalty.

If any person places a name or asks to have a name placed on any list of potential jurors for service on any grand or petit jury in a manner not authorized by the Jury Selection Act, such person shall be guilty of a Class IV felony.

Source: Laws 1915, c. 248, § 6, p. 570; C.S.1922, § 1900; C.S.1929, § 20-1630; Laws 1939, c. 18, § 15, p. 107; C.S.Supp.,1941, § 20-1630; R.S.1943, § 25-1630; Laws 1977, LB 40, § 101; R.S. 1943, (2016), § 25-1630; Laws 2020, LB387, § 33.

25-1677 Packing juries; solicitation of jury service; penalties.

(1) If a sheriff or other officer corruptly or through favor or ill will summons a juror with the intent that such juror shall find a verdict for or against either party, or summons a grand juror from like motives with the intent that such grand juror shall or shall not find an indictment or presentment against any particular individual, the sheriff or other officer shall be fined not exceeding five hundred dollars, shall forfeit his or her office, and shall be forever disqualified from holding any office in this state.

(2) Any person who seeks the position of juror or who asks any attorney or other officer of the court or any other person or officer in any manner charged with the duty of selecting the jury to secure or procure his or her selection as a juror shall be guilty of contempt of court, shall be fined not exceeding twenty dollars, and shall thereby be disqualified from serving as a juror for that jury term.

(3) Any attorney or party to a suit pending for trial at that jury term who requests or solicits the placing of any person upon a jury, or upon any list of potential jurors for service on any grand or petit jury, shall be guilty of contempt of court and be fined not exceeding one hundred dollars, and the person so sought to be put upon the jury or list shall be disqualified to serve as a juror for that jury term.

Source: R.S.1867, Code § 668, p. 512; Laws 1901, c. 83, § 2, p. 477; R.S.1913, § 8147; C.S.1922, § 9082; C.S.1929, § 20-1612; R.S. 1943, § 25-1612; R.S.1943, (2016), § 25-1612; Laws 2020, LB387, § 34.

25-1678 Juries; proceedings stayed; jury panel or list quashed; grounds; procedures; new list, order for.

(1) A party may move to stay the proceedings, to quash the entire jury panel or jury list, or for other appropriate relief on the ground of substantial failure to comply with the Jury Selection Act in selecting the grand or petit jury. Such motion shall be made within seven days after the moving party discovered or by

the exercise of diligence could have discovered the grounds for such motion, and in any event before the petit jury is sworn to try the case.

(2) Upon a motion filed under subsection (1) of this section containing a sworn statement of facts which, if true, would constitute a substantial failure to comply with the Jury Selection Act, the moving party is entitled to present, in support of the motion, the testimony of the jury commissioner, any relevant records and papers not public or otherwise available which were used by the jury commissioner, and any other relevant evidence. If the court determines that in selecting either a grand jury or a petit jury there has been a substantial failure to comply with the Jury Selection Act, the court shall stay the proceedings pending the selection of the jury in conformity with the act, quash an entire jury panel or jury list, or grant other appropriate relief.

(3) The procedures prescribed by this section are the exclusive means by which the state, a person accused of a crime, or a party in a civil case may challenge a jury on the ground that the jury was not selected in conformity with the Jury Selection Act.

(4) The contents of any records or papers used by the jury commissioner in connection with the selection process and not made public under the Jury Selection Act shall not be disclosed, except in connection with the preparation or presentation of a motion under subsection (1) of this section, until after all persons on the jury list have been discharged. The parties in a case may inspect, reproduce, and copy the records or papers at all reasonable times during the preparation and pendency of a motion under subsection (1) of this section.

(5) Whenever the entire jury list is quashed, the court shall make an order directing the jury commissioner to draw a new key number in the manner provided in section 25-1653 and prepare a new master key list in the manner provided in section 25-1654. The jury commissioner shall qualify and summon jurors from the new master key list as provided in the Jury Selection Act.

Source: Laws 1915, c. 248, § 13, p. 577; C.S.1922, § 9108; C.S.1929, § 20-1637; R.S.1943, § 25-1637; Laws 1959, c. 102, § 3, p. 425; Laws 1979, LB 234, § 11; Laws 1985, LB 113, § 4; R.S.1943, (2016), § 25-1637; Laws 2020, LB387, § 35; Laws 2022, LB922, § 4.
Operative date January 1, 2023.

ARTICLE 18

EXPENSES AND ATTORNEY'S FEES

Section
25-1801. Lawsuit of four thousand dollars or less; recovery; costs; interest; attorney's fees.

25-1801 Lawsuit of four thousand dollars or less; recovery; costs; interest; attorney's fees.

(1) On any lawsuit of four thousand dollars or less, regardless of whether the claims are liquidated or assigned, the plaintiff may recover costs, interest, and attorney's fees in connection with each claim as provided in this section. If, at the expiration of ninety days after each claim accrued, the claim or claims have not been paid or satisfied, the plaintiff may file a lawsuit for payment of the claim or claims. If full payment of each claim is made to the plaintiff by or on

behalf of the defendant after the filing of the lawsuit, but before judgment is taken, except as otherwise agreed in writing by the plaintiff, the plaintiff shall be entitled to receive the costs of the lawsuit whether by voluntary payment or judgment. If the plaintiff secures a judgment thereon, the plaintiff shall be entitled to recover:

(a) The full amount of such judgment and all costs of the lawsuit thereon;

(b) Interest at the rate of six percent per annum. Such interest shall apply to the amount of the total claim beginning thirty days after the date each claim accrued, regardless of assignment, until paid in full; and

(c) If the plaintiff has an attorney retained, employed, or otherwise working in connection with the case, an amount for attorney's fees as provided in this section.

(2) If the cause is taken to an appellate court and the plaintiff recovers a judgment thereon, the appellate court shall tax as costs in the action, to be paid to the plaintiff, an additional amount for attorney's fees in such appellate court as provided in this section, except that if the plaintiff fails to recover a judgment in excess of the amount that may have been tendered by the defendant, then the plaintiff shall not recover the attorney's fees provided by this section.

(3) Attorney's fees shall be assessed by the court in a reasonable amount, but shall in no event be less than ten dollars when the judgment is fifty dollars or less, and when the judgment is over fifty dollars up to four thousand dollars, the attorney's fee shall be ten dollars plus ten percent of the judgment in excess of fifty dollars.

(4) For purposes of this section, the date that each claim accrued means the date the services, goods, materials, labor, or money were provided, or the date the charges were incurred by the debtor, unless some different time period is expressly set forth in a written agreement between the parties.

(5) This section shall apply to original creditors as well as their assignees and successors.

(6) This section does not apply to a cause of action alleging personal injury, regardless of the legal theory asserted.

Source: Laws 1919, c. 191, § 1, p. 865; C.S.1922, § 9126; C.S.1929, § 20-1801; R.S.1943, § 25-1801; Laws 1951, c. 70, § 1, p. 225; Laws 1955, c. 92, § 1, p. 269; Laws 1967, c. 150, § 1, p. 446; Laws 1993, LB 121, § 171; Laws 2009, LB35, § 13; Laws 2018, LB710, § 1.

Cross References

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

ARTICLE 19

REVERSAL OR MODIFICATION OF JUDGMENTS AND ORDERS BY APPELLATE COURTS

(a) REVIEW ON PETITION IN ERROR

Section
25-1902. Final order, defined; appeal.

(b) REVIEW ON APPEAL

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

(a) REVIEW ON PETITION IN ERROR

25-1902 Final order, defined; appeal.

(1) The following are final orders which may be vacated, modified, or reversed:

(a) An order affecting a substantial right in an action, when such order in effect determines the action and prevents a judgment;

(b) An order affecting a substantial right made during a special proceeding;

(c) An order affecting a substantial right made on summary application in an action after a judgment is entered; and

(d) An order denying a motion for summary judgment when such motion is based on the assertion of sovereign immunity or the immunity of a government official.

(2) An order under subdivision (1)(d) of this section may be appealed pursuant to section 25-1912 within thirty days after the entry of such order or within thirty days after the entry of judgment.

Source: R.S.1867, Code § 581, p. 496; R.S.1913, § 8176; C.S.1922, § 9128; C.S.1929, § 20-1902; R.S.1943, § 25-1902; Laws 2019, LB179, § 1.

(b) REVIEW ON APPEAL

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

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

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

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

of the terminating motion. A new notice of appeal shall be filed within the prescribed time after the entry of the order ruling on the motion. No additional fees are required for such filing. A notice of appeal filed after the court announces its decision or order on the terminating motion but before the entry of the order is treated as filed on the date of and after the entry of the order.

(4) Except as otherwise provided in subsection (3) of this section, sections 25-2301 to 25-2310 and 29-2306, and subsection (4) of section 48-638, an appeal shall be deemed perfected and the appellate court shall have jurisdiction of the cause when such notice of appeal has been filed and such docket fee deposited in the office of the clerk of the district court. After being perfected no appeal shall be dismissed without notice, and no step other than the filing of such notice of appeal and the depositing of such docket fee shall be deemed jurisdictional.

(5) The clerk of the district court shall forward such docket fee and a certified copy of such notice of appeal to the Clerk of the Supreme Court, and the Clerk of the Supreme Court shall file such appeal.

(6) Within thirty days after the date of filing of notice of appeal, the clerk of the district court shall prepare and file with the Clerk of the Supreme Court a transcript certified as a true copy of the proceedings contained therein. The Supreme Court shall, by rule, specify the method of ordering the transcript and the form and content of the transcript. Neither the form nor substance of such transcript shall affect the jurisdiction of the Court of Appeals or Supreme Court.

(7) Nothing in this section shall prevent any person from giving supersedeas bond in the district court in the time and manner provided in section 25-1916 nor affect the right of a defendant in a criminal case to be admitted to bail pending the review of such case in the Court of Appeals or Supreme Court.

Source: Laws 1907, c. 162, § 1, p. 495; R.S.1913, § 8186; Laws 1917, c. 140, § 1, p. 326; C.S.1922, § 9138; C.S.1929, § 20-1912; Laws 1941, c. 32, § 1, p. 141; C.S.Supp.,1941, § 20-1912; R.S.1943, § 25-1912; Laws 1947, c. 87, § 1, p. 265; Laws 1961, c. 135, § 1, p. 388; Laws 1981, LB 411, § 5; Laws 1982, LB 720, § 2; Laws 1982, LB 722, § 2; Laws 1986, LB 530, § 2; Laws 1986, LB 529, § 25; Laws 1991, LB 732, § 52; Laws 1995, LB 127, § 1; Laws 1997, LB 398, § 1; Laws 1999, LB 43, § 8; Laws 1999, LB 689, § 1; Laws 2000, LB 921, § 15; Laws 2017, LB172, § 2; Laws 2018, LB193, § 32.

Cross References

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

ARTICLE 21

ACTIONS AND PROCEEDINGS IN PARTICULAR CASES

(e) FORECLOSURE OF MORTGAGES

(p) MISCELLANEOUS

(e) FORECLOSURE OF MORTGAGES

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

In all cases of foreclosure of mortgages in the several counties in the state, it shall be the duty of the clerk of the district court, on the satisfaction or payment of the amount of the decree, to forward to the register of deeds a certificate setting forth the names of parties, plaintiff and defendant, descriptions of the premises mentioned in the decree, and the book and page where the mortgage foreclosed is recorded. For such certificate the clerk of the district court shall collect the fee required pursuant to section 33-109 for recording the certificate. Such amount shall be taxed as part of the costs in the case, and such sum shall be paid to the register of deeds as the fee for recording the certificate.

Source: Laws 1887, c. 63, § 1, p. 564; R.S.1913, § 5614; C.S.1922, § 4933; C.S.1929, § 26-1010; R.S.1943, § 25-2154; Laws 1951, c. 106, § 1, p. 512; Laws 1959, c. 140, § 3, p. 546; Laws 1971, LB 495, § 1; Laws 2012, LB14, § 3; Laws 2017, LB152, § 1; Laws 2017, LB268, § 2.

(p) MISCELLANEOUS

25-21,186 Emergency care at scene of emergency; persons relieved of civil liability, when.

(1) No person who renders emergency care at the scene of an accident or other emergency gratuitously, shall be held liable for any civil damages as a result of any act or omission by such person in rendering the emergency care or as a result of any act or failure to act to provide or arrange for medical treatment or care for the injured person.

(2) For purposes of this section, rendering emergency care at the scene of an accident or other emergency includes entering a motor vehicle to remove a child when entering the vehicle and removing the child is necessary to avoid immediate harm to the child.

Source: Laws 1961, c. 110, § 1, p. 349; Laws 1971, LB 458, § 1; R.S.1943, (1979), § 25-1152; Laws 2020, LB832, § 1.

(s) SHOPLIFTING

25-21,194 Repealed. Laws 2019, LB71, § 3.

(v) ACTIONS IN WHICH THE STATE OR A STATE AGENCY IS A PARTY

25-21,212 Judgment against claimant; transmitted to other counties; how collected.

In any action in which a judgment is rendered in any sum, or for costs, against the claimant, the clerk of the court in which such judgment is rendered shall make and transmit a certified copy thereof on application of the Attorney General or other counsel on behalf of the state, to the clerk of the district court of any county within the state and the same shall thereupon be filed and recorded in such court and become and be a judgment thereof. All judgments against the claimant or plaintiff shall be collected by execution as other judgments in the district courts.

Source: Laws 1877, § 13, p. 23; R.S.1913, § 1189; C.S.1922, § 1111; C.S.1929, § 27-330; R.S.1943, § 24-330; R.S.1943, (1985), § 24-330; Laws 2018, LB193, § 33.

(w) FORCIBLE ENTRY AND DETAINER

25-21,219 Forcible entry and detainer; jurisdiction; exceptions.

The district and county courts shall have jurisdiction over complaints of unlawful and forcible entry into lands and tenements and the detention of the same and of complaints against those who, having a lawful and peaceable entry into lands or tenements, unlawfully and by force hold the same. If the court finds that an unlawful and forcible entry has been made and that the same lands or tenements are held by force or that the same, after a lawful entry, are held unlawfully, the court shall cause the party complaining to have restitution thereof. The court or the jury, as the situation warrants, shall inquire into the matters between the two litigants such as the amount of rent owing the plaintiff and the amount of damage caused by the defendant to the premises while they were occupied by him or her and render a judgment or verdict accordingly. This section shall not apply to actions for possession of any premises subject to the provisions of the Uniform Residential Landlord and Tenant Act or the Mobile Home Landlord and Tenant Act.

Source: Laws 1929, c. 82, § 117, p. 309; C.S.1929, § 22-1201; R.S.1943, § 26-1,118; Laws 1965, c. 129, § 1, p. 468; R.R.S.1943, § 26-1,118; Laws 1972, LB 1032, § 68; Laws 1974, LB 293, § 48; Laws 1984, LB 13, § 27; Laws 1984, LB 1113, § 1; R.S.1943, (1985), § 24-568; Laws 2021, LB320, § 1.

Cross References

Mobile Home Landlord and Tenant Act, see section 76-1450.
Uniform Residential Landlord and Tenant Act, see section 76-1401.

25-21,228 Forcible entry and detainer; verdict; entry; judgment.

The court shall enter the verdict upon the record and shall render such judgment in the action as if the facts authorizing the finding of such verdict had been found to be true by the court.

Source: Laws 1929, c. 82, § 127, p. 311; C.S.1929, § 22-1211; R.S.1943, § 26-1,128; Laws 1972, LB 1032, § 78; R.S.1943, (1985), § 24-578; Laws 2018, LB193, § 34.

(hh) CHANGE OF NAME

25-21,271 Change of name; persons; procedure; clerk of the district court; duty.

(1) Any person desiring to change his or her name shall file a petition in the district court of the county in which such person may be a resident, setting forth (a) that the petitioner has been a bona fide citizen of such county for at least one year prior to the filing of the petition, (b) the address of the petitioner, (c) the date of birth of the petitioner, (d) the cause for which the change of petitioner's name is sought, and (e) the name asked for.

(2)(a) Except as provided in subdivision (2)(b) of this section, notice of the filing of the petition shall be published in a newspaper in the county, and if no newspaper is printed in the county, then in a newspaper of general circulation therein. The notice shall be published (i) once a week for four consecutive weeks if the petitioner is nineteen years of age or older at the time the action is filed and (ii) once a week for two consecutive weeks if the petitioner is under nineteen years of age at the time the action is filed.

(b) The court may waive the notice requirement of subdivision (2)(a) of this section upon a showing by the petitioner that such notice would endanger the petitioner.

(3) In an action involving a petitioner under nineteen years of age who has a noncustodial parent, notice of the filing of the petition shall be sent by certified mail within five days after publication to the noncustodial parent at the address provided to the clerk of the district court pursuant to subsection (1) of section 42-364.13 for the noncustodial parent if he or she has provided an address. The clerk of the district court shall provide the petitioner with the address upon request.

(4) It shall be the duty of the district court, upon being duly satisfied by proof in open court of the truth of the allegations set forth in the petition, that there exists proper and reasonable cause for changing the name of the petitioner, and that notice of the filing of the petition has been given as required by this section, to order and direct a change of name of such petitioner and that an order for the purpose be entered by the court.

(5) The clerk of the district court shall deliver a copy of any name-change order issued by the court pursuant to this section to the Department of Health and Human Services for use pursuant to sections 28-376 and 28-718 and to the sex offender registration and community notification division of the Nebraska State Patrol for use pursuant to section 29-4004.

Source: Laws 1871, p. 62; R.S.1913, § 5316; C.S.1922, § 4609; C.S.1929, § 61-102; R.S.1943, § 61-102; Laws 1963, c. 367, § 1, p. 1184; Laws 1994, LB 892, § 1; Laws 1995, LB 161, § 1; R.S.1943,

(1996), § 61-102; Laws 2010, LB147, § 1; Laws 2018, LB193, § 35; Laws 2022, LB519, § 1.
Effective date July 21, 2022.

(ll) EMERGENCY RESPONSE TO ASTHMA OR ALLERGIC REACTIONS

25-21,280 School, educational service unit, early childhood education program, school nurse, medication aide, and nonmedical staff person; physician; health care professional; pharmacist; immunity; when.

(1) Any person employed by a school approved or accredited by the State Department of Education, employed by an educational service unit and working in a school approved or accredited by the department, or employed by an early childhood education program approved by the department who serves as a school nurse or medication aide or who has been designated and trained by the school, educational service unit, or program as a nonmedical staff person to implement the emergency response to life-threatening asthma or systemic allergic reactions protocols adopted by the school, educational service unit, or program shall be immune from civil liability for any act or omission in rendering emergency care for a person experiencing a potentially life-threatening asthma or allergic reaction event on school grounds, in a vehicle being used for school purposes, in a vehicle being used for educational service unit purposes, at a school-sponsored activity or athletic event, at a facility used by the early childhood education program, in a vehicle being used for early childhood education program purposes, or at an activity sponsored by the early childhood education program which results in damage or injury unless such damage or injury was caused by the willful or wanton act or omission of such employee.

(2) The individual immunity granted by subsection (1) of this section shall not extend to the school district, educational service unit, or early childhood education program and shall not extend to any act or omission of such employee which results in damage or injury if the damage or injury is caused by such employee while impaired by alcohol or any controlled substance enumerated in section 28-405.

(3) Any school nurse, such nurse's designee, or other designated adult described in section 79-224 shall be immune from civil liability for any act or omission described in such section which results in damage or injury unless such damage or injury was caused by the willful or wanton act or omission of such school nurse, nurse's designee, or designated adult.

(4) A physician or other health care professional may issue a non-patient-specific prescription for medication for response to life-threatening asthma or anaphylaxis to a school, an educational service unit, or an early childhood education program as described in subsection (1) of this section. The physician or other health care professional shall be immune from liability for issuing such prescription unless he or she does not exercise reasonable care under the circumstances in signing the prescription. In no circumstance shall a physician or other health care professional be liable for the act or omission of another who provides or in any way administers the medication prescribed by the physician or other health care professional.

(5) A pharmacist may dispense medication pursuant to a non-patient-specific prescription for response to life-threatening asthma or anaphylaxis to a school,

an educational service unit, or an early childhood education program as described in subsection (1) of this section. The pharmacist shall be immune from liability for dispensing medication pursuant to a non-patient-specific prescription unless the pharmacist does not exercise reasonable care under the circumstances in dispensing the medication. In no circumstance shall a pharmacist be liable for the act or omission of another who provides or in any way administers the medication dispensed by the pharmacist.

(6) For purposes of this section, the name of the school, educational service unit, or early childhood education program shall serve as the patient name on the non-patient-specific prescription.

Source: Laws 2004, LB 868, § 2; Laws 2005, LB 361, § 30; Laws 2006, LB 1148, § 2; Laws 2017, LB487, § 1.

(qq) HUMAN TRAFFICKING VICTIMS CIVIL REMEDY ACT

25-21,299 Civil action authorized; recovery; attorney's fees and costs; order of attachment.

(1) Any trafficking victim, his or her parent or legal guardian, or personal representative in the event of such victim's death, who suffered or continues to suffer personal or mental injury, death, or any other damages proximately caused by such human trafficking may bring a civil action against any person who knowingly (a) engaged in human trafficking of such victim within this state or (b) aided or assisted in the human trafficking of such victim within this state.

(2) A plaintiff who prevails in a civil action brought pursuant to the Human Trafficking Victims Civil Remedy Act may recover his or her damages proximately caused by the actions of the defendant plus any and all attorney's fees and costs reasonably associated with the civil action.

(3) Damages recoverable pursuant to subsection (2) of this section include all damages otherwise recoverable under the law and include, but are not limited to:

(a) The physical pain and mental suffering the plaintiff has experienced and is reasonably certain to experience in the future;

(b) The reasonable value of the medical, hospital, nursing, and care and supplies reasonably needed by and actually provided to the plaintiff and reasonably certain to be needed and provided in the future;

(c) The reasonable value of transportation, housing, and child care reasonably needed and actually incurred by the plaintiff;

(d) The reasonable value of the plaintiff's labor and services the plaintiff has lost because he or she was a trafficking victim;

(e) The reasonable monetary value of the harm caused by the documentation and circulation of the human trafficking;

(f) The reasonable costs incurred by the plaintiff to relocate away from the defendant or the defendant's associates;

(g) In the event of death, damages available as in other actions for wrongful death; and

(h) The reasonable costs incurred by the plaintiff to participate in the criminal investigation or prosecution or attend criminal proceedings related to trafficking the plaintiff.

(4) In addition to all remedies available under this section, the court may enter an order of attachment pursuant to sections 25-1001 to 25-1010.

Source: Laws 2015, LB294, § 3; Laws 2019, LB519, § 1.

ARTICLE 22
GENERAL PROVISIONS

(b) CLERKS OF COURTS; DUTIES

(d) MISCELLANEOUS

(e) CONSTABLES AND SHERIFFS

(b) CLERKS OF COURTS; DUTIES

25-2205 Case file and record; preservation.

The clerk of each of the courts shall maintain and preserve a case file and a record of all documents delivered to him or her for that purpose in every action or special proceeding. Retention and disposition of the records shall be determined by the State Records Administrator pursuant to the Records Management Act.

Source: R.S.1867, Code § 884, p. 547; R.S.1913, § 8553; C.S.1922, § 9504; C.S.1929, § 20-2205; R.S.1943, § 25-2205; Laws 2018, LB193, § 36.

Cross References

Records Management Act, see section 84-1220.

25-2207 Record of service of summons; entry as evidence.

The clerk of the court shall, upon the return of every summons served, enter upon the record the name of the defendant or defendants summoned and the day of the service upon each one. The entry shall be evidence of the service of the summons in case of the loss thereof.

Source: R.S.1867, Code § 886, p. 548; R.S.1913, § 8555; C.S.1922, § 9506; C.S.1929, § 20-2207; R.S.1943, § 25-2207; Laws 2018, LB193, § 37.

25-2209 Clerk of district court; required records enumerated.

(1) The clerk of the district court shall keep records, to be maintained on the court's electronic case management system, called the register of actions, the trial docket, the judge's docket notes, the financial record, the general index,

the judgment index, and the case file. Retention and disposition of the records shall be determined by the State Records Administrator pursuant to the Records Management Act.

(2) The case file, numbered in chronological order, shall contain the complaint or petition and subsequent pleadings in the case file. The case file may be maintained as an electronic document through the court's electronic case management system, on microfilm, or in a paper volume and disposed of when determined by the State Records Administrator pursuant to the Records Management Act.

(3) For purposes of this section:

(a) Financial record means the financial accounting of the court, including the recording of all money receipted and disbursed by the court and the receipts and disbursements of all money held as an investment;

(b) General index means the alphabetical listing of the names of the parties to the suit, both direct and inverse, with the case number where all proceedings in such action may be found;

(c) Judge's docket notes means the notations of the judge detailing the actions in a court proceeding and the entering of orders and judgments;

(d) Judgment index means the alphabetical listing of all judgment debtors and judgment creditors;

(e) Register of actions means the official court record and summary of the case; and

(f) Trial docket means a list of pending cases as provided in section 25-2211.

Source: R.S.1867, Code § 321, p. 448; G.S.1873, c. 57, § 321, p. 579; R.S.1913, § 8557; C.S.1922, § 9508; C.S.1929, § 20-2209; R.S.1943, § 25-2209; Laws 1971, LB 128, § 1; Laws 1992, LB 1059, § 13; Laws 2011, LB17, § 4; Laws 2018, LB193, § 38.

Cross References

Records Management Act, see section 84-1220.

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

25-2211 Trial docket.

The trial docket shall be available for the court on the first day of each month setting forth each case pending in the order of filing of the complaint to be called for trial. For the purpose of arranging the trial docket, an issue shall be considered as made up when either party is in default of a pleading. If the defendant fails to answer, the cause for the purpose of this section shall be deemed to be at issue upon questions of fact, but in every such case the plaintiff may move for and take such judgment as he or she is entitled to, on the defendant's default, on or after the day on which the action is set for trial. No witnesses shall be subpoenaed in any case while the cause stands upon issue of law. Whenever the court regards the answer in any case as frivolous and put in for delay only, no leave to answer or reply shall be given unless upon payment of all costs then accrued in the action. When the number of actions filed exceeds three hundred, the judge or judges of the district court for the county may, by rule or order, classify them in such manner as they may deem expedient and cause them to be placed according to such classifications upon different trial dockets and the respective trial dockets may be proceeded with and causes thereon tried, heard, or otherwise disposed of, concurrently by one

or more of the judges. Provision may be made by rule of court that issues of fact shall not be for trial at any term when the number of pending actions exceeds three hundred, except upon such previous notice of trial as may be prescribed thereby.

Source: R.S.1867, Code § 323, p. 448; Laws 1887, c. 94, § 1, p. 647; Laws 1899, c. 83, § 1, p. 338; R.S.1913, § 8559; C.S.1922, § 9510; C.S.1929, § 20-2211; R.S.1943, § 25-2211; Laws 1951, c. 74, § 2(1), p. 230; Laws 2002, LB 876, § 54; Laws 2018, LB193, § 39.

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

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

25-2213 Clerks of courts of record other than district courts; duties.

The provisions of sections 25-2204 to 25-2211 shall, as far as applicable, apply to clerks of other courts of record.

Source: R.S.1867, Code § 888, p. 548; R.S.1913, § 8562; C.S.1922, § 9513; C.S.1929, § 20-2214; R.S.1943, § 25-2213; Laws 1992, LB 1059, § 14; Laws 2018, LB193, § 40.

(d) MISCELLANEOUS

25-2221 Time; how computed; offices may be closed, when; federal holiday schedule observed; exceptions.

Except as may be otherwise more specifically provided, the period of time within which an act is to be done in any action or proceeding shall be computed by excluding the day of the act, event, or default after which the designated period of time begins to run. The last day of the period so computed shall be included unless it is a Saturday, a Sunday, or a day during which the offices of courts of record may be legally closed as provided in this section, in which event the period shall run until the end of the next day on which the office will be open.

All courts and their offices may be closed on Saturdays, Sundays, days on which a specifically designated court is closed by order of the Chief Justice of the Supreme Court, and these holidays: New Year's Day, January 1; Birthday of Martin Luther King, Jr., the third Monday in January; President's Day, the third Monday in February; Arbor Day, the last Friday in April; Memorial Day, the last Monday in May; Juneteenth National Independence Day, June 19; Independence Day, July 4; Labor Day, the first Monday in September; Indigenous Peoples' Day and Columbus Day, the second Monday in October; Veterans Day, November 11; Thanksgiving Day, the fourth Thursday in November; the day after Thanksgiving; Christmas Day, December 25; and all days declared by law or proclamation of the Governor to be holidays. Such days shall be designated as nonjudicial days. If any such holiday falls on Sunday, the following Monday shall be a holiday. If any such holiday falls on Saturday, the preceding Friday shall be a holiday. Court services shall be available on all other days. If the date designated by the state for observance of any legal holiday pursuant to this section, except Veterans Day, is different from the date of observance of such

holiday pursuant to a federal holiday schedule, the federal holiday schedule shall be observed.

Source: R.S.1867, Code § 895, p. 549; R.S.1913, § 8570; C.S.1922, § 9521; C.S.1929, § 20-2222; R.S.1943, § 25-2221; Laws 1959, c. 108, § 1, p. 437; Laws 1967, c. 151, § 1, p. 448; Laws 1969, c. 844, § 1, p. 3179; Laws 1973, LB 34, § 1; Laws 1975, LB 218, § 1; Laws 1978, LB 855, § 1; Laws 1988, LB 821, § 1; Laws 1988, LB 909, § 1; Laws 2002, LB 876, § 55; Laws 2003, LB 760, § 6; Laws 2011, LB669, § 17; Laws 2020, LB848, § 2; Laws 2022, LB29, § 1.
Effective date April 19, 2022.

25-2228 Legal notices; how published.

(1) All legal publications and notices of whatever kind or character that may by law be required to be published a certain number of days or a certain number of weeks shall be legally published when they have been published in one issue in each week in a daily, semiweekly, or triweekly newspaper, such publication in such daily, semiweekly, or triweekly paper or papers to be made upon any one day of the week upon which such paper is published. Nothing in this section shall be construed as preventing the publication of such legal notices and publications in weekly newspapers. Any newspaper publishing such legal notices or publications as provided in this section shall be otherwise qualified under existing law to publish such notices or publications. All legal publications and all notices of whatever kind or character that may be required by law to be published a certain number of days or a certain number of weeks, shall be and hereby are declared to be legally published when they shall have been published once a week in a weekly, semiweekly, triweekly, or daily newspaper for the number of weeks, covering the period of publication. For the purpose of this section, when a newspaper is published regularly four or more times each week, it shall be deemed a daily newspaper.

(2) Beginning October 1, 2022, all legal publications and notices of whatever kind or character that may by law be required to be published a certain number of days or a certain number of weeks shall also be posted by the newspaper publishing such legal publications or notices on a statewide website established and maintained as a repository for such notices by a majority of Nebraska newspapers. A website posting or a failure to make such website posting under this subsection shall not affect the validity of the publication or notice published under subsection (1) of this section.

Source: Laws 1917, c. 202, § 1, p. 481; C.S.1922, § 9528; Laws 1923, c. 100, § 1, p. 255; Laws 1927, c. 63, § 1, p. 225; C.S.1929, § 20-2229; R.S.1943, § 25-2228; Laws 1943, c. 47, § 1, p. 198; Laws 1996, LB 299, § 21; Laws 2022, LB840, § 1.
Effective date July 21, 2022.

(e) CONSTABLES AND SHERIFFS

25-2234 Sheriff; return of process.

It shall be the duty of every sheriff to make due return of all legal process to him or her directed and by him or her delivered or served by certified or registered mail, at the proper office and on the proper return day thereof, or if

the judgment is recorded in the district court, appealed, or stayed, upon which he or she has an execution, on notice thereof, to return the execution, stating thereon such facts.

Source: Laws 1929, c. 82, art. XV, § 173, p. 324; C.S.1929, § 22-1503; Laws 1933, c. 44, § 4, p. 253; C.S.Supp.,1941, § 22-1503; R.S. 1943, § 26-1,174; R.S.1943, (1979), § 26-1,174; Laws 1987, LB 93, § 7; R.S.Supp.,1988, § 24-597; Laws 1992, LB 1059, § 18; Laws 2018, LB193, § 41.

ARTICLE 25

UNIFORM PROCEDURE FOR ACQUIRING PRIVATE PROPERTY FOR PUBLIC USE

Section
25-2501. Intent and purpose.

25-2501 Intent and purpose.

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

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

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

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

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

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

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

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

ARTICLE 26

ARBITRATION

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

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

ARTICLE 27

PROVISIONS APPLICABLE TO COUNTY COURTS

(a) MISCELLANEOUS PROCEDURAL PROVISIONS

(a) MISCELLANEOUS PROCEDURAL PROVISIONS

25-2704 Summons; pleadings; time for filings; trial date; telephonic or videoconference hearing; authorized.

(1) In any civil action in county court, the summons, pleadings, and time for filings shall be the same as provided for civil actions in district court. A case shall stand for trial at the earliest available time on the trial docket after the issues therein are or, according to the times fixed for pleading, should have been made up.

(2) All nonevidentiary hearings, and any evidentiary hearings approved by the county court and by stipulation of all parties that have filed an appearance, may be heard by the court telephonically or by videoconferencing or similar equipment at any location within the judicial district as ordered by the court and in a manner that ensures the preservation of an accurate record. Such hearings shall not include trials before a jury. Hearings conducted in this manner shall be consistent with the public's access to the courts.

Source: Laws 1972, LB 1032, § 35; R.S.1943, (1985), § 24-535; Laws 1997, LB 363, § 1; Laws 1998, LB 234, § 9; Laws 2002, LB 876, § 57; Laws 2008, LB1014, § 12; Laws 2018, LB193, § 42.

25-2706 County court; certify proceedings to district court; when; avoidance of county court jurisdiction; recovery of costs prohibited.

The county court shall certify proceedings to the district court of the county in which an action is pending (1) when the pleadings or discovery proceedings indicate that the amount in controversy is greater than the jurisdictional amount in subdivision (5) of section 24-517 and a party to the action requests the transfer or (2) when the relief requested is exclusively within the jurisdiction of the district court. The county court shall file a certification of the case file and costs with the district court within ten days after entry of the transfer order. The action shall then be tried and determined by the district court as if the proceedings were originally brought in such district court, except that no new pleadings need be filed unless ordered by the district court.

If it is determined, upon adjudication, that the allegations of either party to such action are asserted with the intention solely of avoiding the jurisdiction of the county court, the offending party shall not recover any costs in the county court or the district court.

Source: Laws 1983, LB 137, § 3; Laws 1986, LB 750, § 2; R.S.Supp.,1988, § 24-302.01; Laws 1991, LB 422, § 2; Laws 1993, LB 69, § 1; Laws 2001, LB 269, § 2; Laws 2018, LB193, § 43.

25-2707 Garnishment; amount in excess of jurisdiction of county court; transfer to district court; proceedings certified.

Whenever proceedings under sections 25-1011 and 25-1026 to 25-1031.01, or under section 25-1056, are had in any county court and it shall appear by the pleadings or other answers to interrogatories filed by the garnishee that there is an amount in excess of the jurisdictional dollar amount specified in section 24-517, or property with a value of more than such amount, the title or ownership of which is in dispute, or when at any time during such proceedings it shall appear from the evidence or other pleadings that there is property of the value of more than the jurisdictional dollar amount specified in section 24-517, the title or ownership of which is in dispute, such court shall proceed no further. Within ten days after entry of the transfer order, the county court shall file with the district court of the county in which the action is pending a certification of the case file and costs. The matter shall be tried and determined by the district court as if the proceedings were originally had in district court, except that no new pleadings need be filed except as ordered by the district court.

Source: Laws 1961, c. 116, § 1, p. 358; R.S.1943, § 24-502.01; Laws 1972, LB 1032, § 40; Laws 1986, LB 749, § 1; R.S.Supp.,1988, § 24-540; Laws 2018, LB193, § 44.

(c) UNCLAIMED FUNDS

25-2717 Unclaimed funds; payment to State Treasurer; disposition.

If any fees, money, condemnation awards, legacies, devises, sums due creditors, or costs due or belonging to any heir, legatee, or other person or persons have not been paid to or demanded by the person or persons entitled to the funds within three years from the date the funds were paid to the county judge or his or her predecessors in office, it shall be the duty of the county judge to

notify the State Treasurer of the fees, money, condemnation awards, legacies, devises, sums due creditors, or costs remaining. When directed by the State Treasurer, the county judge shall remit the fees, money, condemnation awards, legacies, devises, sums due creditors, or costs to the State Treasurer for deposit in the Unclaimed Property Trust Fund pursuant to section 69-1317. Such payment shall release the bond of the county judge making such payment of all liability for such fees, money, condemnation awards, legacies, devises, sums due creditors, and costs due to heirs, legatees, or other persons paid in compliance with this section.

Source: Laws 1909, c. 40, § 2, p. 227; R.S.1913, § 1243; Laws 1921, c. 105, § 1, p. 376; C.S.1922, § 1166; C.S.1929, § 27-546; R.S.1943, § 24-553; Laws 1949, c. 49, § 1, p. 157; Laws 1967, c. 139, § 4, p. 427; R.R.S.1943, § 24-553; Laws 1972, LB 1032, § 63; Laws 1978, LB 860, § 1; R.S.1943, (1985), § 24-563; Laws 1992, Third Spec. Sess., LB 26, § 2; Laws 2019, LB406, § 2; Laws 2021, LB532, § 2.

Cross References

Uniform Disposition of Unclaimed Property Act, see section 69-1329.

(d) JUDGMENTS

25-2721 Judgment; execution; lien on real estate; conditions.

(1) Any person having a judgment rendered by a county court may request the clerk of such court to issue execution on the judgment in the same manner as execution is issued upon other judgments rendered in the county court and direct the execution on the judgment to any county in the state. Such person may request that garnishment, attachment, or any other aid to execution be directed to any county without the necessity of filing a transcript of the judgment in the receiving county, and any hearing or proceeding with regard to such execution or aid in execution shall be heard in the court in which the judgment was originally rendered.

(2) Any person having a judgment rendered by a county court may cause a transcript thereof to be filed in the office of the clerk of the district court in any county of this state. When the transcript is so filed and entered upon the judgment index, such judgment shall be a lien on real estate in the county where the transcript is filed, and when the transcript is so filed and entered upon such judgment index, the clerk of such court may issue execution thereupon in like manner as execution is issued upon judgments rendered in the district court.

Source: G.S.1873, c. 14, § 18, p. 267; R.S.1913, § 1221; C.S.1922, § 1144; C.S.1929, § 27-532; R.S.1943, § 24-532; Laws 1972, LB 1032, § 39; R.S.1943, (1985), § 24-539; Laws 1991, LB 422, § 3; Laws 2009, LB35, § 15; Laws 2018, LB193, § 45.

(f) APPEALS

25-2728 Appeals; parties; applicability of sections.

(1) Any party in a civil case and any defendant in a criminal case may appeal from the final judgment or final order of the county court to the district court of the county where the county court is located. In a criminal case, a prosecuting

attorney may obtain review by exception proceedings pursuant to sections 29-2317 to 29-2319.

(2) Sections 25-2728 to 25-2738 shall not apply to:

(a) Appeals in eminent domain proceedings as provided in sections 76-715 to 76-723;

(b) Appeals in proceedings in the county court sitting as a juvenile court as provided in sections 43-2,106 and 43-2,106.01;

(c) Appeals in matters arising under the Nebraska Probate Code as provided in section 30-1601;

(d) Appeals in matters arising under the Nebraska Uniform Trust Code;

(e) Appeals in matters arising under the Health Care Surrogacy Act as provided in section 30-1601;

(f) Appeals in adoption proceedings as provided in section 43-112;

(g) Appeals in inheritance tax proceedings as provided in section 77-2023; and

(h) Appeals in domestic relations matters as provided in section 25-2739.

Source: Laws 1981, LB 42, § 1; Laws 1984, LB 13, § 19; Laws 1986, LB 529, § 11; Laws 1989, LB 182, § 8; R.S.Supp.,1989, § 24-541.01; Laws 1991, LB 732, § 69; Laws 1994, LB 1106, § 2; Laws 1995, LB 538, § 2; Laws 2000, LB 921, § 25; Laws 2003, LB 130, § 118; Laws 2010, LB800, § 3; Laws 2018, LB104, § 20.

Cross References

Health Care Surrogacy Act, see section 30-601.
Nebraska Probate Code, see section 30-2201.
Nebraska Uniform Trust Code, see section 30-3801.

25-2729 Appeals; procedure.

(1) In order to perfect an appeal from the county court, the appealing party shall within thirty days after the entry of the judgment or final order complained of:

(a) File with the clerk of the county court a notice of appeal; and

(b) Deposit with the clerk of the county court a docket fee of the district court for cases originally commenced in district court.

(2) Satisfaction of the requirements of subsection (1) of this section shall perfect the appeal and give the district court jurisdiction of the matter appealed.

(3) The entry of a judgment or final order occurs when the clerk of the court places the file stamp and date upon the judgment or final order. For purposes of determining the time for appeal, the date stamped on the judgment or final order shall be the date of entry.

(4) In appeals from the Small Claims Court only, the appealing party shall also, within the time fixed by subsection (1) of this section, deposit with the clerk of the county court a cash bond or undertaking, with at least one good and sufficient surety approved by the court, in the amount of fifty dollars conditioned that the appellant will satisfy any judgment and costs that may be adjudged against him or her.

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

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

(7) The party appealing shall serve a copy of the notice of appeal upon all parties who have appeared in the action or upon their attorney of record. Proof of service shall be filed with the notice of appeal.

(8) If an appellant fails to comply with any provision of subsection (4) or (7) of this section, the district court on motion and notice may take such action, including dismissal of the appeal, as is just.

Source: Laws 1981, LB 42, § 2; Laws 1984, LB 13, § 20; Laws 1986, LB 529, § 12; R.S.Supp.,1988, § 24-541.02; Laws 1994, LB 1106, § 3; Laws 1995, LB 538, § 3; Laws 1995, LB 598, § 1; Laws 1999, LB 43, § 15; Laws 2000, LB 921, § 26; Laws 2018, LB193, § 46.

25-2731 Appeal; transcript; contents; clerk; duties.

(1) Upon perfection of the appeal, the clerk of the county court shall transmit within ten days to the clerk of the district court a certified copy of the transcript and the docket fee, whereupon the clerk of the district court shall file the appeal. A copy of any bond or undertaking shall be transmitted to the clerk of the district court within ten days of filing.

(2) The Supreme Court shall, by rule and regulation, specify the method of ordering the transcript and the form and content of the transcript.

Source: Laws 1981, LB 42, § 4; Laws 1984, LB 13, § 22; Laws 1986, LB 529, § 14; Laws 1988, LB 352, § 24; R.S.Supp.,1988, § 24-541.04; Laws 2018, LB193, § 47.

(g) DOMESTIC RELATIONS MATTERS

25-2740 Domestic relations matters; district, county, and separate juvenile courts; jurisdiction; procedure.

(1) For purposes of this section:

(a) Domestic relations matters means proceedings under sections 28-311.09 and 28-311.10 (including harassment protection orders and valid foreign

harassment protection orders), sections 28-311.11 and 28-311.12 (including sexual assault protection orders and valid foreign sexual assault protection orders), the Conciliation Court Law and sections 42-347 to 42-381 (including dissolution, separation, annulment, custody, and support), section 43-512.04 (including child support or medical support), section 42-924 (including domestic protection orders), sections 43-1401 to 43-1418 (including paternity determinations and parental support), and sections 43-1801 to 43-1803 (including grandparent visitation); and

(b) Paternity or custody determinations means proceedings to establish the paternity of a child under sections 43-1411 to 43-1418 or proceedings to determine custody of a child under section 42-364.

(2) Except as provided in subsection (3) of this section, in domestic relations matters, a party shall file his or her petition or complaint and all other court filings with the clerk of the district court. The party shall state in the petition or complaint whether such party requests that the proceeding be heard by a county court judge or by a district court judge. If the party requests the case be heard by a county court judge, the county court judge assigned to hear cases in the county in which the matter is filed at the time of the hearing is deemed appointed by the district court and the consent of the county court judge is not required. Such proceeding is considered a district court proceeding, even if heard by a county court judge, and an order or judgment of the county court in a domestic relations matter has the force and effect of a district court judgment. The testimony in a domestic relations matter heard before a county court judge shall be preserved as provided in section 25-2732.

(3) In addition to the jurisdiction provided for paternity or custody determinations under subsection (2) of this section, a county court or separate juvenile court which already has jurisdiction over the child whose paternity or custody is to be determined has jurisdiction over such paternity or custody determination.

Source: Laws 1997, LB 229, § 2; Laws 1998, LB 218, § 1; Laws 1998, LB 1041, § 2; Laws 2004, LB 1207, § 16; Laws 2008, LB280, § 2; Laws 2008, LB1014, § 14; Laws 2017, LB289, § 1.

Cross References

Conciliation Court Law, see section 42-802.

(h) EXPEDITED CIVIL ACTIONS

25-2741 Act, how cited.

Sections 25-2741 to 25-2749 shall be known and may be cited as the County Court Expedited Civil Actions Act.

Source: Laws 2020, LB912, § 1.

25-2742 Civil actions; applicability of act.

(1) The County Court Expedited Civil Actions Act applies to civil actions in county court in which the sole relief sought is a money judgment and in which the claim of each plaintiff is less than or equal to the county court jurisdictional amount set forth in subdivision (5) of section 24-517, including damages of any kind, penalties, interest accrued before the filing date, and attorney's fees, but

excluding prejudgment interest accrued after the filing date, postjudgment interest, and costs.

(2) The act does not apply to Small Claims Court actions or domestic relations matters or paternity or custody determinations as defined in section 25-2740.

(3) For the purposes of the act, side means all litigants with generally common interests in the litigation.

Source: Laws 2020, LB912, § 2.

25-2743 Plaintiffs; certification of relief sought; applicability of laws and rules; jurisdictional amount; restriction on judgment; termination of proceedings; conditions; counterclaim.

(1) Eligible plaintiffs may elect to proceed under the County Court Expedited Civil Actions Act by certifying that the relief sought meets the requirements of section 25-2742. The certification must be on a form approved by the Supreme Court, signed by all plaintiffs and their attorneys, if represented, and filed with the complaint. The certification is not admissible to prove a plaintiff's damages in any proceeding.

(2) Except as otherwise specifically provided, the Nebraska laws and court rules that are applicable to civil actions are applicable to actions under the act.

(3) A party proceeding under the act may not recover a judgment in excess of the county court jurisdictional amount set forth in subdivision (5) of section 24-517, nor may a judgment be entered against a party in excess of such amount, excluding prejudgment interest that accrues after the filing date, postjudgment interest, and costs. The jury, if any, must not be informed of the county court jurisdictional amount. If the jury returns a verdict for damages in excess of the county court jurisdictional amount for or against a party, the court shall not enter judgment on that verdict in excess of such amount, exclusive of the prejudgment interest that accrues after the filing date, postjudgment interest, and costs.

(4) Upon timely application of any party, the county court may terminate application of the act and enter such orders as are appropriate under the circumstances if:

(a) The moving party makes a specific showing of substantially changed circumstances sufficient to render the application of the act unfair; or

(b) A party has in good faith filed a counterclaim that seeks relief other than that allowed under the act.

(5) A party may assert a counterclaim only if the counterclaim arises out of the same transaction or occurrence as the opposing party's claim. Any such counterclaim is subject to the county court jurisdictional limit on damages under the act, unless the court severs the counterclaim or certifies the action to district court pursuant to section 25-2706 on the grounds that the amount in controversy exceeds the county court jurisdictional limit.

Source: Laws 2020, LB912, § 3.

25-2744 Discovery; expert; limitations; motion to modify.

(1) Except upon agreement of the parties or leave of court granted upon a showing of good cause, all discovery under the County Court Expedited Civil Actions Act must be completed no later than sixty days before trial.

(2) Except upon agreement of the parties or leave of court granted upon a showing of good cause, discovery under the act is subject to the following additional limitations:

(a) Each side shall serve no more than ten interrogatories on any other side;

(b) Each side shall serve no more than ten requests for production on any other side;

(c) Each side shall serve no more than ten requests for admission on any other side. This limit does not apply to requests for admission of the genuineness of documents that a party intends to offer into evidence at trial;

(d) One deposition of each party may be taken. With regard to corporations, partnerships, voluntary associations, or any other groups or entities named as a party, the entity or one officer, member, or employee of such entity may be deposed; and

(e) Each side may take the deposition of up to two nonparties.

(3) Each side is entitled to one expert, except upon agreement of the parties or leave of court granted upon a showing of good cause. A treating health care provider is counted as an expert for purposes of this subsection.

(4) A motion for leave of court to modify the limitations set forth in this section must be in writing and must set forth the proposed additional discovery or expert and the reasons establishing good cause.

Source: Laws 2020, LB912, § 4.

25-2745 Motions.

(1) Any party may file any motion permitted under rules adopted by the Supreme Court for pre-answer motions.

(2) A motion for summary judgment must be filed no later than ninety days before trial.

Source: Laws 2020, LB912, § 5.

25-2746 Action; time limitations.

An action under the County Court Expedited Civil Actions Act should ordinarily be submitted to the jury or the court within two business days from the commencement of trial. Unless the court allows additional time for good cause shown, each side shall be allowed no more than six hours to complete jury selection, opening statements, presentation of evidence, examination and cross-examination of witnesses, and closing arguments. Time spent on objections, bench conferences, and challenges for cause to a juror are not included in the time limit.

Source: Laws 2020, LB912, § 6.

25-2747 Evidence; stipulation; document; objections; Nebraska Evidence Rules; applicability; health care provider report; form.

(1) Parties to an action under the County Court Expedited Civil Actions Act should stipulate to factual and evidentiary matters to the greatest extent possible.

(2) For purposes of the act, the court may overrule objections based on authenticity and hearsay to the admission of a document, notwithstanding the absence of testimony or certification from a custodian or other qualified witness, if:

(a) The party offering the document gives notice to all other parties of the party's intention to offer the document into evidence at least ninety days in advance of trial. The notice must be given to all parties together with a copy of any document intended to be offered;

(b) The document on its face appears to be what the proponent claims it is;

(c) The document on its face appears not to be hearsay or appears to fall within a hearsay exception set forth in Nebraska law; and

(d) The objecting party has not raised a substantial question as to the authenticity or trustworthiness of the document.

(3) Except as otherwise specifically provided by the act, the Nebraska Evidence Rules are applicable to actions under the act.

(4) Nothing in subsection (2) of this section authorizes admission of a document that contains hearsay within hearsay, unless the court determines from the face of the document that each part of the combined statements conforms with a hearsay exception set forth in Nebraska law.

(5) Any authenticity or hearsay objections to a document as to which notice has been provided under subdivision (2)(a) of this section must be made within thirty days after receipt of the notice.

(6)(a) The report of any treating health care provider concerning the plaintiff may be used in lieu of deposition or in-court testimony of the health care provider, so long as the report offered into evidence is on a form adopted for such purpose by the Supreme Court and is signed by the health care provider making the report.

(b) The Supreme Court shall adopt a form for the purposes of subdivision (6)(a) of this section.

(c) Unless otherwise stipulated or ordered by the court, a copy of any completed health care provider report under subdivision (6)(a) of this section must be served on all parties at least ninety days in advance of trial. Any objections to the health care provider statement, including an objection that the statement is incomplete or does not otherwise comply with this subsection, must be made within thirty days after receipt of the statement. For good cause shown, the court may issue such orders regarding the health care provider report as justice may require, including an order permitting a health care provider to supplement the report.

(d) Any party against whom a health care provider report may be used has the right, at the party's own initial expense, to cross-examine by deposition the health care provider signing the report, and the deposition may be used at trial.

(e) The deposition of the health care provider and the discovery of facts or opinions held by an expert are not counted for purposes of the numerical limits of section 25-2744.

Source: Laws 2020, LB912, § 7.

Cross References

Nebraska Evidence Rules, see section 27-1103.

25-2748 Rules and forms; Supreme Court; powers.

The Supreme Court may promulgate rules and forms for actions governed by the County Court Expedited Civil Actions Act, and such rules and forms shall not be in conflict with the act.

Source: Laws 2020, LB912, § 8.

25-2749 Act; applicability.

The County Court Expedited Civil Actions Act applies to civil actions filed on or after January 1, 2022.

Source: Laws 2020, LB912, § 9.

ARTICLE 28

SMALL CLAIMS COURT

Section
25-2803. Parties; representation.
25-2804. Actions; how commenced; fee; hearing; notice; setoff or counterclaim; limitations; default judgment; actions authorized.

25-2803 Parties; representation.

(1) Parties in the Small Claims Court may be individuals, partnerships, limited liability companies, corporations, unions, associations, or any other kind of organization or entity.

(2) No party shall be represented by an attorney in the Small Claims Court except as provided in sections 25-2804 and 25-2805.

(3) An individual shall represent himself or herself in the Small Claims Court. A partnership shall be represented by a partner or one of its employees. A limited liability company shall be represented by a member, a manager, or one of its employees. A union shall be represented by a union member or union employee. A corporation shall be represented by one of its employees. An association shall be represented by one of its members or by an employee of the association. Any other kind of organization or entity shall be represented by one of its members or employees.

(4) Only a party, natural or otherwise, who has been a party to the transaction with the defendant for which the claim is brought may file and prosecute a claim in the Small Claims Court.

(5) No party may file an assigned claim in the Small Claims Court.

(6) No party shall file more than two claims within any calendar week nor more than ten claims in any calendar year in the Small Claims Court.

(7) Notwithstanding any other provision of this section, a personal representative of a decedent's estate, a guardian, or a conservator may be a party in the Small Claims Court.

Source: Laws 1972, LB 1032, § 23; Laws 1987, LB 77, § 1; Laws 1987, LB 536, § 2; R.S.Supp.,1988, § 24-523; Laws 1993, LB 121, § 174; Laws 2010, LB712, § 5; Laws 2019, LB71, § 1.

25-2804 Actions; how commenced; fee; hearing; notice; setoff or counterclaim; limitations; default judgment; actions authorized.

(1) Actions in the Small Claims Court shall be commenced by the plaintiff by filing a claim personally, by mail, or by another method established by Supreme Court rules.

(2) At the time of the filing of the claim, the plaintiff shall pay a fee of six dollars and twenty-five cents to the clerk. One dollar and twenty-five cents of such fee shall be remitted to the State Treasurer for credit to the Nebraska Retirement Fund for Judges through June 30, 2021. Beginning July 1, 2021, two dollars of such fee shall be remitted to the State Treasurer for credit to the Nebraska Retirement Fund for Judges.

(3) Upon filing of a claim in the Small Claims Court, the court shall set a time for hearing and shall cause notice to be served upon the defendant. Notice shall be served not less than five days before the time set for hearing. Notice shall consist of a copy of the complaint and a summons directing the defendant to appear at the time set for hearing and informing the defendant that if he or she fails to appear, judgment will be entered against him or her. Notice shall be served in the manner provided for service of a summons in a civil action. If the notice is to be served by certified mail, the clerk shall provide the plaintiff with written instructions, prepared and provided by the State Court Administrator, regarding the proper procedure for service by certified mail. The cost of service shall be paid by the plaintiff, but such cost and filing fee shall be added to any judgment given the plaintiff.

(4) The defendant may file a setoff or counterclaim. Any setoff or counterclaim shall be filed and a copy delivered to the plaintiff at least two days prior to the time of trial. If the setoff or counterclaim exceeds the jurisdictional limits of the Small Claims Court as established pursuant to section 25-2802, the court shall cause the entire matter to be transferred to the regular county court docket and set for trial.

(5) No prejudgment actions for attachment, garnishment, replevin, or other provisional remedy may be filed in the Small Claims Court.

(6) All forms that may be required by this section shall be prescribed by the Supreme Court.

(7) For a default judgment rendered by a Small Claims Court (a) the default judgment may be appealed as provided in section 25-2807, (b) if a motion for a new trial, by the procedure provided in sections 25-1142, 25-1144, and 25-1144.01, is filed ten days or less after entry of the default judgment, the court may act upon the motion without a hearing, or (c) if more than ten days have passed since the entry of the default judgment, the court may set aside, vacate, or modify the default judgment as provided in section 25-2720.01. Parties may be represented by attorneys for the purpose of filing a motion for a new trial or to set aside, vacate, or modify a default judgment.

Source: Laws 1972, LB 1032, § 24; Laws 1973, LB 226, § 7; Laws 1975, LB 283, § 1; Laws 1979, LB 117, § 2; Laws 1980, LB 892, § 1; Laws 1982, LB 928, § 17; Laws 1983, LB 447, § 14; Laws 1984, LB 13, § 14; Laws 1985, LB 373, § 3; Laws 1986, LB 125, § 1; Laws 1987, LB 77, § 2; R.S.Supp.,1988, § 24-524; Laws 2000, LB 921, § 28; Laws 2005, LB 348, § 4; Laws 2010, LB712, § 6; Laws 2020, LB1028, § 5; Laws 2021, LB17, § 4; Laws 2021, LB355, § 3.

ARTICLE 29
DISPUTE RESOLUTION

(a) DISPUTE RESOLUTION ACT

(a) DISPUTE RESOLUTION ACT

25-2901 Act, how cited.

Sections 25-2901 to 25-2921 shall be known and may be cited as the Dispute Resolution Act.

Source: Laws 1991, LB 90, § 1; Laws 1996, LB 922, § 1; Laws 2019, LB595, § 1.

25-2902 Legislative findings.

The Legislature finds that:

(1) The resolution of certain disputes and offenses can be costly and time consuming in the context of a formal judicial proceeding;

(2) Employing restorative justice and mediation to address disputes can provide an avenue for efficiently reducing the volume of matters which burden the court system in this state;

(3) Restorative justice practices and programs can meet the needs of Nebraska's residents by providing forums in which persons may participate in voluntary or court-ordered resolution of juvenile and adult offenses in an informal and less adversarial atmosphere;

(4) Employing restorative justice can provide an avenue for repair, healing, accountability, and community safety to address the harm experienced by victims as a result of an offense committed by youth or adult individuals;

(5) Restorative justice practices and programs are grounded in a wide body of research and evidence showing individuals who participate in restorative justice practices and programs are less likely to reoffend;

(6) Unresolved disputes of those who do not have the resources for formal resolution may be of small social or economic magnitude individually but are collectively of enormous social and economic consequences;

(7) Many seemingly minor conflicts between individuals may escalate into major social problems unless resolved early in an atmosphere in which the persons involved can discuss the dispute or offense through a private and informal yet structured process;

(8) There is a need in our society to reduce acrimony and improve relationships between people in conflict which has a long-term benefit of a more peaceful community of people;

(9) There is a compelling need in a complex society for dispute resolution and restorative justice whereby people can participate in creating comprehensive, lasting, and realistic resolutions to conflicts and offenses;

(10) Mediation can increase the public's access to dispute resolution and thereby increase public regard and usage of the legal system; and

(11) Office-approved nonprofit dispute resolution centers can make a substantial contribution to the operation and maintenance of the courts of this state by preserving the court's scarce resources for those disputes and offenses which cannot be resolved by means other than litigation.

Source: Laws 1991, LB 90, § 2; Laws 2019, LB595, § 2.

25-2903 Terms, defined.

For purposes of the Dispute Resolution Act:

(1) Approved center means a center that has applied for and received approval from the director under section 25-2909;

(2) Center means a nonprofit organization or a court-established program which makes dispute resolution procedures and restorative justice services available;

(3) Council means the Advisory Council on Dispute Resolution;

(4) Director means the Director of the Office of Dispute Resolution;

(5) Dispute resolution process means a process by which the parties involved in a dispute voluntarily agree to enter into informal discussion and negotiation with the assistance of a mediator;

(6) Mediation means the intervention into a dispute by a third party who has no decisionmaking authority and is impartial to the issues being discussed;

(7) Mediator means a person trained in the process of mediation who assists parties in dispute to reach a mutually acceptable resolution of their conflict;

(8) Office means the Office of Dispute Resolution;

(9) Restorative justice facilitator means a person trained to facilitate restorative justice practices as a staff member or affiliate of an approved center; and

(10) Restorative justice means practices, programs, or services described in section 25-2912.01 that emphasize repairing the harm caused to victims and the community by persons who have caused the harm or committed an offense.

Source: Laws 1991, LB 90, § 3; Laws 2019, LB595, § 3.

25-2904 Office of Dispute Resolution; established; director; qualifications; duties.

The Office of Dispute Resolution is hereby established in the office of the State Court Administrator. The director of the office shall be hired by the Supreme Court. The director may but need not be an attorney and shall be hired on the basis of his or her training and experience in mediation, restorative justice, and dispute resolution. The director shall administer the Dispute Resolution Act and shall serve as staff to the council.

Source: Laws 1991, LB 90, § 4; Laws 2019, LB595, § 4.

25-2905 Advisory Council on Dispute Resolution; created; members.

The Advisory Council on Dispute Resolution is hereby created. The council shall be comprised of individuals from a variety of disciplines who are trained and knowledgeable in mediation, restorative justice, and dispute resolution and selected to be representative of the geographical and cultural diversity of the state and to reflect gender fairness. The council shall consist of fifteen voting members. The membership shall include a district court judge, county court judge, and juvenile court judge and a representative from the Office of Probation Administration, the Nebraska State Bar Association, and the Nebraska County Attorneys Association. Nominations for the remaining members may be solicited from such entities and from the Nebraska Mediation Association, the Public Counsel, social workers, mental health professionals, diversion program administrators, educators, law enforcement entities, crime victim advocates, and former participants in restorative justice programs and related fields. The council shall be appointed by the Supreme Court or its designee. The Supreme Court or its designee shall not be restricted to the solicited list of nominees in making its appointments. Two nonvoting, ex officio members shall be appointed by the council from among the approved centers.

Source: Laws 1991, LB 90, § 5; Laws 1999, LB 315, § 2; Laws 2019, LB595, § 5.

25-2906 Council; members; terms; vacancy; officers.

The initial members of the council and the new members required by the changes to section 25-2905 made by Laws 2019, LB595, shall be appointed for terms of one, two, or three years. All subsequent appointments shall be made for terms of three years. Any vacancy on the council shall be filled and shall last for the duration of the term vacated. Appointments to the council required by changes to section 25-2905 made by Laws 2019, LB595, shall be made within ninety days after September 1, 2019. The council shall select a chairperson, a vice-chairperson, and such other officers as it deems necessary.

Source: Laws 1991, LB 90, § 6; Laws 2019, LB595, § 6.

25-2907 Council; powers and duties; members; expenses.

(1) The council shall advise the director on the administration of the Dispute Resolution Act.

(2) The council shall meet at least four times per year and at other times deemed necessary to perform its functions. Members of the council shall be reimbursed for expenses as provided in sections 81-1174 to 81-1177.

(3) The council may appoint task forces to carry out its work. Task force members shall have knowledge of, responsibility for, or interest in an area related to the duties of the council.

Source: Laws 1991, LB 90, § 7; Laws 2020, LB381, § 21.

25-2908 Director; duties.

Consistent with the purposes and objectives of the Dispute Resolution Act and in consultation with the council, the director shall:

(1) Approve centers which meet requirements for approval;

(2) Develop and supervise a uniform system of reporting and collecting statistical data from approved centers;

(3) Develop and supervise a uniform system of evaluating approved centers;

(4) Prepare a yearly budget for the implementation of the act and distribute funds to approved centers;

(5) Develop and administer guidelines for a sliding scale of fees to be charged by approved centers;

(6) Develop, initiate, or approve curricula and training sessions for mediators and staff of approved centers and of courts;

(7) Establish volunteer training programs;

(8) Promote public awareness of the restorative justice and dispute resolution process;

(9) Apply for and receive funds from public and private sources for carrying out the purposes and obligations of the act;

(10) Develop and supervise a uniform system to create and maintain a roster of approved centers and victim youth conferencing and other restorative justice facilitators who are affiliated with approved centers. The roster shall be made available to courts and county attorneys;

(11) Enhance the sustainability of approved centers;

(12) Support approved centers in the implementation of restorative justice programs;

(13) Coordinate the development and implementation of new restorative justice programs;

(14) Develop and administer a uniform system for reporting and collecting statistical data regarding restorative justice programs from approved centers;

(15) Develop and administer a uniform system for evaluating restorative justice programs administered by approved centers;

(16) Develop and administer a uniform system for evaluating quality assurance and fidelity to established restorative justice principles;

(17) Coordinate software and data management system quality assurance for the office and the approved centers;

(18) Coordinate restorative justice training sessions for restorative justice facilitators and staff of approved centers and the courts;

(19) Review and provide analyses of state and federal laws and policies and judicial branch policies relating to restorative justice programs for juvenile populations and adult populations;

(20) Promote public awareness of the restorative justice and dispute resolution process under the Dispute Resolution Act; and

(21) Seek and identify funds from public and private sources for carrying out new and ongoing restorative justice programs.

Source: Laws 1991, LB 90, § 8; Laws 1998, LB 1073, § 7; Laws 2019, LB595, § 7.

25-2909 Grants; application; contents; approved centers; reports.

(1) The office shall annually award grants to approved centers. It is the intent of the Legislature that centers be established and grants distributed statewide.

(2) A center or an entity proposing a center may apply to the office for approval to provide services under the Dispute Resolution Act by submitting an application which includes:

(a) A strategic plan for the operation of the center;

(b) The center's objectives;

(c) The areas of population to be served;

(d) The administrative organization;

(e) Record-keeping procedures;

(f) Procedures for intake, for scheduling, and for conducting and terminating restorative justice programs and dispute resolution sessions;

(g) Qualifications for mediators and restorative justice facilitators for the center;

(h) An annual budget for the center;

(i) The results of an audit of the center for a period covering the previous year if the center was in operation for such period; and

(j) Proof of 501(c)(3) status under the Internal Revenue Code or proof of establishment by a court.

(3) The office may specify additional criteria for approval and for grants as it deems necessary.

(4) Annual reports shall be required of each approved center. The reports shall include the number and types of cases handled in the year and a showing of continued compliance with the act.

Source: Laws 1991, LB 90, § 9; Laws 2019, LB595, § 8.

25-2911 Restorative justice programs and dispute resolution; types of cases; referral of cases.

(1) The following types of cases may be accepted for restorative justice programs and dispute resolution at an approved center:

(a) Civil claims and disputes, including, but not limited to, consumer and commercial complaints, disputes between neighbors, disputes between business associates, disputes between landlords and tenants, and disputes within communities;

(b) Disputes concerning child custody, parenting time, visitation, or other access and other areas of domestic relations;

(c) Juvenile offenses and disputes involving juveniles when appropriate, which shall be determined according to the policies and procedures provided for in section 25-2918;

(d) Disputes involving youth that occur in families, in educational settings, and in the community at large;

(e) Adult criminal offenses and disputes involving juvenile, adult, or community victims when appropriate, which shall be determined according to the policies and procedures provided for in section 25-2918; and

(f) Contested guardianship and contested conservatorship proceedings.

(2) Restorative justice practices at an approved center may be used in addition to any other condition, consequence, or sentence imposed by a court, a probation officer, a diversion program, a school, or another community program.

(3) An approved center may accept cases referred by a court, an attorney, a law enforcement officer, a social service agency, a school, or any other interested person or agency or upon the request of the parties involved. A case may be referred prior to the commencement of formal judicial proceedings or may be referred as a pending court case. If a court refers a case to an approved center, the center shall provide information to the court as to whether an agreement was reached. If the court requests a copy of the agreement, the center shall provide it.

Source: Laws 1991, LB 90, § 11; Laws 2007, LB554, § 25; Laws 2011, LB157, § 2; Laws 2019, LB595, § 9.

25-2912 Restorative justice or dispute resolution process; procedures.

Before the restorative justice or dispute resolution process begins, an approved center shall provide the parties with a written statement setting forth the procedures to be followed.

Source: Laws 1991, LB 90, § 12; Laws 2019, LB595, § 10.

25-2912.01 Restorative justice practices, restorative justice services, or restorative justice programs; activities to repair harm.

Restorative justice practices, restorative justice services, or restorative justice programs include, but are not limited to, victim youth conferences, victim-offender mediation, family group conferences, circles, peer-to-peer mediation, truancy mediation, victim or community panels, and community conferences. Restorative justice programs may involve restorative projects or classes and facilitated meetings attended voluntarily by the victim, the victim's representatives, or a victim surrogate and the victim's supporters, as well as the youth or adult individual who caused harm and that individual's supporters, whether voluntarily or following a referral for assessment by court order. These meetings may also include community members, when appropriate. By engaging the parties to the offense or harm in voluntary dialogue, restorative justice provides an opportunity for healing for the victim and the individual who harmed the victim by:

(1) Holding the individual who caused harm accountable and providing the individual a platform to accept responsibility and gain empathy for the harm he or she caused to the victim and community;

(2) Providing the victim a platform to describe the impact that the harm had upon himself or herself or his or her family and to identify detriments experienced or any losses incurred;

(3) Providing the opportunity to enter into a reparation plan agreement; and

(4) Enabling the victim and the individual who caused harm the opportunity to agree on consequences to repair the harm, to the extent possible. This includes, but is not limited to, apologies, community service, reparation, restitution, restoration, and counseling.

Source: Laws 2019, LB595, § 11.

25-2912.02 Best practices; policies and procedures.

The office and the approved centers shall strive to conduct restorative justice programs in accordance with best practices, including evidence-based programs, and shall adopt policies and procedures to accomplish this goal.

Source: Laws 2019, LB595, § 12.

25-2913 Mediators and restorative justice facilitators; qualifications; compensation; powers and duties.

(1) Mediators and restorative justice facilitators of approved centers shall have completed at least thirty hours of basic mediation training, including conflict resolution techniques, neutrality, agreement writing, and ethics. An initial apprenticeship with an experienced mediator shall be required for at least three sessions for all mediators without prior mediation experience.

(2) In addition to the basic mediation training required under subsection (1) of this section:

(a) For disputes involving marital dissolution, parenting, or child custody, mediators of approved centers shall have additional training in family mediation; and

(b) For disputes involving harm done to others or the community, restorative justice facilitators of approved centers shall have additional restorative justice training that has been approved by the office. Such training should include, but not be limited to, topics such as restorative justice basics, trauma-informed practices, juvenile developmental characteristics, and crime victimization.

(3) An approved center may provide for the compensation of mediators and restorative justice facilitators, utilize the services of volunteer mediators and restorative justice facilitators, or utilize the services of both paid and volunteer mediators and restorative justice facilitators.

(4) The mediator or restorative justice facilitator shall provide an opportunity for the parties to achieve a mutually acceptable resolution of their dispute, in joint or separate sessions, as appropriate, including a reparation plan agreement regarding reparations through dialogue and negotiation. A mediator shall be impartial, neutral, and unbiased and shall make no decisions for the parties.

(5) The mediator or restorative justice facilitator shall officially terminate the process if the parties are unable to agree or if, in the judgment of the mediator, the agreement would be unconscionable. The termination shall be without prejudice to either party in any other proceeding.

(6) The mediator or restorative justice facilitator has no authority to make or impose any adjudicatory sanction or penalty upon the parties.

(7) The mediator or restorative justice facilitator shall be aware of and recommend outside resources to the parties whenever appropriate. The mediator or restorative justice facilitator shall advise participants to obtain legal review of agreements as necessary.

Source: Laws 1991, LB 90, § 13; Laws 2019, LB595, § 13.

25-2914 Confidentiality; exceptions.

(1) Any verbal, written, or electronic communication made in or in connection with matters referred to mediation which relates to the controversy or dispute being mediated and agreements resulting from the mediation, whether made to the mediator, the staff of an approved center, a party, or any other person attending the mediation session, shall be confidential.

(2) Mediation proceedings shall be regarded as settlement negotiations, and no admission, representation, or statement made in mediation, not otherwise discoverable or obtainable, shall be admissible as evidence or subject to discovery.

(3) A mediator shall not be subject to process requiring the disclosure of any matter discussed during mediation proceedings unless all the parties consent to a waiver.

(4) Confidential communications and materials are subject to disclosure when all parties agree in writing to waive confidentiality regarding specific verbal, written, or electronic communications relating to the mediation session or the agreement.

(5) This section shall not apply if a party brings an action against the mediator or center, if the communication was made in furtherance of a crime or fraud, or if this section conflicts with other legal requirements.

Source: Laws 1991, LB 90, § 14; Laws 1994, LB 868, § 1; Laws 2019, LB595, § 14.

25-2914.01 Verbal, written, or electronic communication; confidentiality; privileged; disclosure; when; activities of juvenile; limit on evidence.

(1) Any verbal, written, or electronic communication made in or in connection with matters referred to a restorative justice program which relates to the controversy or dispute undergoing restorative justice and agreements resulting from the restorative justice program, whether made to the restorative justice facilitator, the staff of an approved center, a party, or any other person attending the restorative justice program, shall be confidential and privileged.

(2) No admission, confession, or incriminating information obtained from a juvenile in the course of any restorative justice program that is conducted in conjunction with proceedings under the Dispute Resolution Act or as directed by a court, including, but not limited to, school-based disciplinary proceedings, juvenile diversion, court-ordered detention, or probation, shall be admitted into evidence against such juvenile, except as rebuttal or impeachment evidence, in any future adjudication hearing under the Nebraska Juvenile Code or in any criminal proceeding. Such admission, confession, or incriminating information may be considered by a court at sentencing or by a juvenile court during disposition proceedings.

(3) Confidential communications and materials are subject to disclosure when all parties to the restorative justice program agree in writing to waive

confidentiality regarding specific verbal, written, or electronic communications relating to the restorative justice program or the agreement.

(4) This section shall not apply if:

(a) A party brings an action against the restorative justice facilitator or approved center;

(b) The communication was made in furtherance of a crime or fraud;

(c) The communication is required to be reported under section 28-711 and is a new allegation of child abuse or neglect which was not previously known or reported; or

(d) This section conflicts with other legal requirements.

Source: Laws 2019, LB595, § 15.

Cross References

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

25-2915 Immunity; exceptions.

No mediator, restorative justice facilitator, staff member, or member of a governing board of an approved center may be held liable for civil damages for any statement or decision made in the process of restorative justice or dispute resolution unless such person acted in a manner exhibiting willful or wanton misconduct.

Source: Laws 1991, LB 90, § 15; Laws 2019, LB595, § 16.

25-2916 Agreement; contents.

(1) If the parties involved in mediation reach an agreement, the agreement may be reduced to writing and signed by the parties. The agreement shall set forth the settlement of the issues and the future responsibilities of each party. If a court referred the case, the agreement as signed and approved by the parties may be presented to the court as a stipulation and, if approved by the court, shall be enforceable as an order of the court.

(2) If the parties involved in a restorative justice program reach a reparation plan agreement, the agreement may be reduced to writing and signed by the parties. The agreement shall set forth the reparations agreed upon by the parties to repair the specific circumstances of the offense. These may include, but are not limited to, service to the victim, an apology to the victim, financial restitution, services for the individual who caused the harm, community service, or any other reparation agreed upon by the parties. The agreement shall specify the time period during which such individual must comply with the requirements specified therein.

Source: Laws 1991, LB 90, § 16; Laws 2019, LB595, § 17.

25-2917 Tolling of civil statute of limitations; when.

During the period of the restorative justice or dispute resolution process, any applicable civil statute of limitations shall be tolled as to the parties. The tolling shall commence on the date the approved center accepts the case and shall end on the date of the last restorative justice or mediation session. This period shall be no longer than sixty days without consent of all the parties.

Source: Laws 1991, LB 90, § 17; Laws 2019, LB595, § 18.

25-2918 Rules and regulations.

(1) The Supreme Court, upon recommendation by the director in consultation with the council, shall adopt and promulgate rules and regulations to carry out the Dispute Resolution Act.

(2) The office may adopt and promulgate policies and procedures to carry out the Dispute Resolution Act.

Source: Laws 1991, LB 90, § 18; Laws 2019, LB595, § 19.

25-2919 Application of act.

The Dispute Resolution Act shall apply only to approved centers and mediators and restorative justice facilitators of such centers.

Source: Laws 1991, LB 90, § 19; Laws 2019, LB595, § 20.

25-2920 Director; report.

The director shall provide an annual report regarding the implementation of the Dispute Resolution Act. The report shall be available to the public on the Supreme Court's website. The report shall include the number and types of disputes received, the disposition of the disputes, any problems encountered, and any recommendations to address problems.

Source: Laws 1991, LB 90, § 20; Laws 2012, LB782, § 29; Laws 2019, LB595, § 21.

25-2921 Dispute Resolution Cash Fund; created; use; investment.

The Dispute Resolution Cash Fund is created. The State Court Administrator shall administer the fund. The fund shall consist of proceeds received pursuant to subdivision (9) of section 25-2908 and section 33-155. The fund shall be used to supplement the administration of the office and the support of the approved centers. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1996, LB 922, § 2; Laws 2003, LB 760, § 8; Laws 2009, First Spec. Sess., LB3, § 12; Laws 2011, LB378, § 18; Laws 2019, LB595, § 22.

Cross References

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

ARTICLE 33
NONRECOURSE CIVIL LITIGATION ACT

Section
25-3308. Registration fee; renewal fee.

25-3308 Registration fee; renewal fee.

(1) An application for registration or renewal of registration under section 25-3307 shall be accompanied by either an application for registration fee or a renewal of registration fee, as applicable.

(2) The Secretary of State may, by rule and regulation, establish fees for applications for registration and renewals of registration at rates sufficient to

cover the costs of administering the Nonrecourse Civil Litigation Act, in the event any such fees are required. Such fees shall be collected by the Secretary of State and remitted to the State Treasurer for credit to the Secretary of State Cash Fund.

Source: Laws 2010, LB1094, § 8; Laws 2020, LB910, § 10.

ARTICLE 34

PRISONER LITIGATION

Section
25-3401. Prisoner; civil actions; in forma pauperis litigation; limitation; finding by court that action was frivolous.

25-3401 Prisoner; civil actions; in forma pauperis litigation; limitation; finding by court that action was frivolous.

(1) For purposes of this section:

(a) Civil action means a legal action seeking monetary damages, injunctive relief, declaratory relief, or any appeal filed in any court in this state that relates to or involves a prisoner's conditions of confinement. Civil action does not include a motion for postconviction relief or petition for habeas corpus relief;

(b) Conditions of confinement means any circumstance, situation, or event that involves a prisoner's custody, transportation, incarceration, or supervision;

(c) Correctional institution means any state or local facility that incarcerates or detains any adult accused of, charged with, convicted of, or sentenced for any crime;

(d) Frivolous means the law and evidence supporting a litigant's position is wholly without merit or rational argument; and

(e) Prisoner means any person who is incarcerated, imprisoned, or otherwise detained in a correctional institution.

(2)(a) A prisoner who has filed three or more civil actions, commenced after July 19, 2012, that have been found to be frivolous by a court of this state or a federal court for a case originating in this state shall not be permitted to proceed in forma pauperis for any further civil actions without leave of court. A court shall permit the prisoner to proceed in forma pauperis if the court determines that the person is in danger of serious bodily injury.

(b) A court may include in its final order or judgment in any civil action a finding that the action was frivolous.

(c) A finding under subdivision (2)(b) of this section shall be reflected in the record of the case.

(d) This subsection does not apply to judicial review of disciplinary procedures in adult institutions administered by the Department of Correctional Services governed by sections 83-4,109 to 83-4,123.

Source: Laws 2012, LB793, § 1; Laws 2018, LB193, § 48.

ARTICLE 35

UNIFORM CIVIL REMEDIES FOR UNAUTHORIZED DISCLOSURE OF INTIMATE IMAGES

Section
25-3501. Act, how cited.
25-3502. Definitions.
25-3503. Civil action.
25-3504. Exceptions to liability.
25-3505. Remedies.
25-3506. Statute of limitations.
25-3507. Construction.
25-3508. Uniformity of application and construction.
25-3509. Plaintiff's privacy.

25-3501 Act, how cited.

Sections 25-3501 to 25-3508 shall be known and may be cited as the Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act.

Source: Laws 2019, LB680, § 1.

25-3502 Definitions.

In the Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act:

(1) Consent means affirmative, conscious, and voluntary authorization by an individual with legal capacity to give authorization.

(2) Depicted individual means an individual whose body is shown in whole or in part in an intimate image.

(3) Disclosure means transfer, publication, or distribution to another person. Disclose has a corresponding meaning.

(4) Identifiable means recognizable by a person other than the depicted individual:

(A) from an intimate image itself; or

(B) from an intimate image and identifying characteristic displayed in connection with the intimate image.

(5) Identifying characteristic means information that may be used to identify a depicted individual.

(6) Individual means a human being.

(7) Intimate image means a photograph, film, video recording, or other similar medium that shows:

(A) the uncovered genitals, pubic area, anus, or female post-pubescent nipple of a depicted individual; or

(B) a depicted individual engaging in or being subjected to sexual conduct.

(8) Person means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(9) Sexual conduct includes:

(A) masturbation;

(B) genital, anal, or oral sex;

(C) sexual penetration of, or with, an object;

(D) bestiality; or

(E) the transfer of semen onto a depicted individual.

Source: Laws 2019, LB680, § 2.

25-3503 Civil action.

(a) In this section:

(1) Harm includes physical harm, economic harm, and emotional distress whether or not accompanied by physical or economic harm.

(2) Private means:

(A) created or obtained under circumstances in which a depicted individual had a reasonable expectation of privacy; or

(B) made accessible through theft, bribery, extortion, fraud, false pretenses, voyeurism, or exceeding authorized access to an account, message, file, device, resource, or property.

(b) Except as otherwise provided in section 25-3504, a depicted individual who is identifiable and who suffers harm from a person's intentional disclosure or threatened disclosure of an intimate image that was private without the depicted individual's consent has a cause of action against the person if the person knew or acted with reckless disregard for whether:

(1) the depicted individual did not consent to the disclosure;

(2) the intimate image was private; and

(3) the depicted individual was identifiable.

(c) The following conduct by a depicted individual does not establish by itself that the individual consented to the disclosure of the intimate image which is the subject of an action under the Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act or that the individual lacked a reasonable expectation of privacy:

(1) consent to creation of the image; or

(2) previous consensual disclosure of the image.

(d) A depicted individual who does not consent to the sexual conduct or uncovering of the part of the body depicted in an intimate image of the individual retains a reasonable expectation of privacy even if the image was created when the individual was in a public place.

Source: Laws 2019, LB680, § 3.

25-3504 Exceptions to liability.

(a) In this section:

(1) Child means an unemancipated individual who is less than nineteen years of age.

(2) Parent means an individual recognized as a parent under law of this state other than the Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act.

(b) A person is not liable under the act if the person proves that disclosure of, or a threat to disclose, an intimate image was:

(1) made in good faith in:

(A) law enforcement;

(B) a legal proceeding; or

(C) medical education or treatment;

(2) made in good faith in the reporting or investigation of:

(A) unlawful conduct; or

(B) unsolicited and unwelcome conduct;

(3) related to a matter of public concern or public interest; or

(4) reasonably intended to assist the depicted individual.

(c) Subject to subsection (d) of this section, a defendant who is a parent, legal guardian, or individual with legal custody of a child is not liable under the act for a disclosure or threatened disclosure of an intimate image, as defined in subdivision (7)(A) of section 25-3502, of the child.

(d) If a defendant asserts an exception to liability under subsection (c) of this section, the exception does not apply if the plaintiff proves the disclosure was:

(1) prohibited by law other than the act; or

(2) made for the purpose of sexual arousal, sexual gratification, humiliation, degradation, or monetary or commercial gain.

(e) Disclosure of, or a threat to disclose, an intimate image is not a matter of public concern or public interest solely because the depicted individual is a public figure.

Source: Laws 2019, LB680, § 4.

25-3505 Remedies.

(a) In an action under the Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act, a prevailing plaintiff may recover as compensation:

(1)(A) economic and noneconomic damages proximately caused by the defendant's disclosure or threatened disclosure, including damages for emotional distress whether or not accompanied by other damages; or

(B) if the actual damages are incapable of being quantified or difficult to quantify, presumed damages not to exceed ten thousand dollars against each defendant in an amount that bears a reasonable relationship to the probable damages incurred by the prevailing plaintiff. In determining the amount of presumed damages under subdivision (a)(1)(B) of this section, consideration must be given to the age of the parties at the time of the disclosure or threatened disclosure, the number of disclosures or threatened disclosures made by the defendant, the breadth of distribution of the image by the defendant, and other exacerbating or mitigating factors; and

(2) an amount equal to any monetary gain made by the defendant from disclosure of the intimate image.

(b) In an action under the act, the court may award a prevailing plaintiff:

(1) reasonable attorney's fees and costs; and

(2) additional relief, including injunctive relief.

(c) The act does not affect a right or remedy available under law of this state other than the act.

Source: Laws 2019, LB680, § 5.

25-3506 Statute of limitations.

(a) An action under subsection (b) of section 25-3503 for:

(1) an unauthorized disclosure may not be brought later than four years from the date the disclosure was discovered or should have been discovered with the exercise of reasonable diligence; and

(2) a threat to disclose may not be brought later than four years from the date of the threat to disclose.

(b) This section is subject to section 25-213.

Source: Laws 2019, LB680, § 6.

25-3507 Construction.

(a) In an action brought under the Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act, no provider or user of an interactive computer service shall be treated as a person disclosing any information provided by another information content provider unless the provider or user of such interactive computer service is responsible, in whole or in part, for the creation or development of the information provided through the Internet or any other interactive service.

(b) No provider or user of an interactive computer service shall be held liable under the act on account of:

(1) any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected; or

(2) any action taken to enable or make available to any information content provider or others the technical means to restrict access to material described in subdivision (b)(1) of this section.

(c) Nothing in the Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act shall be construed to impose liability on an interactive computer service for content provided by another person.

(d) The Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act must be construed to be consistent with 47 U.S.C. 230, as such section existed on January 1, 2019.

(e) The act may not be construed to alter the law of this state on sovereign immunity.

(f) For purposes of this section, information content provider and interactive computer service have the same meanings as in 47 U.S.C. 230, as such section existed on January 1, 2019.

Source: Laws 2019, LB680, § 7.

25-3508 Uniformity of application and construction.

In applying and construing the Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Source: Laws 2019, LB680, § 8.

25-3509 Plaintiff's privacy.

In any action brought pursuant to the Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act, a plaintiff may request to use a pseudonym instead of his or her legal name in all court proceedings and records. Upon finding that the use of a pseudonym is proper, the court shall ensure that the pseudonym is used in all court proceedings and records.

Source: Laws 2019, LB680, § 9.

Cross References

Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act, see section 25-3501.

ARTICLE 36

COVID-19 LIABILITY ACT

Section
25-3601. Act, how cited.
25-3602. Terms, defined.
25-3603. Exposure or potential exposure to COVID-19; civil action; when permitted.
25-3604. Act; how construed.

25-3601 Act, how cited.

Sections 25-3601 to 25-3604 shall be known and may be cited as the COVID-19 Liability Act.

Source: Laws 2021, LB139, § 1.

Cross References

Health Care Crisis Protocol Act, see section 71-2701.

25-3602 Terms, defined.

For purposes of the COVID-19 Liability Act:

(1) COVID-19 means the novel coronavirus identified as SARS-CoV-2, the disease caused by the novel coronavirus SARS-CoV-2 or a virus mutating therefrom, and the health conditions or threats associated with the disease caused by the novel coronavirus SARS-CoV-2 or a virus mutating therefrom;

(2) Federal public health guidance means and includes written or oral guidance related to COVID-19 issued by any of the following:

(a) The Centers for Disease Control and Prevention of the United States Department of Health and Human Services;

(b) The Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services; or

(c) The federal Occupational Safety and Health Administration; and

(3)(a) Person means:

(i) Any natural person;

(ii) Any sole proprietorship, partnership, limited liability partnership, corporation, limited liability company, business trust, estate, trust, unincorporated association, or joint venture;

(iii) The State of Nebraska and any political subdivision of the state;

(iv) Any school, college, university, institution of higher education, religious organization, or charitable organization; or

(v) Any other legal or commercial entity.

(b) Person includes an employee, director, governing board, officer, agent, independent contractor, or volunteer of a person listed in subdivision (3)(a) of this section.

Source: Laws 2021, LB139, § 2.

Cross References

Health Care Crisis Protocol Act, see section 71-2701.

25-3603 Exposure or potential exposure to COVID-19; civil action; when permitted.

A person may not bring or maintain a civil action seeking recovery for any injuries or damages sustained from exposure or potential exposure to COVID-19 on or after May 26, 2021, if the act or omission alleged to violate a duty of care was in substantial compliance with any federal public health guidance that was applicable to the person, place, or activity at issue at the time of the alleged exposure or potential exposure.

Source: Laws 2021, LB139, § 3.

Cross References

Health Care Crisis Protocol Act, see section 71-2701.

25-3604 Act; how construed.

The COVID-19 Liability Act shall not be construed to:

(1) Create, recognize, or ratify a claim or cause of action of any kind;

(2) Eliminate or satisfy a required element of a claim or cause of action of any kind;

(3) Affect rights or coverage limits under the Nebraska Workers' Compensation Act;

(4) Abrogate, amend, repeal, alter, or affect any statutory or common law immunity or limitation of liability; or

(5) Constitute a waiver of the sovereign immunity of the State of Nebraska or any political subdivision of the state.

Source: Laws 2021, LB139, § 4.

Cross References

Health Care Crisis Protocol Act, see section 71-2701.
Nebraska Workers' Compensation Act, see section 48-1,110.

CHAPTER 27
COURTS; RULES OF EVIDENCE

ARTICLE 4
RELEVANCY AND ITS LIMITS

27-404 Rule 404. Character evidence; not admissible to prove conduct; exceptions; evidence of other crimes, wrongs, or acts; standard of proof; sexual assault; provisions applicable.

(1) Evidence of a person's character or a trait of his or her character is not admissible for the purpose of proving that he or she acted in conformity therewith on a particular occasion, except:

(a) Evidence of a pertinent trait of his or her character offered by an accused, or by the prosecution to rebut the same;

(b) Evidence of a pertinent trait of character of the victim of the crime offered by an accused or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor. In a sexual assault case, reputation, opinion, or other evidence of past sexual behavior of the victim is governed by section 27-412; or

(c) Evidence of the character of a witness as provided in sections 27-607 to 27-609.

(2) Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he or she acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

(3) When such evidence is admissible pursuant to this section, in criminal cases evidence of other crimes, wrongs, or acts of the accused may be offered in evidence by the prosecution if the prosecution proves to the court by clear and convincing evidence that the accused committed the crime, wrong, or act. Such proof shall first be made outside the presence of any jury.

(4) Regarding the admissibility in a civil or criminal action of evidence of a person's commission of another offense or offenses of sexual assault under sections 28-316.01 and 28-319 to 28-322.05, see sections 27-413 to 27-415.

Source: Laws 1975, LB 279, § 14; Laws 1984, LB 79, § 2; Laws 1993, LB 598, § 1; Laws 2009, LB97, § 7; Laws 2019, LB519, § 2; Laws 2020, LB881, § 2.

27-412 Sex offense cases; relevance of alleged victim's past sexual behavior or alleged sexual predisposition; evidence of victim's consent; when not admissible.

(1) The following evidence is not admissible in any civil or criminal proceeding involving alleged sexual misconduct except as provided in subsections (2) and (3) of this section:

(a) Evidence offered to prove that any victim engaged in other sexual behavior; and

(b) Evidence offered to prove any victim's sexual predisposition.

(2)(a) In a criminal case, the following evidence is admissible, if otherwise admissible under the Nebraska Evidence Rules:

(i) Evidence of specific instances of sexual behavior by the victim offered to prove that a person other than the accused was the source of semen, injury, or other physical evidence;

(ii) Evidence of specific instances of sexual behavior of the victim with respect to the accused offered by the accused to prove consent of the victim if it is first established to the court that such behavior is similar to the behavior involved in the case and tends to establish a pattern of behavior of the victim relevant to the issue of consent; and

(iii) Evidence, the exclusion of which would violate the constitutional rights of the accused.

(b) In a civil case, evidence offered to prove the sexual behavior or sexual predisposition of any victim is admissible if it is otherwise admissible under the Nebraska Evidence Rules and its probative value substantially outweighs the danger of harm to any victim and of unfair prejudice to any party. Evidence of a victim's reputation is admissible only if it has been placed in controversy by the victim.

(3)(a) A party intending to offer evidence under subsection (2) of this section shall:

(i) File a written motion at least fifteen days before trial specifically describing the evidence and stating the purpose for which it is offered unless the court, for good cause, requires a different time for filing or permits filing during trial; and

(ii) Serve the motion on all parties and notify the victim or, when appropriate, the victim's guardian or representative.

(b) Before admitting evidence under this section, the court shall conduct a hearing in camera outside the presence of any jury.

(4) Evidence of the victim's consent is not admissible in any civil proceeding involving alleged:

(a) Sexual penetration when the actor is nineteen years of age or older and the victim is less than sixteen years of age; or

(b) Sexual contact when the actor is nineteen years of age or older and the victim is less than fifteen years of age.

Source: Laws 2009, LB97, § 3; Laws 2019, LB478, § 1.

27-413 Offense of sexual assault, defined.

For purposes of sections 27-414 and 27-415, offense of sexual assault means sexual assault under section 28-319 or 28-320, sexual abuse by a school employee under section 28-316.01, sexual assault of a child under section 28-319.01 or 28-320.01, sexual assault by use of an electronic communication device under section 28-320.02, sexual abuse of an inmate or parolee under sections 28-322.01 to 28-322.03, sexual abuse of a protected individual under section 28-322.04, sexual abuse of a detainee under section 28-322.05, an attempt or conspiracy to commit any of the crimes listed in this section, or the commission of or conviction for a crime in another jurisdiction that is substantially similar to any crime listed in this section.

Source: Laws 2009, LB97, § 4; Laws 2015, LB294, § 8; Laws 2019, LB519, § 3; Laws 2020, LB881, § 3.

ARTICLE 7

OPINION AND EXPERT TESTIMONY

Section
27-707. Eyewitness identification and memory; expert witness; admissibility of testimony.

27-707 Eyewitness identification and memory; expert witness; admissibility of testimony.

The testimony of an expert witness regarding eyewitness identification and memory may be admitted in any criminal or civil proceeding pursuant to the rules governing admissibility of evidence set forth in the Nebraska Evidence Rules.

Source: Laws 2020, LB881, § 4.

ARTICLE 8

HEARSAY

Section
27-801. Rule 801. Definitions; statement, declarant, hearsay; statements which are not hearsay.
27-803. Rule 803. Hearsay exceptions; enumerated; availability of declarant immaterial.

27-801 Rule 801. Definitions; statement, declarant, hearsay; statements which are not hearsay.

The following definitions apply under this article:

(1) A statement is (a) an oral or written assertion or (b) nonverbal conduct of a person, if it is intended by him or her as an assertion;

(2) A declarant is a person who makes a statement;

(3) Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted; and

(4) A statement is not hearsay if:

(a) The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement (i) is inconsistent with his or her testimony and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition, (ii) is consistent with his or her testimony and is offered to rebut an express or implied charge against him or her of recent fabrication or improper influence or motive, or (iii) identifies a person as someone the declarant perceived earlier; or

(b) The statement is offered against a party and is (i) his or her own statement, in either his or her individual or a representative capacity, (ii) a statement of which he or she has manifested his or her adoption or belief in its truth, (iii) a statement by a person authorized by him or her to make a statement concerning the subject, (iv) a statement by his or her agent or servant within the scope of his or her agency or employment, or (v) a statement by a coconspirator of a party during the course and in furtherance of the conspiracy.

Source: Laws 1975, LB 279, § 55; Laws 2019, LB392, § 1.

Cross References

Electronic recordation of statements in custodial interrogation, admissibility, see sections 29-4501 to 29-4508.

27-803 Rule 803. Hearsay exceptions; enumerated; availability of declarant immaterial.

Subject to the provisions of section 27-403, the following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(1) A statement describing or explaining an event or condition, made while or immediately after the declarant perceived it;

(2) A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition;

(3) A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will;

(4) Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment;

(5) A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable him or her to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in his or her memory and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party;

(6)(a) A memorandum, report, record, or data compilation, in any form, of acts, events, or conditions, other than opinions or diagnoses, made at or near the time of such acts, events, or conditions, in the course of a regularly conducted activity, if it was the regular course of such activity to make such memorandum, report, record, or data compilation at the time of such act,

event, or condition, or within a reasonable time thereafter, as shown by the testimony of the custodian or other qualified witness unless the source of information or method or circumstances of preparation indicate lack of trustworthiness. The circumstances of the making of such memorandum, report, record, or data compilation, including lack of personal knowledge by the entrant or maker, may be shown to affect its weight.

(b) A memorandum, report, record, or data compilation, in any form, of acts, events, or conditions, other than opinions or diagnoses, that was received or acquired in the regular course of business by an entity from another entity and has been incorporated into and kept in the regular course of business of the receiving or acquiring entity; that the receiving or acquiring entity typically relies upon the accuracy of the contents of the memorandum, report, record, or data compilation; and that the circumstances otherwise indicate the trustworthiness of the memorandum, report, record, or data compilation, as shown by the testimony of the custodian or other qualified witness. Subdivision (6)(b) of this section shall not apply in any criminal proceeding;

(7) Evidence that a matter is not included in the memoranda, reports, records, or data compilations, in any form, kept in accordance with the provisions of subdivision (6) of this section to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record, or data compilation was regularly made and preserved, unless the sources of information or other circumstances indicate a lack of trustworthiness;

(8) Upon reasonable notice to the opposing party prior to trial, records, reports, statements, or data compilations made by a public official or agency of facts required to be observed and recorded pursuant to a duty imposed by law, unless the sources of information or the method or circumstances of the investigation are shown by the opposing party to indicate a lack of trustworthiness;

(9) Records or data compilations, in any form, of births, fetal deaths, deaths, or marriages, if the report thereof was made to a public office pursuant to requirements of law;

(10) To prove the absence of a record, report, statement, or data compilation, in any form, or the nonoccurrence or nonexistence of a matter of which a record, report, statement, or data compilation, in any form, was regularly made and preserved by a public office or agency, evidence in the form of a certification in accordance with section 27-902, or testimony, that diligent search failed to disclose the record, report, statement, or data compilation or entry;

(11) Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family history, contained in a regularly kept record of a religious organization;

(12) Statements of fact contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a member of the clergy, public official, or other person authorized by the rules or practices of a religious organization or by law to perform the act certified, and purporting to have been issued at the time of the act or within a reasonable time thereafter;

(13) Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family history contained in family Bibles, genealogies, charts, engravings on rings,

inscriptions on family portraits, engravings on urns, crypts, or tombstones or the like;

(14) The record of a document purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of a public office and an applicable statute authorized the recording of documents of that kind in that office;

(15) A statement contained in a document purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the document, unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document;

(16) Statements in a document in existence thirty years or more whose authenticity is established;

(17) Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations;

(18) Statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice, to the extent called to the attention of an expert witness upon cross-examination or relied upon by the expert witness in direct examination. If admitted, the statements may be read into evidence but may not be received as exhibits;

(19) Reputation among members of his or her family by blood, adoption, or marriage, or among his or her associates, or in the community, concerning a person's birth, adoption, marriage, divorce, death, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of his or her personal or family history;

(20) Reputation in a community, arising before the controversy, as to boundaries of or customs affecting lands in the community, and reputation as to events of general history important to the community or state or nation in which located;

(21) Reputation of a person's character among his or her associates or in the community;

(22) Evidence of a final judgment, entered after a trial or upon a plea of guilty (but not upon a plea of nolo contendere), adjudging a person guilty of a crime punishable by death or imprisonment in excess of one year, to prove any fact essential to sustain the judgment, but not including, when offered by the government in a criminal prosecution for purposes other than impeachment, judgments against a person other than the accused. The pendency of an appeal may be shown but does not affect admissibility;

(23) Judgments as proof of matters of personal, family, or general history, or boundaries, essential to the judgment, if the same would be provable by evidence of reputation; and

(24) A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (a) the statement is offered as evidence of a material fact, (b) the statement is more probative on the point for which it is offered than any

other evidence which the proponent can procure through reasonable efforts, and (c) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. A statement may not be admitted under this exception unless the proponent of it makes known to the adverse party, sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, his or her intention to offer the statement and the particulars of it, including the name and address of the declarant.

Source: Laws 1975, LB 279, § 57; Laws 1999, LB 64, § 1; Laws 2014, LB788, § 7; Laws 2021, LB57, § 1.

ARTICLE 11

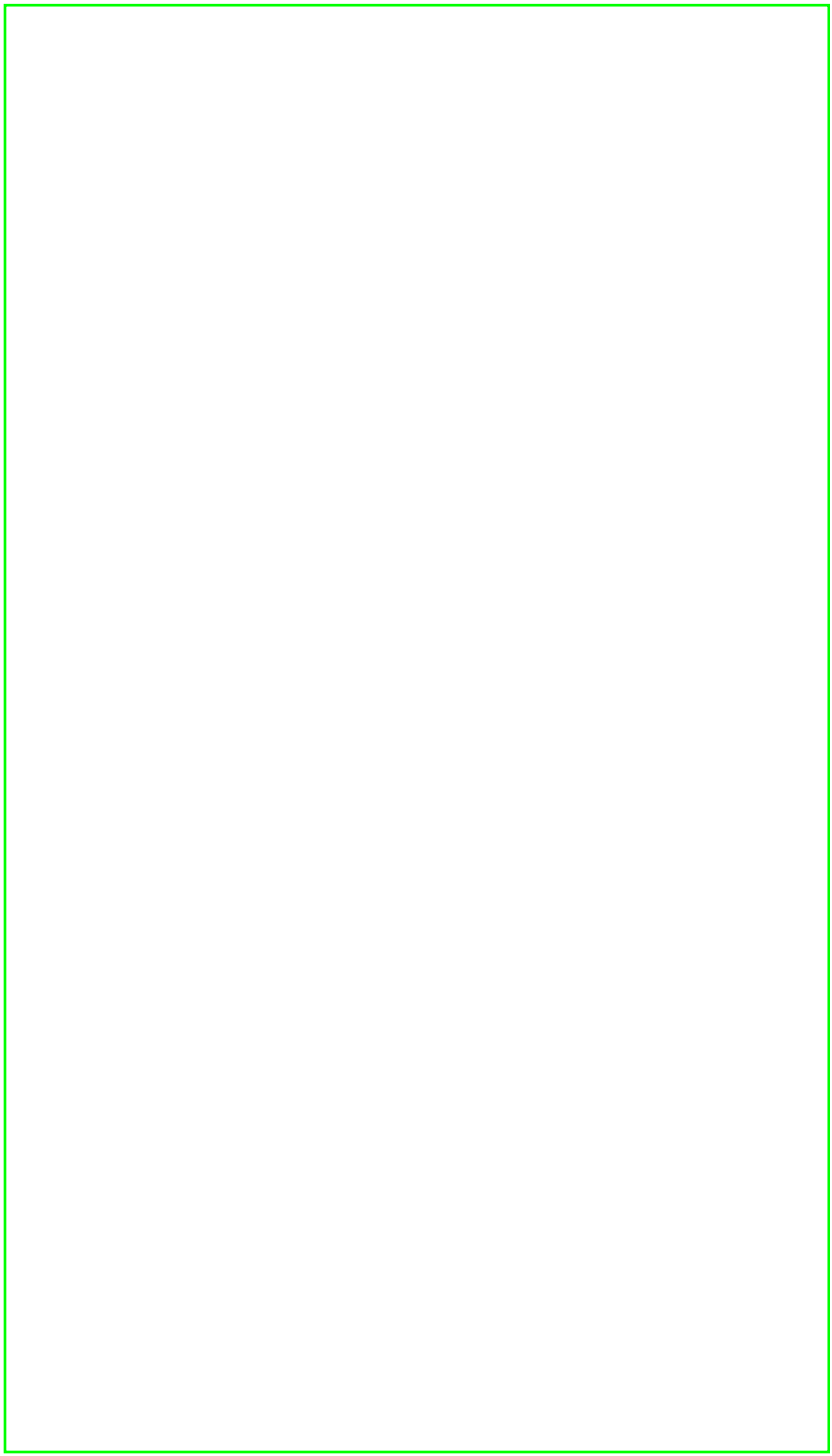
MISCELLANEOUS RULES

Section
27-1103. Rule 1103. Act, how cited.

27-1103 Rule 1103. Act, how cited.

These rules may be known and cited as the Nebraska Evidence Rules.

Source: Laws 1975, LB 279, § 73; Laws 2009, LB97, § 8; Laws 2020, LB881, § 5.



CHAPTER 28
CRIMES AND PUNISHMENTS

Article.

ARTICLE 1

PROVISIONS APPLICABLE TO OFFENSES GENERALLY

(a) GENERAL PROVISIONS

Section

(b) DISCRIMINATION-BASED OFFENSES

(d) VICTIMS OF SEX TRAFFICKING OF A MINOR OR LABOR TRAFFICKING OF A MINOR

(a) GENERAL PROVISIONS

28-101 Code, how cited.

Sections 28-101 to 28-1357, 28-1601 to 28-1603, and 28-1701 shall be known and may be cited as the Nebraska Criminal Code.

Source: Laws 1977, LB 38, § 1; Laws 1980, LB 991, § 8; Laws 1982, LB 465, § 1; Laws 1985, LB 371, § 1; Laws 1985, LB 406, § 1; Laws 1986, LB 956, § 12; Laws 1986, LB 969, § 1; Laws 1987, LB 451, § 1; Laws 1988, LB 170, § 1; Laws 1988, LB 463, § 41; Laws 1989, LB 372, § 1; Laws 1990, LB 50, § 10; Laws 1990, LB 571, § 2; Laws 1990, LB 1018, § 1; Laws 1991, LB 135, § 1; Laws 1991, LB 477, § 2; Laws 1992, LB 1098, § 5; Laws 1992, LB 1184, § 8; Laws 1994, LB 988, § 1; Laws 1994, LB 1035, § 1; Laws 1994, LB 1129, § 1; Laws 1995, LB 371, § 1; Laws 1995, LB 385, § 11; Laws 1996, LB 908, § 2; Laws 1997, LB 90, § 1; Laws 1997, LB 814, § 6; Laws 1998, LB 218, § 2; Laws 1999, LB 6, § 1; Laws 1999, LB 49, § 1; Laws 1999, LB 163, § 1; Laws 1999, LB 511, § 1; Laws 2002, LB 276, § 1; Laws 2002, LB 824, § 1; Laws 2003, LB 17, § 1; Laws 2003, LB 43, § 8; Laws 2003, LB 273, § 2; Laws 2004, LB 943, § 1; Laws 2006, LB 57, § 1; Laws 2006, LB 287, § 4; Laws 2006, LB 1086, § 6; Laws 2006, LB 1199, § 1; Laws 2007, LB142, § 1; Laws 2008, LB764, § 1; Laws 2008, LB1055, § 1; Laws 2009, LB63, § 2; Laws 2009, LB97, § 9; Laws 2009, LB155, § 1; Laws 2010, LB252, § 1; Laws 2010, LB594, § 1; Laws 2010, LB894, § 1; Laws 2010, LB1103, § 11; Laws 2011, LB20, § 1; Laws 2011, LB226, § 1; Laws 2011, LB667, § 1; Laws 2013, LB3, § 1; Laws 2013, LB44 § 1; Laws 2014, LB403, § 1; Laws 2014, LB863, § 15; Laws 2015, LB390, § 1; Laws 2016, LB136, § 1; Laws 2016, LB934, § 1; Laws 2016, LB1009, § 1; Laws 2016, LB1106, § 3; Laws 2017, LB289, § 2; Laws 2017, LB487, § 2; Laws 2018, LB931, § 1; Laws 2018, LB990, § 1; Laws 2019, LB7, § 1; Laws 2019, LB519, § 4; Laws 2019, LB686, § 1; Laws 2020, LB814, § 1; Laws 2020, LB881, § 6; Laws 2020, LB1152, § 14; Laws 2022, LB519, § 2; Laws 2022, LB922, § 5.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB519, section 2, with LB922, section 5, to reflect all amendments.

Note: Changes made by LB519 became effective July 21, 2022. Changes made by LB922 became operative July 21, 2022.

28-104 Offense; crime; synonymous.

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

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

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

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

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

Class I felony	Death
Class IA felony	Life imprisonment
Class IB felony	Maximum—life imprisonment Minimum—twenty years imprisonment
Class IC felony	Maximum—fifty years imprisonment Mandatory minimum—five years imprisonment
Class ID felony	Maximum—fifty years imprisonment Mandatory minimum—three years imprisonment
Class II felony	Maximum—fifty years imprisonment Minimum—one year imprisonment
Class IIA felony	Maximum—twenty years imprisonment Minimum—none
Class III felony	Maximum—four years imprisonment and two years post-release supervision or twenty-five thousand dollars fine, or both Minimum—none for imprisonment and nine months post-release supervision if imprisonment is imposed
Class IIIA felony	Maximum—three years imprisonment and eighteen months post-release supervision or ten thousand dollars fine, or both Minimum—none for imprisonment and nine months post-release supervision if imprisonment is imposed
Class IV felony	Maximum—two years imprisonment and twelve months post-release supervision or ten thousand dollars fine, or both Minimum—none for imprisonment and none for post-release supervision

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

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

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

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

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

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

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

Source: Laws 1977, LB 38, § 5; Laws 1989, LB 592, § 1; Laws 1995, LB 371, § 2; Laws 1997, LB 364, § 1; Laws 1998, LB 900, § 1; Laws 1998, LB 1266, § 1; Laws 2002, Third Spec. Sess., LB 1, § 1; Laws 2011, LB12, § 1; Laws 2015, LB268, § 6; Laws 2015, LB605, § 6; Laws 2016, LB1094, § 2; Referendum 2016, No. 426; Laws 2019, LB686, § 2.

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

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

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

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

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

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

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

(b) DISCRIMINATION-BASED OFFENSES

28-115 Criminal offense against a pregnant woman; enhanced penalty.

(1) Except as provided in subsection (2) of this section, any person who commits any of the following criminal offenses against a pregnant woman shall be punished by the imposition of the next higher penalty classification than the penalty classification prescribed for the criminal offense:

(a) Assault in the first degree, section 28-308;

(b) Assault in the second degree, section 28-309;

(c) Assault in the third degree, section 28-310;

(d) Assault by strangulation or suffocation, section 28-310.01;

(e) Sexual assault in the first degree, section 28-319;

(f) Sexual assault in the second or third degree, section 28-320;

(g) Sexual assault of a child in the first degree, section 28-319.01;

(h) Sexual assault of a child in the second or third degree, section 28-320.01;

(i) Sexual abuse of an inmate or parolee in the first degree, section 28-322.02;

(j) Sexual abuse of an inmate or parolee in the second degree, section 28-322.03;

(k) Sexual abuse of a protected individual in the first or second degree, section 28-322.04;

(l) Sexual abuse of a detainee under section 28-322.05;

(m) Domestic assault in the first, second, or third degree, section 28-323;

(n) Assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the first degree, section 28-929;

(o) Assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the second degree, section 28-930;

(p) Assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the third degree, section 28-931;

(q) Assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional using a motor vehicle, section 28-931.01;

(r) Assault by a confined person, section 28-932;

(s) Confined person committing offenses against another person, section 28-933; and

(t) Proximately causing serious bodily injury while operating a motor vehicle, section 60-6,198.

(2) The enhancement in subsection (1) of this section does not apply to any criminal offense listed in subsection (1) of this section that is already punishable as a Class I, IA, or IB felony. If any criminal offense listed in subsection (1) of this section is punishable as a Class I misdemeanor, the penalty under this section is a Class IIIA felony.

(3) The prosecution shall allege and prove beyond a reasonable doubt that the victim was pregnant at the time of the offense.

Source: Laws 2006, LB 57, § 9; Laws 2010, LB771, § 1; Laws 2014, LB811, § 1; Laws 2016, LB1094, § 4; Laws 2019, LB141, § 1; Laws 2019, LB519, § 5.

(d) VICTIMS OF SEX TRAFFICKING OF A MINOR OR LABOR TRAFFICKING OF A MINOR

28-117 Department of Health and Human Services; information on programs and services.

On or before December 1, 2019, the Department of Health and Human Services shall make publicly available information on programs and services available for referral by the department to respond to the safety and needs of children reported or suspected to be victims of sex trafficking of a minor or labor trafficking of a minor as defined in section 28-830 and their families. The department shall develop this information in consultation with representatives of child advocacy centers, behavioral health providers, child welfare and juvenile justice service providers, law enforcement representatives, and prosecutors.

Source: Laws 2019, LB519, § 12.

ARTICLE 2

INCHOATE OFFENSES

Section
28-201. Criminal attempt; conduct; penalties.
28-202. Conspiracy, defined; penalty.

28-201 Criminal attempt; conduct; penalties.

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

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

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

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

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

(4) Criminal attempt is:

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

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

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

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

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

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

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

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

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

28-202 Conspiracy, defined; penalty.

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

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

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

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

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

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

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

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

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

ARTICLE 3

OFFENSES AGAINST THE PERSON

(a) GENERAL PROVISIONS

Section

(a) GENERAL PROVISIONS

28-303 Murder in the first degree; penalty.

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

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

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

28-310.01 Assault by strangulation or suffocation; penalty; affirmative defense.

(1) A person commits the offense of assault by strangulation or suffocation if the person knowingly and intentionally:

(a) Impedes the normal breathing or circulation of the blood of another person by applying pressure on the throat or neck of the other person; or

(b) Impedes the normal breathing of another person by covering the mouth and nose of the person.

(2) An offense is committed under this section regardless of whether a visible injury resulted.

(3) Except as provided in subsection (4) of this section, a violation of this section is a Class IIIA felony.

(4) A violation of this section is a Class IIA felony if:

(a) The person used or attempted to use a dangerous instrument while committing the offense;

(b) The person caused serious bodily injury to the other person while committing the offense; or

(c) The person has been previously convicted of a violation of this section.

(5) It is an affirmative defense that an act constituting strangulation or suffocation was the result of a legitimate medical procedure.

Source: Laws 2004, LB 943, § 2; Laws 2015, LB605, § 13; Laws 2019, LB141, § 2.

28-311.04 Stalking; violations; penalties.

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

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

(a) The person has a prior conviction under such section or a substantially conforming criminal violation within the last seven years;

(b) The victim is under sixteen years of age;

(c) The person possessed a deadly weapon at any time during the violation;

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

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

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

28-311.08 Unlawful intrusion; photograph, film, or record image or video of intimate area; distribute or make public; penalty; court; duties; registration under Sex Offender Registration Act; statute of limitations.

(1) It shall be unlawful for any person to knowingly intrude upon any other person without his or her consent in a place of solitude or seclusion. Violation of this subsection is a Class I misdemeanor. A second or subsequent violation of this subsection is a Class IV felony.

(2) It shall be unlawful for any person to knowingly and intentionally photograph, film, or otherwise record an image or video of the intimate area of any other person without his or her knowledge and consent when his or her intimate area would not be generally visible to the public regardless of whether such other person is located in a public or private place. Violation of this subsection is a Class IV felony.

(3) It shall be unlawful for any person to knowingly and intentionally distribute or otherwise make public an image or video of another person recorded in violation of subsection (2) of this section without that person's consent. A first or second violation of this subsection is a Class IIA felony. A third or subsequent violation of this subsection is a Class II felony.

(4) It shall be unlawful for any person to knowingly and intentionally distribute or otherwise make public an image or video of another person's intimate area or of another person engaged in sexually explicit conduct (a) if the other person had a reasonable expectation that the image would remain private, (b) knowing the other person did not consent to distributing or making public the image or video, and (c) if distributing or making public the image or video serves no legitimate purpose. Violation of this subsection is a Class I misdemeanor. A second or subsequent violation of this subsection is a Class IV felony.

(5) It shall be unlawful for any person to threaten to distribute or otherwise make public an image or video of another person's intimate area or of another person engaged in sexually explicit conduct with the intent to intimidate, threaten, or harass any person. Violation of this subsection is a Class I misdemeanor.

(6) As part of sentencing following a conviction for a violation of subsection (1), (2), or (3) of this section, the court shall make a finding as to the ages of the defendant and the victim at the time the offense occurred. If the defendant is found to have been nineteen years of age or older and the victim is found to have been less than eighteen years of age at such time, then the defendant shall be required to register under the Sex Offender Registration Act.

(7) No person shall be prosecuted under this section unless the indictment for such offense is found by a grand jury or a complaint filed before a magistrate within three years after the later of:

(a) The commission of the crime;

(b) Law enforcement's or a victim's receipt of actual or constructive notice of either the existence of a video or other electronic recording made in violation of this section or the distribution of images, video, or other electronic recording made in violation of this section; or

(c) The youngest victim of a violation of this section reaching the age of twenty-one years.

(8) For purposes of this section:

(a) Intimate area means the naked or undergarment-clad genitalia, pubic area, buttocks, or female breast of an individual;

(b) Intrude means either:

(i) Viewing another person in a state of undress as it is occurring; or

(ii) Recording another person in a state of undress by video, photographic, digital, or other electronic means; and

(c) Place of solitude or seclusion means a place where a person would intend to be in a state of undress and have a reasonable expectation of privacy, including, but not limited to, any facility, public or private, used as a restroom, tanning booth, locker room, shower room, fitting room, or dressing room.

Source: Laws 1996, LB 908, § 1; Laws 2011, LB61, § 1; Laws 2014, LB998, § 2; Laws 2015, LB605, § 17; Laws 2019, LB630, § 1.

Cross References

Sex Offender Registration Act, see section 29-4001.

28-311.09 Harassment protection order; violation; penalty; procedure; costs; enforcement.

(1) Any victim who has been harassed as defined by section 28-311.02 may file a petition and affidavit for a harassment protection order as provided in subsection (3) of this section. Upon the filing of such a petition and affidavit in support thereof, the court may issue a harassment protection order without bond enjoining the respondent from (a) imposing any restraint upon the person or liberty of the petitioner, (b) harassing, threatening, assaulting, molesting, attacking, or otherwise disturbing the peace of the petitioner, or (c) telephoning, contacting, or otherwise communicating with the petitioner. The harassment protection order shall specify to whom relief under this section was granted.

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

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

(4) A petition for a harassment protection order filed pursuant to subsection (1) of this section may not be withdrawn except upon order of the court. An order issued pursuant to subsection (1) of this section shall specify that it is effective for a period of one year unless otherwise dismissed or modified by the court. Any person, except the petitioner, who knowingly violates an order issued pursuant to subsection (1) of this section after service or notice as described in subdivision (9)(b) of this section shall be guilty of a Class II misdemeanor.

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

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

(6) The clerk of the district court shall make available standard application and affidavit forms for a harassment protection order with instructions for completion to be used by a petitioner. Affidavit forms shall request all relevant information, including, but not limited to: A description of the incidents that

are the basis for the application for a harassment protection order, including the most severe incident, and the date or approximate date of such incidents. The clerk and his or her employees shall not provide assistance in completing the forms. The State Court Administrator shall adopt and promulgate the standard application and affidavit forms provided for in this section as well as the standard temporary ex parte and final harassment protection order forms and provide a copy of such forms to all clerks of the district courts in this state. These standard temporary ex parte and final harassment protection order forms shall be the only such forms used in this state.

(7) Any order issued under subsection (1) of this section may be issued ex parte without notice to the respondent if it reasonably appears from the specific facts shown by affidavit of the petitioner that irreparable harm, loss, or damage will result before the matter can be heard on notice. If the specific facts included in the affidavit (a) do not show that the petitioner will suffer irreparable harm, loss, or damage or (b) show that, for any other compelling reason, an ex parte order should not be issued, the court may forthwith cause notice of the application to be given to the respondent stating that he or she may show cause, not more than fourteen days after service, why such order should not be entered. Any notice provided to the respondent shall include notification that a court may treat a petition for a harassment protection order as a petition for a sexual assault protection order or a domestic abuse protection order if it appears from the facts that such other protection order is more appropriate and that the respondent shall have an opportunity to show cause as to why such protection order should not be entered. If such ex parte order is issued without notice to the respondent, the court shall forthwith cause notice of the petition and order and a form with which to request a show-cause hearing to be given the respondent stating that, upon service on the respondent, the order shall remain in effect for a period of one year unless the respondent shows cause why the order should not remain in effect for a period of one year. If the respondent wishes to appear and show cause why the order should not remain in effect for a period of one year, he or she shall affix his or her current address, telephone number, and signature to the form and return it to the clerk of the district court within ten business days after service upon him or her. Upon receipt of a timely request for a show-cause hearing, the court shall immediately schedule a show-cause hearing to be held within thirty days after the receipt of the request for a show-cause hearing and shall notify the petitioner and respondent of the hearing date. If a petition is dismissed without a hearing, it shall be dismissed without prejudice. The petition and affidavit shall be deemed to have been offered into evidence at any show-cause hearing. The petition and affidavit shall be admitted into evidence unless specifically excluded by the court.

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

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

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

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

(b) If the respondent is present at a hearing convened pursuant to this section and the harassment protection order is not dismissed, such respondent shall be deemed to have notice by the court at such hearing that the harassment protection order will be granted and remain in effect and further service of such notice described in this subsection shall not be required for purposes of prosecution under this section.

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

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

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

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

(10) A peace officer may, with or without a warrant, arrest a person if (a) the officer has probable cause to believe that the person has committed a violation of a harassment protection order issued pursuant to this section or a violation of a valid foreign harassment protection order recognized pursuant to section 28-311.10 and (b) a petitioner under this section provides the peace officer with a copy of a harassment protection order or the peace officer determines that such an order exists after communicating with the local law enforcement agency or a person protected under a valid foreign harassment protection order recognized pursuant to section 28-311.10 provides the peace officer with a copy of such order.

(11) A peace officer making an arrest pursuant to subsection (10) of this section shall take such person into custody and take such person before the county court or the court which issued the harassment protection order within a reasonable time. At such time the court shall establish the conditions of such

person's release from custody, including the determination of bond or recognizance, as the case may be. The court shall issue an order directing that such person shall have no contact with the alleged victim of the harassment.

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

Source: Laws 1998, LB 218, § 6; Laws 2012, LB310, § 1; Laws 2019, LB532, § 1.

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

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

(2) The petition for a sexual assault protection order shall state the events and dates or approximate dates of acts constituting the sexual assault offense, including the most recent and most severe incident or incidents.

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

(4) A petition for a sexual assault protection order may not be withdrawn except upon order of the court. A sexual assault protection order shall specify that it is effective for a period of one year unless renewed pursuant to subsection (12) of this section or otherwise dismissed or modified by the court. Any person, except the petitioner, who knowingly violates a sexual assault protection order after service or notice as described in subdivision (9)(b) of this section shall be guilty of a Class I misdemeanor, except that any person convicted of violating such order who has a prior conviction for violating a sexual assault protection order shall be guilty of a Class IV felony.

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

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

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

(7) A sexual assault protection order may be issued or renewed ex parte without notice to the respondent if it reasonably appears from the specific facts shown by affidavit of the petitioner that irreparable harm, loss, or damage will result before the matter can be heard on notice. If a sexual assault protection order is not issued ex parte, the court shall immediately schedule an evidentiary hearing to be held within fourteen days after the filing of the petition, and the court shall cause notice of the application to be given to the respondent stating that he or she may show cause why such order should not be entered. Any notice provided to the respondent shall include notification that a court may treat a petition for a sexual assault protection order as a petition for a harassment protection order or a domestic abuse protection order if it appears from the facts that such other protection order is more appropriate and that the respondent shall have an opportunity to show cause as to why such protection order should not be entered. If such ex parte order is issued or renewed without notice to the respondent, the court shall forthwith cause notice of the petition and order and a form with which to request a show-cause hearing to be given the respondent stating that, upon service on the respondent, the order shall remain in effect for a period of one year unless the respondent shows cause why the order should not remain in effect for a period of one year. If the respondent wishes to appear and show cause why the order should not remain in effect for a period of one year, he or she shall affix his or her current address, telephone number, and signature to the form and return it to the clerk of the district court within ten business days after service upon him or her. Upon receipt of a timely request for a show-cause hearing, the court shall immediately schedule a show-cause hearing to be held within thirty days after the receipt of the request for a show-cause hearing and shall notify the petitioner and respondent of the hearing date. The petition and affidavit shall be deemed to have been offered into evidence at any show-cause hearing. The petition and affidavit shall be admitted into evidence unless specifically excluded by the court.

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

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

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

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

(b) If the respondent is present at a hearing convened pursuant to this section and the sexual assault protection order is not dismissed, such respondent shall be deemed to have notice by the court at such hearing that the protection order will be granted and remain in effect and further service of such notice described in this subsection shall not be required for purposes of prosecution under this section.

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

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

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

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

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

(11) A peace officer making an arrest pursuant to subsection (10) of this section shall take such person into custody and take such person before the county court or the court which issued the sexual assault protection order

within a reasonable time. At such time the court shall establish the conditions of such person's release from custody, including the determination of bond or recognizance, as the case may be. The court shall issue an order directing that such person shall have no contact with the alleged victim of the sexual assault offense.

(12)(a) An order issued under subsection (1) of this section may be renewed annually. To request renewal of the order, the petitioner shall file a petition for renewal and affidavit in support thereof at any time within forty-five days prior to the date the order is set to expire, including the date the order expires.

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

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

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

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

(c) The petition for renewal shall state the reasons a renewal is sought and shall be filed with the clerk of the district court, and the proceeding thereon may be heard by the county court or the district court as provided in section 25-2740. A petition for renewal will otherwise be governed in accordance with the procedures set forth in subsections (4) through (11) of this section. The renewed order shall specify that it is effective for one year commencing on the first calendar day after expiration of the previous order or on the calendar day the court grants the renewal if such day is subsequent to the first calendar day after expiration of the previous order.

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

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

(a) Conduct amounting to sexual assault under section 28-319 or 28-320, sexual abuse by a school employee under section 28-316.01, sexual assault of a child under section 28-319.01 or 28-320.01, or an attempt to commit any of such offenses; or

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

Source: Laws 2017, LB289, § 4; Laws 2019, LB532, § 2; Laws 2020, LB881, § 7.

28-311.12 Foreign sexual assault protection order; enforcement.

(1) A valid foreign sexual assault protection order or an order similar to a sexual assault protection order issued by a court of another state, territory, possession, or tribe shall be accorded full faith and credit by the courts of this state and enforced as if it were issued in this state.

(2) A foreign sexual assault protection order issued by a court of another state, territory, possession, or tribe shall be valid if:

(a) The issuing court had jurisdiction over the parties and matter under the law of such state, territory, possession, or tribe;

(b) The respondent was given reasonable notice and an opportunity to be heard sufficient to protect the respondent's right to due process before the order was issued; and

(c) The sexual assault protection order from another jurisdiction has not been rendered against both the petitioner and the respondent, unless: (i) The respondent filed a cross or counter petition, complaint, or other written pleading seeking such a sexual assault protection order; and (ii) the issuing court made specific findings of sexual assault offenses against both the petitioner and respondent and determined that each party was entitled to such an order.

(3) There is a presumption of the validity of the foreign protection order when the order appears authentic on its face.

(4) A peace officer may rely upon a copy of any putative valid foreign sexual assault protection order which has been provided to the peace officer by any source.

Source: Laws 2017, LB289, § 5.

28-316.01 Sexual abuse by a school employee; penalty.

(1) For purposes of this section:

(a) Sexual contact has the same meaning as in section 28-318;

(b) Sexual penetration has the same meaning as in section 28-318;

(c) School employee means a person nineteen years of age or older who is employed by a public, private, denominational, or parochial school approved or accredited by the State Department of Education; and

(d) Student means a person at least sixteen but not more than nineteen years of age enrolled in or attending a public, private, denominational, or parochial school approved or accredited by the State Department of Education, or who was such a person enrolled in or who attended such a school within ninety days of any violation of this section.

(2) A person commits the offense of sexual abuse by a school employee if a school employee subjects a student in the school to which such employee is assigned for work to sexual penetration or sexual contact, or engages in a pattern or scheme of conduct to subject a student in the school to which such employee is assigned for work to sexual penetration or sexual contact. It is not a defense to a charge under this section that the student consented to such sexual penetration or sexual contact.

(3) Any school employee who engages in sexual penetration with a student is guilty of sexual abuse by a school employee in the first degree. Sexual abuse by a school employee in the first degree is a Class IIA felony.

(4) Any school employee who engages in sexual contact with a student is guilty of sexual abuse by a school employee in the second degree. Sexual abuse by a school employee in the second degree is a Class IIIA felony.

(5) Any school employee who engages in a pattern or scheme of conduct with the intent to subject a student to sexual penetration or sexual contact is guilty of

sexual abuse by a school employee in the third degree. Sexual abuse by a school employee in the third degree is a Class IV felony.

Source: Laws 2020, LB881, § 12.

28-318 Terms, defined.

As used in sections 28-317 to 28-322.05, unless the context otherwise requires:

(1) Actor means a person accused of sexual assault;

(2) Intimate parts means the genital area, groin, inner thighs, buttocks, or breasts;

(3) Past sexual behavior means sexual behavior other than the sexual behavior upon which the sexual assault is alleged;

(4) Serious personal injury means great bodily injury or disfigurement, extreme mental anguish or mental trauma, pregnancy, disease, or loss or impairment of a sexual or reproductive organ;

(5) Sexual contact means the intentional touching of the victim's sexual or intimate parts or the intentional touching of the victim's clothing covering the immediate area of the victim's sexual or intimate parts. Sexual contact also means the touching by the victim of the actor's sexual or intimate parts or the clothing covering the immediate area of the actor's sexual or intimate parts when such touching is intentionally caused by the actor. Sexual contact includes only such conduct which can be reasonably construed as being for the purpose of sexual arousal or gratification of either party. Sexual contact also includes the touching of a child with the actor's sexual or intimate parts on any part of the child's body for purposes of sexual abuse by a school employee under section 28-316.01 or sexual assault of a child under sections 28-319.01 and 28-320.01;

(6) Sexual penetration means sexual intercourse in its ordinary meaning, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of the actor's or victim's body or any object manipulated by the actor into the genital or anal openings of the victim's body which can be reasonably construed as being for nonmedical, nonhealth, or nonlaw enforcement purposes. Sexual penetration shall not require emission of semen;

(7) Victim means the person alleging to have been sexually assaulted;

(8) Without consent means:

(a)(i) The victim was compelled to submit due to the use of force or threat of force or coercion, or (ii) the victim expressed a lack of consent through words, or (iii) the victim expressed a lack of consent through conduct, or (iv) the consent, if any was actually given, was the result of the actor's deception as to the identity of the actor or the nature or purpose of the act on the part of the actor;

(b) The victim need only resist, either verbally or physically, so as to make the victim's refusal to consent genuine and real and so as to reasonably make known to the actor the victim's refusal to consent; and

(c) A victim need not resist verbally or physically where it would be useless or futile to do so; and

(9) Force or threat of force means (a) the use of physical force which overcomes the victim's resistance or (b) the threat of physical force, express or

implied, against the victim or a third person that places the victim in fear of death or in fear of serious personal injury to the victim or a third person where the victim reasonably believes that the actor has the present or future ability to execute the threat.

Source: Laws 1977, LB 38, § 33; Laws 1978, LB 701, § 1; Laws 1984, LB 79, § 3; Laws 1985, LB 2, § 2; Laws 1995, LB 371, § 3; Laws 2004, LB 943, § 4; Laws 2006, LB 1199, § 4; Laws 2009, LB97, § 11; Laws 2019, LB519, § 6; Laws 2020, LB881, § 8.

28-322 Sexual abuse of an inmate or parolee; terms, defined.

For purposes of sections 28-322 to 28-322.03:

(1) Inmate or parolee means any individual confined in a facility operated by the Department of Correctional Services or a city or county correctional or jail facility or under parole supervision; and

(2) Person means (a) an individual employed by the Department of Correctional Services or by the Division of Parole Supervision, including any individual working in central administration of the department, any individual working under contract with the department, and any individual, other than an inmate's spouse, to whom the department has authorized or delegated control over an inmate or an inmate's activities, (b) an individual employed by a city or county correctional or jail facility, including any individual working in central administration of the city or county correctional or jail facility, any individual working under contract with the city or county correctional or jail facility, and any individual, other than an inmate's spouse, to whom the city or county correctional or jail facility has authorized or delegated control over an inmate or an inmate's activities, and (c) an individual employed by the Office of Probation Administration who performs official duties within any facility operated by the Department of Correctional Services or a city or county correctional or jail facility.

Source: Laws 1999, LB 511, § 2; Laws 2001, LB 155, § 1; Laws 2004, LB 943, § 5; Laws 2018, LB841, § 1.

28-322.01 Sexual abuse of an inmate or parolee.

(1) A person commits the offense of sexual abuse of an inmate or parolee if such person subjects an inmate or parolee to sexual penetration or sexual contact as those terms are defined in section 28-318. It is not a defense to a charge under this section that the inmate or parolee consented to such sexual penetration or sexual contact.

(2) An otherwise lawful pat-down or body cavity search by a person is not a violation of this section.

Source: Laws 1999, LB 511, § 3; Laws 2001, LB 155, § 2; Laws 2004, LB 943, § 6; Laws 2019, LB519, § 7.

28-322.05 Sexual abuse of a detainee; penalty.

(1) For purposes of this section:

(a) Detainee means an individual who has been:

(i) Arrested by a person;

(ii) Detained by a person, regardless of whether the detainee has been arrested or charged; or

(iii) Placed into the custody of a person, regardless of whether the detainee has been arrested or charged;

(b) Law enforcement agency means an agency or department of this state or of any political subdivision of this state which is responsible for the prevention and detection of crime; the enforcement of the penal, traffic, or highway laws of this state or any political subdivision of this state; and the enforcement of arrest warrants. Law enforcement agency includes a police department, an office of the town marshal, an office of the county sheriff, the Nebraska State Patrol, and any department to which a deputy state sheriff is assigned as provided in section 84-106; and

(c) Person means an individual:

(i) Who is employed by a law enforcement agency, including an individual working under contract with the agency;

(ii) To whom the law enforcement agency has authorized or delegated authority to make arrests, to place a detainee in detention or custody, or to otherwise exercise control over a detainee or a detainee's activities; and

(iii) Who is not the spouse of a detainee.

(2) A person commits the offense of sexual abuse of a detainee if the person engages in sexual penetration or sexual contact with a detainee. It is not a defense to a charge under this section that the detainee consented to such sexual penetration or sexual contact.

(3) An otherwise lawful pat-down or body cavity search by a person is not a violation of this section.

(4) Any person who engages in sexual penetration with a detainee is guilty of sexual abuse of a detainee in the first degree. Sexual abuse of a detainee in the first degree is a Class IIA felony.

(5) Any person who engages in sexual contact with a detainee is guilty of sexual abuse of a detainee in the second degree. Sexual abuse of a detainee in the second degree is a Class IIIA felony.

Source: Laws 2019, LB519, § 8.

28-326 Terms, defined.

For purposes of sections 28-325 to 28-345 and 28-347 to 28-347.06, unless the context otherwise requires:

(1) Abortion means the use or prescription of any instrument, medicine, drug, or other substance or device intentionally to terminate the pregnancy of a woman known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead unborn child, and which causes the premature termination of the pregnancy;

(2) Complications associated with abortion means any adverse physical, psychological, or emotional reaction that is reported in a peer-reviewed journal to be statistically associated with abortion such that there is less than a five percent probability ($P < .05$) that the result is due to chance;

(3) Conception means the fecundation of the ovum by the spermatozoa;

(4)(a) Dismemberment abortion means an abortion in which, with the purpose of causing the death of an unborn child, a person purposely dismembers the body of a living unborn child and extracts him or her one piece at a time from the uterus through use of clamps, grasping forceps, tongs, scissors, or similar instruments that, through the convergence of two rigid levers, slice, crush, or grasp a portion of the unborn child's body to cut or rip it off.

(b) Dismemberment abortion does not include:

(i) An abortion in which suction is used to dismember the body of an unborn child by sucking fetal parts into a collection container; or

(ii) The use of instruments or suction to remove the remains of an unborn child who has already died;

(5) Emergency situation means that condition which, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial impairment of a major bodily function;

(6) Hospital means those institutions licensed by the Department of Health and Human Services pursuant to the Health Care Facility Licensure Act;

(7) Negligible risk means a risk that a reasonable person would consider to be immaterial to a decision to undergo an elective medical procedure;

(8) Partial-birth abortion means an abortion procedure in which the person performing the abortion partially delivers vaginally a living unborn child before killing the unborn child and completing the delivery. For purposes of this subdivision, the term partially delivers vaginally a living unborn child before killing the unborn child means deliberately and intentionally delivering into the vagina a living unborn child, or a substantial portion thereof, for the purpose of performing a procedure that the person performing such procedure knows will kill the unborn child and does kill the unborn child;

(9) Physician means any person licensed to practice medicine in this state as provided in the Uniform Credentialing Act;

(10) Pregnant means that condition of a woman who has unborn human life within her as the result of conception;

(11) Probable gestational age of the unborn child means what will with reasonable probability, in the judgment of the physician, be the gestational age of the unborn child at the time the abortion is planned to be performed;

(12) Risk factor associated with abortion means any factor, including any physical, psychological, emotional, demographic, or situational factor, for which there is a statistical association with one or more complications associated with abortion such that there is less than a five percent probability ($P < .05$) that such statistical association is due to chance. Such information on risk factors shall have been published in any peer-reviewed journals indexed by the United States National Library of Medicine's search services (PubMed or MEDLINE) or in any journal included in the Thomson Reuters Scientific Master Journal List not less than twelve months prior to the day preabortion screening was provided;

(13) Self-induced abortion means any abortion or menstrual extraction attempted or completed by a pregnant woman on her own body;

(14) Ultrasound means the use of ultrasonic waves for diagnostic or therapeutic purposes, specifically to monitor an unborn child;

(15) Viability means that stage of human development when the unborn child is potentially able to live more than merely momentarily outside the womb of the mother by natural or artificial means; and

(16) Woman means any female human being whether or not she has reached the age of majority.

Source: Laws 1977, LB 38, § 41; Laws 1979, LB 316, § 1; Laws 1984, LB 695, § 1; Laws 1986, LB 663, § 1; Laws 1993, LB 110, § 1; Laws 1996, LB 1044, § 59; Laws 1997, LB 23, § 2; Laws 2000, LB 819, § 64; Laws 2007, LB296, § 27; Laws 2009, LB675, § 1; Laws 2010, LB594, § 3; Laws 2020, LB814, § 2.

Cross References

Health Care Facility Licensure Act, see section 71-401.
Uniform Credentialing Act, see section 38-101.

28-327 Abortion; voluntary and informed consent required; exception.

No abortion shall be performed except with the voluntary and informed consent of the woman upon whom the abortion is to be performed. Except in the case of an emergency situation, consent to an abortion is voluntary and informed only if:

(1) The woman is told the following by the physician who is to perform the abortion, by the referring physician, or by a physician assistant or registered nurse licensed under the Uniform Credentialing Act who is an agent of either physician, at least twenty-four hours before the abortion:

(a) The particular medical risks associated with the particular abortion procedure to be employed including, when medically accurate, the risks of infection, hemorrhage, perforated uterus, danger to subsequent pregnancies, and infertility;

(b) The probable gestational age of the unborn child at the time the abortion is to be performed;

(c) The medical risks associated with carrying her child to term;

(d) That she cannot be forced or required by anyone to have an abortion and is free to withhold or withdraw her consent for an abortion; and

(e) Research indicates that mifepristone alone is not always effective in ending a pregnancy. You may still have a viable pregnancy after taking mifepristone. If you change your mind and want to continue your pregnancy after taking mifepristone, information on finding immediate medical assistance is available on the website of the Department of Health and Human Services.

The person providing the information specified in this subdivision to the person upon whom the abortion is to be performed shall be deemed qualified to so advise and provide such information only if, at a minimum, he or she has had training in each of the following subjects: Sexual and reproductive health; abortion technology; contraceptive technology; short-term counseling skills; community resources and referral; and informed consent. The physician or the physician's agent may provide this information by telephone without conducting a physical examination or tests of the patient, in which case the information required to be supplied may be based on facts supplied by the patient and

whatever other relevant information is reasonably available to the physician or the physician's agent;

(2) The woman is informed by telephone or in person, by the physician who is to perform the abortion, by the referring physician, or by an agent of either physician, at least twenty-four hours before the abortion:

(a) The name of the physician who will perform the abortion;

(b) That medical assistance benefits may be available for prenatal care, childbirth, and neonatal care;

(c) That the father is liable to assist in the support of her child, even in instances in which the father has offered to pay for the abortion;

(d) That she has the right to review the printed materials described in section 28-327.01. The physician or his or her agent shall orally inform the woman that the materials have been provided by the Department of Health and Human Services and that they describe the unborn child, list agencies which offer alternatives to abortion, and include information on finding immediate medical assistance if she changes her mind after taking mifepristone and wants to continue her pregnancy. If the woman chooses to review the materials, they shall either be given to her at least twenty-four hours before the abortion or mailed to her at least seventy-two hours before the abortion by certified mail, restricted delivery to addressee, which means the postal employee can only deliver the mail to the addressee. The physician and his or her agent may disassociate themselves from the materials and may comment or refrain from commenting on them as they choose; and

(e) That she has the right to request a comprehensive list, compiled by the Department of Health and Human Services, of health care providers, facilities, and clinics that offer to have ultrasounds performed by a person at least as qualified as a registered nurse licensed under the Uniform Credentialing Act, including and specifying those that offer to perform such ultrasounds free of charge. The list shall be arranged geographically and shall include the name, address, hours of operation, and telephone number of each entity. If requested by the woman, the physician who is to perform the abortion, the referring physician, or his or her agent shall provide such a list as compiled by the department;

(3) If an ultrasound is used prior to the performance of an abortion, the physician who is to perform the abortion, the referring physician, or a physician assistant or registered nurse licensed under the Uniform Credentialing Act who is an agent of either physician, or any qualified agent of either physician, shall:

(a) Perform an ultrasound of the woman's unborn child of a quality consistent with standard medical practice in the community at least one hour prior to the performance of the abortion;

(b) Simultaneously display the ultrasound images so that the woman may choose to view the ultrasound images or not view the ultrasound images. The woman shall be informed that the ultrasound images will be displayed so that she is able to view them. Nothing in this subdivision shall be construed to require the woman to view the displayed ultrasound images; and

(c) If the woman requests information about the displayed ultrasound image, her questions shall be answered. If she requests a detailed, simultaneous, medical description of the ultrasound image, one shall be provided that in-

cludes the dimensions of the unborn child, the presence of cardiac activity, if present and viewable, and the presence of external members and internal organs, if present and viewable;

(4) At least one hour prior to the performance of an abortion, a physician, psychiatrist, psychologist, mental health practitioner, physician assistant, registered nurse, or social worker licensed under the Uniform Credentialing Act or a professional counselor holding a privilege to practice in Nebraska under the Licensed Professional Counselors Interstate Compact has:

(a) Evaluated the pregnant woman to identify if the pregnant woman had the perception of feeling pressured or coerced into seeking or consenting to an abortion;

(b) Evaluated the pregnant woman to identify the presence of any risk factors associated with abortion;

(c) Informed the pregnant woman and the physician who is to perform the abortion of the results of the evaluation in writing. The written evaluation shall include, at a minimum, a checklist identifying both the positive and negative results of the evaluation for each risk factor associated with abortion and both the licensed person's written certification and the woman's written certification that the pregnant woman was informed of the risk factors associated with abortion as discussed; and

(d) Retained a copy of the written evaluation results in the pregnant woman's permanent record;

(5) If any risk factors associated with abortion were identified, the pregnant woman was informed of the following in such manner and detail that a reasonable person would consider material to a decision of undergoing an elective medical procedure:

(a) Each complication associated with each identified risk factor; and

(b) Any quantifiable risk rates whenever such relevant data exists;

(6) The physician performing the abortion has formed a reasonable medical judgment, documented in the permanent record, that:

(a) The preponderance of statistically validated medical studies demonstrates that the physical, psychological, and familial risks associated with abortion for patients with risk factors similar to the patient's risk factors are negligible risks;

(b) Continuance of the pregnancy would involve risk of injury to the physical or mental health of the pregnant woman greater than if the pregnancy were terminated by induced abortion; or

(c) Continuance of the pregnancy would involve less risk of injury to the physical or mental health of the pregnant woman than if the pregnancy were terminated by an induced abortion;

(7) The woman certifies in writing, prior to the abortion, that:

(a) The information described in subdivisions (1) and (2)(a), (b), and (c) of this section has been furnished her;

(b) She has been informed of her right to review the information referred to in subdivision (2)(d) of this section; and

(c) The requirements of subdivision (3) of this section have been performed if an ultrasound is performed prior to the performance of the abortion; and

(8) Prior to the performance of the abortion, the physician who is to perform the abortion or his or her agent receives a copy of the written certification prescribed by subdivision (7) of this section. The physician or his or her agent shall retain a copy of the signed certification form in the woman's medical record.

Source: Laws 1977, LB 38, § 42; Laws 1979, LB 316, § 2; Laws 1984, LB 695, § 2; Laws 1993, LB 110, § 2; Laws 1996, LB 1044, § 60; Laws 2009, LB675, § 2; Laws 2010, LB594, § 4; Laws 2019, LB209, § 1; Laws 2022, LB752, § 3.
Effective date July 21, 2022.

Cross References

Licensed Professional Counselors Interstate Compact, see section 38-4201.
Uniform Credentialing Act, see section 38-101.

28-327.01 Department of Health and Human Services; printed materials; duties; availability; Internet website information; reporting form; contents.

(1) The Department of Health and Human Services shall cause to be published the following easily comprehensible printed materials:

(a) Geographically indexed materials designed to inform the woman of public and private agencies and services available to assist a woman through pregnancy, upon childbirth, and while the child is dependent, including adoption agencies and agencies and services for prevention of unintended pregnancies, which materials shall include a comprehensive list of the agencies available, a description of the services they offer, and a description of the manner, including telephone numbers and addresses in which such agencies may be contacted or printed materials including a toll-free, twenty-four-hour-a-day telephone number which may be called to orally obtain such a list and description of agencies in the locality of the caller and of the services they offer;

(b) Materials designed to inform the woman of the probable anatomical and physiological characteristics of the unborn child at two-week gestational increments from the time when a woman can be known to be pregnant to full term, including pictures or drawings representing the development of unborn children at the two-week gestational increments, and any relevant information on the possibility of the unborn child's survival. Any such pictures or drawings shall contain the dimensions of the unborn child and shall be realistic and appropriate for the stage of pregnancy depicted. The materials shall be objective, nonjudgmental, and designed to convey only accurate scientific information about the unborn child at the various gestational ages. The materials shall also contain objective information describing the methods of abortion procedures commonly employed, the medical risks commonly associated with each such procedure, the possible detrimental psychological effects of abortion, the medical risks commonly associated with abortion, and the medical risks commonly associated with carrying a child to term;

(c) A comprehensive list of health care providers, facilities, and clinics that offer to have ultrasounds performed by a person at least as qualified as a registered nurse licensed under the Uniform Credentialing Act, including and specifying those that offer to perform such ultrasounds free of charge. The list shall be arranged geographically and shall include the name, address, hours of operation, and telephone number of each entity;

(d) Materials designed to inform the woman that she may still have a viable pregnancy after taking mifepristone. The materials shall include the following statements: ''Research indicates that mifepristone alone is not always effective in ending a pregnancy. You may still have a viable pregnancy after taking mifepristone. If you change your mind and want to continue your pregnancy after taking mifepristone, it may not be too late.''; and

(e) Materials, including contact information, that will assist the woman in finding a medical professional who can help her continue her pregnancy after taking mifepristone.

(2) The printed materials shall be printed in a typeface large enough to be clearly legible.

(3) The printed materials required under this section shall be available from the department upon the request by any person, facility, or hospital for an amount equal to the cost incurred by the department to publish the materials.

(4) The Department of Health and Human Services shall make available on its Internet website a printable publication of geographically indexed materials designed to inform the woman of public and private agencies with services available to assist a woman with mental health concerns, following a risk factor evaluation. Such services shall include, but not be limited to, outpatient and crisis intervention services and crisis hotlines. The materials shall include a comprehensive list of the agencies available, a description of the services offered, and a description of the manner in which such agencies may be contacted, including addresses and telephone numbers of such agencies, as well as a toll-free, twenty-four-hour-a-day telephone number to be provided by the department which may be called to orally obtain the names of the agencies and the services they provide in the locality of the woman. The department shall update the publication as necessary.

(5) The Department of Health and Human Services shall publish and make available on its website materials designed to inform the woman that she may still have a viable pregnancy after taking mifepristone. The materials shall include the following statements: ''Research indicates that mifepristone alone is not always effective in ending a pregnancy. You may still have a viable pregnancy after taking mifepristone. If you change your mind and want to continue your pregnancy after taking mifepristone, it may not be too late.'' The materials shall also include information, including contact information, that will assist the woman in finding a medical professional who can help her continue her pregnancy after taking mifepristone.

(6) The Department of Health and Human Services shall review and update, as necessary, the materials, including contact information, regarding medical professionals who can help a woman continue her pregnancy after taking mifepristone.

(7)(a) The Department of Health and Human Services shall prescribe a reporting form which shall be used for the reporting of every attempt at continuing a woman's pregnancy after taking mifepristone as described in this section performed in this state. Such form shall include the following items:

(i) The age of the pregnant woman;

(ii) The location of the facility where the service was performed;

(iii) The type of service provided;

(iv) Complications, if any;

(v) The name of the attending medical professional;

(vi) The pregnant woman's obstetrical history regarding previous pregnancies, abortions, and live births;

(vii) The state of the pregnant woman's legal residence;

(viii) Whether an emergency situation caused the physician to waive any of the requirements of section 28-327; and

(ix) Such other information as may be prescribed in accordance with section 71-602.

(b) The completed form shall be signed by the attending medical professional and sent to the department within fifteen days after each reporting month. The completed form shall be an original, typed or written legibly in durable ink, and shall not be deemed complete unless the omission of any item of information required shall have been disclosed or satisfactorily accounted for. Carbon copies shall not be acceptable. The reporting form shall not include the name of the person for whom the service was provided. The reporting form shall be confidential and shall not be revealed except upon the order of a court of competent jurisdiction in a civil or criminal proceeding.

Source: Laws 1993, LB 110, § 3; Laws 1996, LB 1044, § 61; Laws 2009, LB675, § 3; Laws 2010, LB594, § 12; Laws 2019, LB209, § 2.

Cross References

Uniform Credentialing Act, see section 38-101.

28-345 Department of Health and Human Services; permanent file; rules and regulations.

The Department of Health and Human Services shall prepare and keep on permanent file compilations of the information submitted on the abortion reporting forms and reporting forms regarding attempts at continuing a woman's pregnancy after taking mifepristone pursuant to such rules and regulations as established by the department, which compilations shall be a matter of public record. Under no circumstances shall the compilations of information include the name of any attending physician or identify in any respect facilities where abortions are performed. The department, in order to maintain and keep such compilations current, shall file with such reports any new or amended information.

Source: Laws 1977, LB 38, § 60; Laws 1979, LB 316, § 10; Laws 1996, LB 1044, § 64; Laws 2007, LB296, § 30; Laws 2019, LB209, § 3.

28-347 Dismemberment abortion; unlawful; when; medical emergency; Board of Medicine and Surgery; hearing; findings admissible at trial; persons not liable.

(1) It shall be unlawful for any person to purposely perform or attempt to perform a dismemberment abortion and thereby kill an unborn child unless a dismemberment abortion is necessary due to a medical emergency as defined in subdivision (4) of section 28-3,103.

(2) A person accused in any proceeding of unlawful conduct under subsection (1) of this section may seek a hearing before the Board of Medicine and Surgery on whether the performance of a dismemberment abortion was necessary due to a medical emergency as defined in subdivision (4) of section 28-3,103. The

board's findings are admissible on that issue at any trial in which such unlawful conduct is alleged. Upon a motion of the person accused, the court shall delay the beginning of the trial for not more than thirty days to permit such a hearing to take place.

(3) No woman upon whom an abortion is performed or attempted to be performed shall be liable for performing or attempting to perform a dismemberment abortion. No nurse, secretary, receptionist, or other employee or agent who is not a physician, but who acts at the direction of a physician, shall be liable for performing or attempting to perform a dismemberment abortion. No pharmacist or other individual who is not a physician, but who fills a prescription or provides instruments or materials used in an abortion at the direction of or to a physician, shall be liable for performing or attempting to perform a dismemberment abortion.

Source: Laws 2020, LB814, § 3.

28-347.01 Dismemberment abortion; injunction; cause of action; who may maintain.

(1) A cause of action for injunctive relief against a person who has performed a dismemberment abortion in violation of section 28-347 may be maintained by:

(a) A woman upon whom such a dismemberment abortion was performed;

(b) If the woman had not attained the age of nineteen years at the time of the dismemberment abortion, a person who is the parent or guardian of the woman upon whom such a dismemberment abortion was performed; or

(c) A prosecuting attorney with appropriate jurisdiction.

(2) The injunction shall prevent the defendant from performing or attempting to perform dismemberment abortions in this state in violation of section 28-347.

(3) A cause of action may not be maintained by a plaintiff if the pregnancy resulted from the plaintiff's criminal conduct.

Source: Laws 2020, LB814, § 4.

28-347.02 Dismemberment abortion; damages; cause of action; who may maintain.

(1) A cause of action for civil damages against a person who performed a dismemberment abortion in violation of section 28-347 may be maintained by:

(a) Any woman upon whom a dismemberment abortion has been performed in violation of section 28-347;

(b) The father of the unborn child, if married to the woman at the time the dismemberment abortion was performed; or

(c) If the woman had not attained the age of nineteen years at the time of the dismemberment abortion or has died as a result of the abortion, the maternal grandparents of the unborn child.

(2) No damages may be awarded a plaintiff if the pregnancy resulted from the plaintiff's criminal conduct.

(3) Damages awarded in such an action shall include money damages for all injuries, psychological and physical, occasioned by the dismemberment abortion.

Source: Laws 2020, LB814, § 5.

28-347.03 Dismemberment abortion; cause of action; judgment; attorney's fees.

(1) If judgment is rendered in favor of the plaintiff in an action described in section 28-347.01 or 28-347.02, the court shall also render judgment for reasonable attorney's fees in favor of the plaintiff against the defendant.

(2) If judgment is rendered in favor of the defendant in an action described in section 28-347.01 or 28-347.02 and the court finds that the plaintiff's suit was frivolous and brought in bad faith, the court shall render judgment for reasonable attorney's fees in favor of the defendant against the plaintiff.

(3) No attorney's fees may be assessed against the woman upon whom an abortion was performed or attempted to be performed except in accordance with subsection (2) of this section.

Source: Laws 2020, LB814, § 6.

28-347.04 Dismemberment abortion; penalty.

The intentional and knowing performance of an unlawful dismemberment abortion in violation of section 28-347 is a Class IV felony.

Source: Laws 2020, LB814, § 7.

28-347.05 Dismemberment abortion; action or proceeding; anonymity of woman; preserved; court order.

In every civil, criminal, or administrative proceeding or action brought under sections 28-347 to 28-347.04, the court shall rule whether the anonymity of any woman upon whom an abortion has been performed or attempted to be performed shall be preserved from public disclosure if she does not give her consent to such disclosure. The court, upon motion or sua sponte, shall make such a ruling and, upon determining that her anonymity should be preserved, shall issue orders to the parties, witnesses, and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard her identity from public disclosure. Each such order shall be accompanied by specific written findings explaining why the anonymity of the woman should be preserved from public disclosure, why the order is essential to that end, how the order is narrowly tailored to serve that interest, and why no reasonable less restrictive alternative exists. In the absence of written consent of the woman upon whom an abortion has been performed or attempted to be performed, any person other than a public official who brings an action under section 28-347.01 or 28-347.02 shall do so under a pseudonym. This section may not be construed to conceal the identity of the plaintiff or of witnesses from the defendant or from attorneys for the defendant.

Source: Laws 2020, LB814, § 8.

28-347.06 Dismemberment abortion; sections, how construed.

Nothing in sections 28-347 to 28-347.04 shall be construed as creating or recognizing a right to abortion or a right to a particular method of abortion.

Source: Laws 2020, LB814, § 9.

(b) ADULT PROTECTIVE SERVICES ACT

28-358.01 Isolation, defined.

(1) Isolation means intentional acts (a) committed for the purpose of preventing, and which do prevent, a vulnerable adult or senior adult from having contact with family, friends, or concerned persons, (b) committed to prevent a vulnerable adult or senior adult from receiving his or her mail or telephone calls, (c) of physical or chemical restraint of a vulnerable adult or senior adult committed for purposes of preventing contact with visitors, family, friends, or other concerned persons, or (d) which restrict, place, or confine a vulnerable adult or senior adult in a restricted area for purposes of social deprivation or preventing contact with family, friends, visitors, or other concerned persons.

(2) Isolation does not include (a) medical isolation prescribed by a licensed physician caring for the vulnerable adult or senior adult, (b) action taken in compliance with a harassment protection order issued pursuant to section 28-311.09, a valid foreign harassment protection order recognized pursuant to section 28-311.10, a sexual assault protection order issued pursuant to section 28-311.11, a valid foreign sexual assault protection order recognized pursuant to section 28-311.12, an order issued pursuant to section 42-924, an ex parte order issued pursuant to section 42-925, an order excluding a person from certain premises issued pursuant to section 42-357, or a valid foreign protection order recognized pursuant to section 42-931, or (c) action authorized by an administrator of a nursing home pursuant to section 71-6021.

Source: Laws 2016, LB934, § 5; Laws 2017, LB289, § 6.

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

(1) When any physician, psychologist, physician assistant, nurse, nurse aide, other medical, developmental disability, or mental health professional, law enforcement personnel, caregiver or employee of a caregiver, operator or employee of a sheltered workshop, owner, operator, or employee of any facility licensed by the department, or human services professional or paraprofessional not including a member of the clergy has reasonable cause to believe that a vulnerable adult has been subjected to abuse, neglect, or exploitation or observes such adult being subjected to conditions or circumstances which reasonably would result in abuse, neglect, or exploitation, he or she shall report the incident or cause a report to be made to the appropriate law enforcement agency or to the department. Any other person may report abuse, neglect, or exploitation if such person has reasonable cause to believe that a vulnerable adult has been subjected to abuse, neglect, or exploitation or observes such adult being subjected to conditions or circumstances which reasonably would result in abuse, neglect, or exploitation.

(2) Such report may be made by telephone, with the caller giving his or her name and address, and, if requested by the department, shall be followed by a written report within forty-eight hours. To the extent available the report shall contain: (a) The name, address, and age of the vulnerable adult; (b) the address

of the caregiver or caregivers of the vulnerable adult; (c) the nature and extent of the alleged abuse, neglect, or exploitation or the conditions and circumstances which would reasonably be expected to result in such abuse, neglect, or exploitation; (d) any evidence of previous abuse, neglect, or exploitation, including the nature and extent of the abuse, neglect, or exploitation; and (e) any other information which in the opinion of the person making the report may be helpful in establishing the cause of the alleged abuse, neglect, or exploitation and the identity of the perpetrator or perpetrators.

(3) Any law enforcement agency receiving a report of abuse, neglect, or exploitation shall notify the department no later than the next working day by telephone or mail.

(4) A report of abuse, neglect, or exploitation made to the department which was not previously made to or by a law enforcement agency shall be communicated to the appropriate law enforcement agency by the department no later than the next working day by telephone or mail.

(5) The department shall establish a statewide toll-free number to be used by any person any hour of the day or night and any day of the week to make reports of abuse, neglect, or exploitation.

Source: Laws 1988, LB 463, § 25; Laws 1996, LB 1044, § 66; Laws 2006, LB 994, § 52; Laws 2007, LB296, § 32; Laws 2012, LB1051, § 10; Laws 2017, LB417, § 2.

28-377 Records relating to abuse; access.

Except as otherwise provided in sections 28-376 to 28-380, no person, official, or agency shall have access to the records relating to abuse unless in furtherance of purposes directly connected with the administration of the Adult Protective Services Act and section 28-726. Persons, officials, and agencies having access to such records shall include, but not be limited to:

(1) A law enforcement agency investigating a report of known or suspected abuse;

(2) A county attorney in preparation of an abuse petition;

(3) A physician who has before him or her a person whom he or she reasonably suspects may be abused;

(4) An agency having the legal responsibility or authorization to care for, treat, or supervise an abused vulnerable adult;

(5) Defense counsel in preparation of the defense of a person charged with abuse;

(6) Any person engaged in bona fide research or auditing, except that no information identifying the subjects of the report shall be made available to the researcher or auditor. The researcher shall be charged for any costs of such research incurred by the department at a rate established by rules and regulations adopted and promulgated by the department;

(7) The designated protection and advocacy system authorized pursuant to the Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. 6000, as the act existed on September 1, 2001, and the Protection and Advocacy for Mentally Ill Individuals Act, 42 U.S.C. 10801, as the act existed on September 1, 2001, acting upon a complaint received from or on behalf of a person with developmental disabilities or mental illness; and

(8) The department, as required or authorized by state law, federal law, federal regulation, or applicable federal program provisions and in furtherance of its programs.

Source: Laws 1988, LB 463, § 30; Laws 1992, LB 643, § 1; Laws 2001, LB 214, § 1; Laws 2007, LB296, § 33; Laws 2020, LB1148, § 1.

28-378 Records relating to abuse; release of information; when.

The department or appropriate law enforcement agency shall provide requested information to any person legally authorized by sections 28-376 to 28-380 to have access to records relating to abuse when ordered by a court of competent jurisdiction or upon compliance by such person with identification requirements established by rules and regulations of the department or law enforcement agency. Such information shall not include the name and address of the person making the report, except that the department may use the name and address as required or authorized by state law, federal law, federal regulation, or applicable federal program provisions and in furtherance of its programs and the county attorney's office may request and receive the name and address of the person making the report with such person's written consent. The name and other identifying data of any person requesting or receiving information from the registry and the dates and the circumstances under which requests are made or information is released shall be entered in the registry.

Source: Laws 1988, LB 463, § 31; Laws 2020, LB1148, § 2.

ARTICLE 4

DRUGS AND NARCOTICS

Section

28-401 Terms, defined.

As used in the Uniform Controlled Substances Act, unless the context otherwise requires:

(1) Administer means to directly apply a controlled substance by injection, inhalation, ingestion, or any other means to the body of a patient or research subject;

(2) Agent means an authorized person who acts on behalf of or at the direction of another person but does not include a common or contract carrier, public warehouse keeper, or employee of a carrier or warehouse keeper;

(3) Administration means the Drug Enforcement Administration of the United States Department of Justice;

(4) Controlled substance means a drug, biological, substance, or immediate precursor in Schedules I through V of section 28-405. Controlled substance does not include distilled spirits, wine, malt beverages, tobacco, hemp, or any nonnarcotic substance if such substance may, under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 et seq., as such act existed on January 1, 2014, and the law of this state, be lawfully sold over the counter without a prescription;

(5) Counterfeit substance means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person or persons who in fact manufactured, distributed, or dispensed such substance and which thereby falsely purports or is represented to be the product of, or to have been distributed by, such other manufacturer, distributor, or dispenser;

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

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

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

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

(10) Prescribe means to issue a medical order;

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

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

(13) Hemp has the same meaning as in section 2-503;

(14)(a) Marijuana means all parts of the plant of the genus cannabis, whether growing or not, the seeds thereof, and every compound, manufacture, salt, derivative, mixture, or preparation of such plant or its seeds.

(b) Marijuana does not include the mature stalks of such plant, hashish, tetrahydrocannabinols extracted or isolated from the plant, fiber produced from

such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks, the sterilized seed of such plant which is incapable of germination, or cannabidiol contained in a drug product approved by the federal Food and Drug Administration.

(c) Marijuana does not include hemp.

(d) When the weight of marijuana is referred to in the Uniform Controlled Substances Act, it means its weight at or about the time it is seized or otherwise comes into the possession of law enforcement authorities, whether cured or uncured at that time.

(e) When industrial hemp as defined in section 2-5701 is in the possession of a person as authorized under section 2-5701, it is not considered marijuana for purposes of the Uniform Controlled Substances Act;

(15) Manufacture means the production, preparation, propagation, conversion, or processing of a controlled substance, either directly or indirectly, by extraction from substances of natural origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container. Manufacture does not include the preparation or compounding of a controlled substance by an individual for his or her own use, except for the preparation or compounding of components or ingredients used for or intended to be used for the manufacture of methamphetamine, or the preparation, compounding, conversion, packaging, or labeling of a controlled substance: (a) By a practitioner as an incident to his or her prescribing, administering, or dispensing of a controlled substance in the course of his or her professional practice; or (b) by a practitioner, or by his or her authorized agent under his or her supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale;

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

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

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

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

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

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

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

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

(24) State means the State of Nebraska;

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

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

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

(28)(a) Hashish or concentrated cannabis means (i) the separated resin, whether crude or purified, obtained from a plant of the genus cannabis or (ii) any material, preparation, mixture, compound, or other substance which contains ten percent or more by weight of tetrahydrocannabinols.

(b) When resins extracted from (i) industrial hemp as defined in section 2-5701 are in the possession of a person as authorized under section 2-5701 or (ii) hemp as defined in section 2-503 are in the possession of a person as authorized under the Nebraska Hemp Farming Act, they are not considered hashish or concentrated cannabis for purposes of the Uniform Controlled Substances Act.

(c) Hashish or concentrated cannabis does not include cannabidiol contained in a drug product approved by the federal Food and Drug Administration;

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

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

health care professional shall not be deemed to be an imitation controlled substance;

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

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

(32) Anabolic steroid means any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, and corticosteroids), that promotes muscle growth and includes any controlled substance in Schedule III(d) of section 28-405. Anabolic steroid does not include any anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species and has been approved by the Secretary of Health and Human Services for such administration, but if any person prescribes, dispenses, or distributes such a steroid for human use, such person shall be considered to have prescribed, dispensed, or distributed an anabolic steroid within the meaning of this subdivision;

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

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

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

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

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

(38) Signature means the name, word, or mark of a person written in his or her own hand with the intent to authenticate a writing or other form of

communication or a digital signature which complies with section 86-611 or an electronic signature;

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

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

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

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

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

(44) Cannabinoid receptor agonist means any chemical compound or substance that, according to scientific or medical research, study, testing, or analysis, demonstrates the presence of binding activity at one or more of the CB1 or CB2 cell membrane receptors located within the human body. Cannabinoid receptor agonist does not include cannabidiol contained in a drug product approved by the federal Food and Drug Administration; and

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

(a) The packaging or labeling of the product or substance suggests that the user will achieve euphoria, hallucination, mood enhancement, stimulation, or another effect on the human body that replicates or mimics those produced by a controlled substance;

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

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

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

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

(f) The owner or person in control of the product or substance makes a verbal or written statement suggesting or implying that the product or substance is a synthetic drug or that consumption of the product or substance will replicate or

mimic effects on the human body to those effects commonly produced through use or consumption of a controlled substance;

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

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

Source: Laws 1977, LB 38, § 61; Laws 1978, LB 276, § 1; Laws 1980, LB 696, § 1; Laws 1985, LB 323, § 1; Laws 1985, LB 406, § 2; Laws 1988, LB 273, § 3; Laws 1988, LB 537, § 1; Laws 1992, LB 1019, § 30; Laws 1993, LB 121, § 175; Laws 1996, LB 1044, § 68; Laws 1996, LB 1108, § 1; Laws 1997, LB 307, § 3; Laws 1999, LB 379, § 1; Laws 2001, LB 398, § 1; Laws 2002, LB 1105, § 428; Laws 2003, LB 200, § 1; Laws 2005, LB 117, § 1; Laws 2005, LB 256, § 16; Laws 2005, LB 382, § 1; Laws 2007, LB247, § 1; Laws 2007, LB296, § 35; Laws 2007, LB463, § 1119; Laws 2009, LB195, § 1; Laws 2013, LB23, § 4; Laws 2014, LB811, § 2; Laws 2014, LB1001, § 2; Laws 2015, LB390, § 2; Laws 2016, LB1009, § 2; Laws 2017, LB487, § 3; Laws 2018, LB1034, § 1; Laws 2019, LB657, § 22; Laws 2021, LB236, § 1.

Cross References

Health Care Facility Licensure Act, see section 71-401.
Nebraska Hemp Farming Act, see section 2-501.

28-401.01 Act, how cited.

Sections 28-401 to 28-456.01 and 28-458 to 28-476 shall be known and may be cited as the Uniform Controlled Substances Act.

Source: Laws 1977, LB 38, § 98; R.S.1943, (1995), § 28-438; Laws 2001, LB 113, § 17; Laws 2001, LB 398, § 2; Laws 2005, LB 117, § 2; Laws 2007, LB463, § 1120; Laws 2011, LB20, § 2; Laws 2014, LB811, § 3; Laws 2015, LB390, § 3; Laws 2016, LB1009, § 3; Laws 2017, LB487, § 4; Laws 2018, LB931, § 2; Laws 2020, LB1152, § 15.

28-405 Controlled substances; schedules; enumerated.

The following are the schedules of controlled substances referred to in the Uniform Controlled Substances Act, unless specifically contained on the list of exempted products of the Drug Enforcement Administration of the United States Department of Justice as the list existed on January 31, 2021:

Schedule I

(a) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

(1) Acetylmethadol;

(2) Allylprodine;

(3) Alphacetylmethadol, except levo-alphacetylmethadol which is also known as levo-alpha-acetylmethadol, levomethadyl acetate, and LAAM;

(4) Alphameprodine;

(5) Alphamethadol;

(6) Benzethidine;

(7) Betacetylmethadol;

(8) Betameprodine;

(9) Betamethadol;

(10) Betaprodine;

(11) Clonitazene;

(12) Dextromoramide;

(13) Difenoxin;

(14) Diampromide;

(15) Diethylthiambutene;

(16) Dimenoxadol;

(17) Dimepheptanol;

(18) Dimethylthiambutene;

(19) Dioxaphetyl butyrate;

(20) Dipipanone;

(21) Ethylmethylthiambutene;

(22) Etonitazene;

(23) Etoxeridine;

(24) Furethidine;

(25) Hydroxypethidine;

(26) Ketobemidone;

(27) Levomoramide;

(28) Levophenacylmorphan;

(29) Morpheridine;

(30) Noracymethadol;

(31) Norlevorphanol;

(32) Normethadone;

(33) Norpipanone;

(34) Phenadoxone;

(35) Phenampromide;

(36) Phenomorphan;

(37) Phenoperidine;

(38) Piritramide;

(39) Proheptazine;

(40) Properidine;

(41) Propiram;

(42) Racemoramide;

(43) Trimeperidine;

(44) Alpha-methylfentanyl, N-(1-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl) propionanilide, 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine;

(45) Tilidine;

(46) 3-Methylfentanyl, N-(3-methyl-1-(2-phenylethyl)-4-piperidyl)-N-phenyl-propanamide, its optical and geometric isomers, salts, and salts of isomers;

(47) 1-methyl-4-phenyl-4-propionoxypiperidine (MPPP), its optical isomers, salts, and salts of isomers;

(48) PEPAP, 1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine, its optical isomers, salts, and salts of isomers;

(49) Acetyl-alpha-methylfentanyl, N-(1-(1-methyl-2-phenethyl)-4-piperidinyl)-N-phenylacetamide, its optical isomers, salts, and salts of isomers;

(50) Alpha-methylthiofentanyl, N-(1-methyl-2-(2-thienyl)ethyl-4-piperidinyl)-N-phenylpropanamide, its optical isomers, salts, and salts of isomers;

(51) Benzylfentanyl, N-(1-benzyl-4-piperidyl)-N-phenylpropanamide, its optical isomers, salts, and salts of isomers;

(52) Beta-hydroxyfentanyl, N-(1-(2-hydroxy-2-phenethyl)-4-piperidinyl)-N-phenylpropanamide, its optical isomers, salts, and salts of isomers;

(53) Beta-hydroxy-3-methylfentanyl, (other name: N-(1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl)-N-phenylpropanamide), its optical and geometric isomers, salts, and salts of isomers;

(54) 3-methylthiofentanyl, N-(3-methyl-1-(2-thienyl)ethyl-4-piperidinyl)-N-phenylpropanamide, its optical and geometric isomers, salts, and salts of isomers;

(55) N-(1-(2-thienyl)methyl-4-piperidyl)-N-phenylpropanamide (thenylfentanyl), its optical isomers, salts, and salts of isomers;

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

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

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

(59) 4-Fluoroisobutyryl Fentanyl;

(60) Acetyl Fentanyl;

(61) Acyrloylfentanyl;

(62) AH-7921; 3, 4-dichloro-N-[(1-dimethylamino) cyclohexylmethyl] benzamide;

(63) Butyryl fentanyl;

(64) Cyclopentyl fentanyl;

(65) Cyclopropyl fentanyl;

(66) Furanyl fentanyl;

(67) Isobutyryl fentanyl;

(68) Isotonitazene;

(69) Methoxyacetyl fentanyl;

(70) MT-45; 1-cyclohexyl-4-(1,2-diphenylethyl) piperazine;

(71) Tetrahydrofuranyl fentanyl;

(72) 2-fluorofentanyl; N-(2-fluorophenyl)-N-(1-phenethylpiperidin-4-yl) propionamide;

(73) Ocfentanil;

(74) Ortho-Fluorofentanyl;

(75) Para-chloroisobutyryl fentanyl;

(76) Para-Fluorobutyryl Fentanyl;

(77) Valeryl fentanyl;

(78) Phenyl Fentanyl;

(79) Para-Methylfentanyl;

(80) Thiofuranyl Fentanyl;

(81) Beta-methyl Fentanyl;

(82) Beta'-Phenyl Fentanyl;

(83) Crotonyl Fentanyl;

(84) 2'-Fluoro Ortho-Fluorofentanyl;

(85) 4'-Methyl Acetyl Fentanyl;

(86) Ortho-Fluorobutyryl Fentanyl;

(87) Ortho-Methyl Acetylfentanyl;

(88) Ortho-Methyl Methoxyacetyl Fentanyl;

(89) Ortho-Fluoroacryl Fentanyl;

(90) Fentanyl Carbamate;

(91) Ortho-Fluoroisobutyryl Fentanyl;

(92) Para-Fluoro Furanyl Fentanyl;

(93) Para-Methoxybutyryl Fentanyl; and

(94) Brorphine (other name: 1-(1-(1-(4-bromophenyl) ethyl) piperidin-4-yl-1,3-dihydro-2H-benzo[D]imidazole-2-one).

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

(1) Acetorphine;

(2) Acetyldihydrocodeine;

(3) Benzylmorphine;

(4) Codeine methylbromide;

(5) Codeine-N-Oxide;

(6) Cyprenorphine;

(7) Desomorphine;

(8) Dihydromorphine;

(9) Drotebanol;

(10) Etorphine, except hydrochloride salt;

(11) Heroin;

(12) Hydromorphinol;

(13) Methyldesorphine;

(14) Methyldihydromorphine;

(15) Morphine methylbromide;

(16) Morphine methylsulfonate;

(17) Morphine-N-Oxide;

(18) Myrophine;

(19) Nicocodeine;

(20) Nicomorphine;

(21) Normorphine;

(22) Pholcodine; and

(23) Thebacon.

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

(1) Bufotenine. Trade and other names shall include, but are not limited to: 3-(beta-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N,N-dimethylserotonin; 5-hydroxy-N,N-dimethyltryptamine; and mappine;

(2) 4-bromo-2,5-dimethoxyamphetamine. Trade and other names shall include, but are not limited to: 4-bromo-2,5-dimethoxy-alpha-methylphenethylamine; and 4-bromo-2,5-DMA;

(3) 4-methoxyamphetamine. Trade and other names shall include, but are not limited to: 4-methoxy-alpha-methylphenethylamine; and paramethoxyamphetamine, PMA;

(4) 4-methyl-2,5-dimethoxyamphetamine. Trade and other names shall include, but are not limited to: 4-methyl-2,5-dimethoxy-alpha-methylphenethylamine; DOM; and STP;

(5) Para-methoxymethamphetamine. Trade and other names shall include, but are not limited to: 1-(4-Methoxyphenyl)-N-methylpropan-2-amine, PMMA, and 4-MMA;

(6) Ibogaine. Trade and other names shall include, but are not limited to: 7-Ethyl-6,6beta,7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano-5H-pyrido (1',2':1,2) azepino (5,4-b) indole; and Tabernanthe iboga;

(7) Lysergic acid diethylamide;

(8) Marijuana;

(9) Mescaline;

(10) Peyote. Peyote shall mean all parts of the plant presently classified botanically as Lophophora williamsii Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture, or preparation of such plant or its seeds or extracts;

(11) Psilocybin;

(12) Psilocyn;

(13) Tetrahydrocannabinols, including, but not limited to, synthetic equivalents of the substances contained in the plant or in the resinous extractives of cannabis, sp. or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following: Delta 1 cis or trans tetrahydrocannabinol and their optical isomers, excluding dronabinol in a drug product approved by the federal Food and Drug Administration; Delta 6 cis or trans tetrahydrocannabinol and their optical isomers; and Delta 3,4 cis or trans tetrahydrocannabinol and its optical isomers. Since nomenclature of these substances is not internationally standardized, compounds of these structures shall be included regardless of the numerical designation of atomic positions covered. Tetrahydrocannabinols does not include cannabidiol contained in a drug product approved by the federal Food and Drug Administration;

(14) N-ethyl-3-piperidyl benzilate;

(15) N-methyl-3-piperidyl benzilate;

(16) Thiophene analog of phencyclidine. Trade and other names shall include, but are not limited to: 1-(1-(2-thienyl)-cyclohexyl)-piperidine; 2-thienyl analog of phencyclidine; TPCP; and TCP;

(17) Hashish or concentrated cannabis;

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

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

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

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

(22) 2,5-dimethoxy-4-ethylamphet-amine; and DOET;

(23) 1-(1-(2-thienyl)cyclohexyl)pyrrolidine; and TCPy;

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

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

(26) Any material, compound, mixture, or preparation containing any quantity of synthetically produced cannabinoids as listed in subdivisions (A) through (L) of this subdivision, including their salts, isomers, salts of isomers, and nitrogen, oxygen, or sulfur-heterocyclic analogs, unless specifically excepted elsewhere in this section. Since nomenclature of these synthetically produced cannabinoids is not internationally standardized and may continually evolve,

these structures or compounds of these structures shall be included under this subdivision, regardless of their specific numerical designation of atomic positions covered, so long as it can be determined through a recognized method of scientific testing or analysis that the substance contains properties that fit within one or more of the following categories:

(A) Tetrahydrocannabinols: Meaning tetrahydrocannabinols naturally contained in a plant of the genus cannabis (cannabis plant), as well as synthetic equivalents of the substances contained in the plant, or in the resinous extractives of cannabis, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following: Delta 1 cis or trans tetrahydrocannabinol, and their optical isomers; Delta 6 cis or trans tetrahydrocannabinol, and their optical isomers; Delta 3,4 cis or trans tetrahydrocannabinol, and its optical isomers. This subdivision does not include cannabidiol contained in a drug product approved by the federal Food and Drug Administration;

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

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

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

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

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

(G) Cyclohexylphenols: Any compound containing a 2-(3-hydroxycyclohexyl)phenol structure with substitution at the 5-position of the phenolic ring by an alkyl, haloalkyl, alkenyl, halobenzyl, benzyl, cycloalkylmethyl, cycloalkylethyl, 2-(4-morpholinyl)ethyl group, cyanoalkyl, 1-(N-methyl-2-piperidinyl)methyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not substituted in or on any of the listed ring systems to any extent;

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

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

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

(K) Indole carboxamides: Any compound containing a 1-indole-3-carboxamide structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, halobenzyl, benzyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, substitution at the carboxamide group by an alkyl, methoxy, benzyl, propionaldehyde, adamantyl, 1-naphthyl, phenyl, aminooxoalkyl group, or quinolinyl group, whether or not further substituted in or on any of the listed ring systems to any extent or to the adamantyl, 1-mapthyl, phenyl, aminooxoalkyl, benzyl, or propionaldehyde groups to any extent;

(L) Indole carboxylates: Any compound containing a 1-indole-3-carboxylate structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, halobenzyl, benzyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, substitution at the carboxylate group by an alkyl, methoxy, benzyl, propionaldehyde, adamantyl, 1-naphthyl, phenyl, aminooxoalkyl group, or quinolinyl group, whether or not further substituted in or on any of the listed ring systems to any extent or to the adamantyl, 1-mapthyl, phenyl, aminooxoalkyl, benzyl, or propionaldehyde groups to any extent; and

(M) Any nonnaturally occurring substance, chemical compound, mixture, or preparation, not specifically listed elsewhere in these schedules and which is

not approved for human consumption by the federal Food and Drug Administration, containing or constituting a cannabinoid receptor agonist as defined in section 28-401;

(27) Any material, compound, mixture, or preparation containing any quantity of a substituted phenethylamine as listed in subdivisions (A) through (C) of this subdivision, unless specifically excepted, listed in another schedule, or specifically named in this schedule, that is structurally derived from phenylethan-2-amine by substitution on the phenyl ring with a fused methylenedioxy ring, fused furan ring, or a fused tetrahydrofuran ring; by substitution with two alkoxy groups; by substitution with one alkoxy and either one fused furan, tetrahydrofuran, or tetrahydropyran ring system; or by substitution with two fused ring systems from any combination of the furan, tetrahydrofuran, or tetrahydropyran ring systems, whether or not the compound is further modified in any of the following ways:

(A) Substitution of the phenyl ring by any halo, hydroxyl, alkyl, trifluoromethyl, alkoxy, or alkylthio groups; (B) substitution at the 2-position by any alkyl groups; or (C) substitution at the 2-amino nitrogen atom with alkyl, dialkyl, benzyl, hydroxybenzyl or methoxybenzyl groups, and including, but not limited to:

(i) 2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine, which is also known as 2C-C or 2,5-Dimethoxy-4-chlorophenethylamine;

(ii) 2-(2,5-Dimethoxy-4-methylphenyl)ethanamine, which is also known as 2C-D or 2,5-Dimethoxy-4-methylphenethylamine;

(iii) 2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine, which is also known as 2C-E or 2,5-Dimethoxy-4-ethylphenethylamine;

(iv) 2-(2,5-Dimethoxyphenyl)ethanamine, which is also known as 2C-H or 2,5-Dimethoxyphenethylamine;

(v) 2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine, which is also known as 2C-I or 2,5-Dimethoxy-4-iodophenethylamine;

(vi) 2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine, which is also known as 2C-N or 2,5-Dimethoxy-4-nitrophenethylamine;

(vii) 2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine, which is also known as 2C-P or 2,5-Dimethoxy-4-propylphenethylamine;

(viii) 2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine, which is also known as 2C-T-2 or 2,5-Dimethoxy-4-ethylthiophenethylamine;

(ix) 2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine, which is also known as 2C-T-4 or 2,5-Dimethoxy-4-isopropylthiophenethylamine;

(x) 2-(4-bromo-2,5-dimethoxyphenyl)ethanamine, which is also known as 2C-B or 2,5-Dimethoxy-4-bromophenethylamine;

(xi) 2-(2,5-dimethoxy-4-(methylthio)phenyl)ethanamine, which is also known as 2C-T or 4-methylthio-2,5-dimethoxyphenethylamine;

(xii) 1-(2,5-dimethoxy-4-iodophenyl)-propan-2-amine, which is also known as DOI or 2,5-Dimethoxy-4-iodoamphetamine;

(xiii) 1-(4-Bromo-2,5-dimethoxyphenyl)-2-aminopropane, which is also known as DOB or 2,5-Dimethoxy-4-bromoamphetamine;

(xiv) 1-(4-chloro-2,5-dimethoxy-phenyl)propan-2-amine, which is also known as DOC or 2,5-Dimethoxy-4-chloroamphetamine;

(xv) 2-(4-bromo-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine, which is also known as 2C-B-NBOMe; 25B-NBOMe or 2,5-Dimethoxy-4-bromo-N-(2-methoxybenzyl)phenethylamine;

(xvi) 2-(4-iodo-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine, which is also known as 2C-I-NBOMe; 25I-NBOMe or 2,5-Dimethoxy-4-iodo-N-(2-methoxybenzyl)phenethylamine;

(xvii) N-(2-Methoxybenzyl)-2-(3,4,5-trimethoxyphenyl)ethanamine, which is also known as Mescaline-NBOMe or 3,4,5-trimethoxy-N-(2-methoxybenzyl)phenethylamine;

(xviii) 2-(4-chloro-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine, which is also known as 2C-C-NBOMe; or 25C-NBOMe or 2,5-Dimethoxy-4-chloro-N-(2-methoxybenzyl)phenethylamine;

(xix) 2-(7-Bromo-5-methoxy-2,3-dihydro-1-benzofuran-4-yl)ethanamine, which is also known as 2CB-5-hemiFLY;

(xx) 2-(8-bromo-2,3,6,7-tetrahydrofuro [2,3-f][1]benzofuran-4-yl)ethanamine, which is also known as 2C-B-FLY;

(xxi) 2-(10-Bromo-2,3,4,7,8,9-hexahydropyrano[2,3-g]chromen-5-yl)ethanamine, which is also known as 2C-B-butterFLY;

(xxii) N-(2-Methoxybenzyl)-1-(8-bromo-2,3,6,7- tetrahydrobenzo[1,2-b:4,5-b']difuran-4-yl)-2-aminoethane, which is also known as 2C-B-FLY-NBOMe;

(xxiii) 1-(4-Bromofuro[2,3-f][1]benzofuran-8-yl)propan-2-amine, which is also known as bromo-benzodifuranylisopropylamine or bromo-dragonFLY;

(xxiv) N-(2-Hydroxybenzyl)-4-iodo-2,5-dimethoxyphenethylamine, which is also known as 2C-INBOH or 25I-NBOH;

(xxv) 5-(2-Aminopropyl)benzofuran, which is also known as 5-APB;

(xxvi) 6-(2-Aminopropyl)benzofuran, which is also known as 6-APB;

(xxvii) 5-(2-Aminopropyl)-2,3-dihydrobenzofuran, which is also known as 5-APDB;

(xxviii) 6-(2-Aminopropyl)-2,3-dihydrobenzofuran, which is also known as 6-APDB;

(xxix) 2,5-dimethoxy-amphetamine, which is also known as 2, 5-dimethoxy-a-methylphenethylamine; 2, 5-DMA;

(xxx) 2,5-dimethoxy-4-ethylamphetamine, which is also known as DOET;

(xxxi) 2,5-dimethoxy-4-(n)-propylthiophenethylamine, which is also known as 2C-T-7;

(xxxii) 5-methoxy-3,4-methylenedioxy-amphetamine;

(xxxiii) 4-methyl-2,5-dimethoxy-amphetamine, which is also known as 4-methyl-2,5-dimethoxy-amethylphenethylamine; DOM and STP;

(xxxiv) 3,4-methylenedioxy amphetamine, which is also known as MDA;

(xxxv) 3,4-methylenedioxymethamphetamine, which is also known as MDMA;

(xxxvi) 3,4-methylenedioxy-N-ethylamphetamine, which is also known as N-ethyl-alpha-methyl-3,4(methylenedioxy)phenethylamine, MDE, MDEA;

(xxxvii) 3,4,5-trimethoxy amphetamine; and

(xxxviii) n-hydroxy-3.4-Methylenedioxy-N-Hydroxyamphetamine, which is also known as N-hydroxyMDA;

(28) Any material, compound, mixture, or preparation containing any quantity of a substituted tryptamine unless specifically excepted, listed in another schedule, or specifically named in this schedule, that is structurally derived from 2-(1H-indol-3-yl)ethanamine, which is also known as tryptamine, by mono- or di-substitution of the amine nitrogen with alkyl or alkenyl groups or by inclusion of the amino nitrogen atom in a cyclic structure whether or not the compound is further substituted at the alpha position with an alkyl group or whether or not further substituted on the indole ring to any extent with any alkyl, alkoxy, halo, hydroxyl, or acetoxy groups, and including, but not limited to:

(A) 5-methoxy-N,N-diallyltryptamine, which is also known as 5-MeO-DALT;

(B) 4-acetoxy-N,N-dimethyltryptamine, which is also known as 4-AcO-DMT or OAcetylpsilocin;

(C) 4-hydroxy-N-methyl-N-ethyltryptamine, which is also known as 4-HO-MET;

(D) 4-hydroxy-N,N-diisopropyltryptamine, which is also known as 4-HO-DIPT;

(E) 5-methoxy-N-methyl-N-isopropyltryptamine, which is also known as 5-MeOMiPT;

(F) 5-Methoxy-N,N-Dimethyltryptamine, which is also known as 5-MeO-DMT;

(G) 5-methoxy-N,N-diisopropyltryptamine, which is also known as 5-MeO-DiPT;

(H) Diethyltryptamine, which is also known as N,N-Diethyltryptamine, DET; and

(I) Dimethyltryptamine, which is also known as DMT; and

(29)(A) Any substance containing any quantity of the following materials, compounds, mixtures, or structures:

(i) 3,4-methylenedioxymethcathinone, or bk-MDMA, or methylone;

(ii) 3,4-methylenedioxypyrovalerone, or MDPV;

(iii) 4-methylmethcathinone, or 4-MMC, or mephedrone;

(iv) 4-methoxymethcathinone, or bk-PMMA, or PMMC, or methedrone;

(v) Fluoromethcathinone, or FMC;

(vi) Naphthylpyrovalerone, or naphyrone; or

(vii) Beta-keto-N-methylbenzodioxolylpropylamine or bk-MBDB or butylone; or

(B) Unless listed in another schedule, any substance which contains any quantity of any material, compound, mixture, or structure, other than bupropion, that is structurally derived by any means from 2-aminopropan-1-one by substitution at the 1-position with either phenyl, naphthyl, or thiophene ring systems, whether or not the compound is further modified in any of the following ways:

(i) Substitution in the ring system to any extent with alkyl, alkoxy, alkylenedioxy, haloalkyl, hydroxyl, or halide substituents, whether or not further substituted in the ring system by one or more other univalent substituents;

(ii) Substitution at the 3-position with an acyclic alkyl substituent; or

(iii) Substitution at the 2-amino nitrogen atom with alkyl or dialkyl groups, or by inclusion of the 2-amino nitrogen atom in a cyclic structure.

(d) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Mecloqualone;

(2) Methaqualone; and

(3) Gamma-Hydroxybutyric Acid. Some other names include: GHB; Gamma-hydroxybutyrate; 4-Hydroxybutyrate; 4-Hydroxybutanoic Acid; Sodium Oxybate; and Sodium Oxybutyrate.

(e) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(1) Fenethylline;

(2) N-ethylamphetamine;

(3) Aminorex; aminoxaphen; 2-amino-5-phenyl-2-oxazoline; or 4,5-dihydro-5-phenyl-2-oxazolamine;

(4) Cathinone; 2-amino-1-phenyl-1-propanone; alpha-aminopropiophenone; 2-aminopropiophenone; and norephedrone;

(5) Methcathinone, its salts, optical isomers, and salts of optical isomers. Some other names: 2-(methylamino)-propiophenone; alpha-(methylamino)propiophenone; 2-(methylamino)-1-phenylpropan-1-one; alpha-N-methylaminopropiophenone; methylcathinone; monomethylpropion; ephedrone; N-methylcathinone; AL-464; AL-422; AL-463; UR1432; and 4-MEC;

(6) (+/-)cis-4-methylaminorex; and (+/-)cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine;

(7) N,N-dimethylamphetamine; N,N-alpha-trimethyl-benzeneethanamine; and N,N-alpha-trimethylphenethylamine;

(8) Benzylpiperazine, 1-benzylpiperazine; and

(9) 4,4'-dimethylaminorex (other names: 4,4'-DMAR, 4,5-dihydro-4-methyl-5-(4-methylphenyl)-2-oxazolamine).

(f) Any controlled substance analogue to the extent intended for human consumption.

Schedule II

(a) Any of the following substances except those narcotic drugs listed in other schedules whether produced directly or indirectly by extraction from substances of vegetable origin, independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, buprenorphine, thebaine-derived butorphanol, dextrorphan, nalbuphine, nalmefene, naloxone, and naltrexone and their salts, but including the following:

(A) Raw opium;

(B) Opium extracts;

(C) Opium fluid;

(D) Powdered opium;

(E) Granulated opium;

(F) Tincture of opium;

(G) Codeine;

(H) Ethylmorphine;

(I) Etorphine hydrochloride;

(J) Hydrocodone;

(K) Hydromorphone;

(L) Metopon;

(M) Morphine;

(N) Oxycodone;

(O) Oxymorphone;

(P) Oripavine;

(Q) Thebaine; and

(R) Dihydroetorphine;

(2) Any salt, compound, derivative, or preparation thereof which is chemically equivalent to or identical with any of the substances referred to in subdivision (1) of this subdivision, except that these substances shall not include the isoquinoline alkaloids of opium;

(3) Opium poppy and poppy straw;

(4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent to or identical with any of these substances, including cocaine or ecgonine and its salts, optical isomers, and salts of optical isomers, except that the substances shall not include decocainized coca leaves or extractions which do not contain cocaine or ecgonine; and

(5) Concentrate of poppy straw, the crude extract of poppy straw in either liquid, solid, or powder form which contains the phenanthrene alkaloids of the opium poppy.

(b) Unless specifically excepted or unless in another schedule any of the following opiates, including their isomers, esters, ethers, salts, and salts of their isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrorphan excepted:

(1) Alphaprodine;

(2) Anileridine;

(3) Bezitramide;

(4) Diphenoxylate;

(5) Fentanyl;

(6) Isomethadone;

(7) Levomethorphan;

(8) Levorphanol;

(9) Metazocine;

(10) Methadone;

(11) Methadone-intermediate, 4-cyano-2-dimethylamino-4,4-diphenyl butane;

(12) Moramide-intermediate, 2-methyl-3-morpholino-1,1-diphenylpropane-carboxylic acid;

(13) Norfentanyl (N-phenyl-N-piperidin-4-yl) propionamide;

(14) Oliceridine;

(15) Pethidine or meperidine;

(16) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;

(17) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;

(18) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;

(19) Phenazocine;

(20) Piminodine;

(21) Racemethorphan;

(22) Racemorphan;

(23) Dihydrocodeine;

(24) Bulk Propoxyphene in nondosage forms;

(25) Sufentanil;

(26) Alfentanil;

(27) Levo-alphacetylmethadol which is also known as levo-alpha-acetylmethadol, levomethadyl acetate, and LAAM;

(28) Carfentanil;

(29) Remifentanil;

(30) Tapentadol; and

(31) Thiafentanil.

(c) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

(1) Amphetamine, its salts, optical isomers, and salts of its optical isomers;

(2) Phenmetrazine and its salts;

(3) Methamphetamine, its salts, isomers, and salts of its isomers;

(4) Methylphenidate; and

(5) Lisdexamfetamine, its salts, isomers, and salts of its isomers.

(d) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system, including their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designations:

(1) Amobarbital;

(2) Secobarbital;

(3) Pentobarbital;

(4) Phencyclidine; and

(5) Glutethimide.

(e) Hallucinogenic substances known as:

(1) Nabilone. Another name for nabilone: (+/-)-trans-3-(1,1-dimethylheptyl)-6,6a,7,8,10,10a-Hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzo(b,d)pyran-9-one; and

(2) Dronabinol in an oral solution in a drug product approved by the federal Food and Drug Administration.

(f) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:

(1) Immediate precursor to amphetamine and methamphetamine: Phenylacetone. Trade and other names shall include, but are not limited to: Phenyl-2-propanone; P2P; benzyl methyl ketone; and methyl benzyl ketone;

(2) Immediate precursors to phencyclidine, PCP:

(A) 1-phenylcyclohexylamine; or

(B) 1-piperidinocyclohexanecarbonitrile, PCC; or

(3) Immediate precursor to fentanyl; 4-anilino-N-phenethylpiperidine (ANPP).

Schedule III

(a) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system, including their salts, isomers, whether optical, position, or geometric, and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Benzphetamine;

(2) Chlorphentermine;

(3) Clortermine; and

(4) Phendimetrazine.

(b) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

(1) Any substance which contains any quantity of a derivative of barbituric acid or any salt of a derivative of barbituric acid, except those substances which are specifically listed in other schedules of this section;

(2) Aprobarbital;

(3) Butabarbital;

(4) Butalbital;

(5) Butethal;

(6) Butobarbital;

(7) Chlorhexadol;

(8) Embutramide;

(9) Lysergic acid;

(10) Lysergic acid amide;

(11) Methyprylon;

(12) Perampanel;

(13) Secbutabarbital;

(14) Sulfondiethylmethane;

(15) Sulfonethylmethane;

(16) Sulfonmethane;

(17) Nalorphine;

(18) Talbutal;

(19) Thiamylal;

(20) Thiopental;

(21) Vinbarbital;

(22) Any compound, mixture, or preparation containing amobarbital, secobarbital, pentobarbital, or any salt thereof and one or more other active medicinal ingredients which are not listed in any schedule;

(23) Any suppository dosage form containing amobarbital, secobarbital, pentobarbital, or any salt of any of these drugs and approved by the federal Food and Drug Administration for marketing only as a suppository;

(24) Any drug product containing gamma-hydroxybutyric acid, including its salts, isomers, and salts of isomers, for which an application is approved under section 505 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 355, as such section existed on January 1, 2014;

(25) Ketamine, its salts, isomers, and salts of isomers. Some other names for ketamine: (+/-)-2-(2-chlorophenyl)-2-(methylamino)-cyclohexanone; and

(26) Tiletamine and zolazepam or any salt thereof. Trade or other names for a tiletamine-zolazepam combination product shall include, but are not limited to: telazol. Trade or other names for tiletamine shall include, but are not limited to: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone. Trade or other names for zolazepam shall include, but are not limited to: 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo-(3,4-e) (1,4)-diazepin-7(1H)-one, and flupyrazapon.

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

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

(A) Not more than one and eight-tenths grams of codeine per one hundred milliliters or not more than ninety milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(B) Not more than one and eight-tenths grams of codeine per one hundred milliliters or not more than ninety milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(C) Not more than one and eight-tenths grams of dihydrocodeine per one hundred milliliters or not more than ninety milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(D) Not more than three hundred milligrams of ethylmorphine per one hundred milliliters or not more than fifteen milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(E) Not more than five hundred milligrams of opium per one hundred milliliters or per one hundred grams, or not more than twenty-five milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts; and

(F) Not more than fifty milligrams of morphine per one hundred milliliters or per one hundred grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts; and

(2) Any material, compound, mixture, or preparation containing any of the following narcotic drug or its salts, as set forth below:

(A) Buprenorphine.

(d) Unless contained on the list of exempt anabolic steroids of the Drug Enforcement Administration of the United States Department of Justice as the list existed on January 31, 2021, any anabolic steroid, which shall include any material, compound, mixture, or preparation containing any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts of isomers is possible within the specific chemical designation:

(1) 3-beta,17-dihydroxy-5a-androstane;

(2) 3-alpha,17-beta-dihydroxy-5a-androstane;

(3) 5-alpha-androstan-3,17-dione;

(4) 1-androstenediol (3-beta,17-beta-dihydroxy-5-alpha-androst-1-ene);

(5) 1-androstenediol (3-alpha,17-beta-dihydroxy-5-alpha-androst-1-ene);

(6) 4-androstenediol (3-beta,17-beta-dihydroxy-androst-5-ene);

(7) 5-androstenediol (3-beta,17-beta-dihydroxy-androst-5-ene);

(8) 1-androstenedione ([5-alpha]-androst-1-en-3,17-dione);

(9) 4-androstenedione (androst-4-en-3,17-dione);

(10) 5-androstenedione (androst-5-en-3,17-dione);

(11) Bolasterone (7-alpha,17-alpha-dimethyl-17-beta-hydroxyandrost-4-en-3-one);

(12) Boldenone (17-beta-hydroxyandrost-1,4-diene-3-one);

(13) Boldione (androsta-1,4-diene-3,17-3-one);

(14) Calusterone (7-beta,17-alpha-dimethyl-17-beta-hydroxyandrost-4-en-3-one);

(15) Clostebol (4-chloro-17-beta-hydroxyandrost-4-en-3-one);

(16) Dehydrochloromethyltestosterone (4-chloro-17-beta-hydroxy-17-alpha-methyl-androst-1,4-dien-3-one);

(17) Desoxymethyltestosterone (17-alpha-methyl-5-alpha-androst-2-en-17-beta-ol) (a.k.a. 'madol');

(18) Delta-1-Dihydrotestosterone (a.k.a. '1-testosterone')(17-beta-hydroxy-5-alpha-androst-1-en-3-one);

(19) 4-Dihydrotestosterone (17-beta-hydroxy-androstan-3-one);

(20) Drostanolone (17-beta-hydroxy-2-alpha-methyl-5-alpha-androstan-3-one);

(21) Ethylestrenol (17-alpha-ethyl-17-beta-hydroxyestr-4-ene);

(22) Fluoxymesterone (9-fluoro-17-alpha-methyl-11-beta,17-beta-dihydroxyandrost-4-en-3-one);

(23) Formebulone (formebolone); (2-formyl-17-alpha-methyl-11-alpha,17-beta-dihydroxyandrost-1,4-dien-3-one);

(24) Furazabol (17-alpha-methyl-17-beta-hydroxyandrostano[2,3-c]-furazan);

(25) 13-beta-ethyl-17-beta-hydroxygon-4-en-3-one;

(26) 4-hydroxytestosterone (4,17-beta-dihydroxy-androst-4-en-3-one);

(27) 4-hydroxy-19-nortestosterone (4,17-beta-dihydroxy-estr-4-en-3-one);

(28) Mestanolone (17-alpha-methyl-17-beta-hydroxy-5-androstan-3-one);

(29) Mesterolone (17-alpha-methyl-17-beta-hydroxy-5-androstan-3-one);

(30) Methandienone (17-alpha-methyl-17-beta-hydroxyandrost-1,4-dien-3-one);

(31) Methandriol (17-alpha-methyl-3-beta,17-beta-dihydroxyandrost-5-ene);

(32) Methasterone (2-alpha,17-alpha-dimethyl-5-alpha-androstan-17-beta-ol-3-one);

(33) Methenolone (1-methyl-17-beta-hydroxy-5-alpha-androst-1-en-3-one);

(34) 17-alpha-methyl-3-beta,17-beta-dihydroxy-5a-androstane;

(35) 17-alpha-methyl-3-alpha,17-beta-dihydroxy-5a-androstane;

(36) 17-alpha-methyl-3-beta,17-beta-dihydroxyandrost-4-ene;

(37) 17-alpha-methyl-4-hydroxynandrolone (17-alpha-methyl-4-hydroxy-17-beta-hydroxyestr-4-en-3-one);

(38) Methyldienolone (17-alpha-methyl-17-beta-hydroxyestra-4,9(10)-dien-3-one);

(39) Methyltrienolone (17-alpha-methyl-17-beta-hydroxyestra-4,9,11-trien-3-one);

(40) Methyltestosterone (17-alpha-methyl-17-beta-hydroxyandrost-4-en-3-one);

(41) Mibolerone (7-alpha,17-alpha-dimethyl-17-beta-hydroxyestr-4-en-3-one);

(42) 17-alpha-methyl-delta-1-dihydrotestosterone (17-beta-hydroxy-17-alpha-methyl-5-alpha-androst-1-en-3-one) (a.k.a. '17-alpha-methyl-1-testosterone');

(43) Nandrolone (17-beta-hydroxyestr-4-en-3-one);

(44) 19-nor-4-androstenediol (3-beta, 17-beta-dihydroxyestr-4-ene);

(45) 19-nor-4-androstenediol (3-alpha, 17-beta-dihydroxyestr-4-ene);

(46) 19-nor-5-androstenediol (3-beta, 17-beta-dihydroxyestr-5-ene);

(47) 19-nor-5-androstenediol (3-alpha, 17-beta-dihydroxyestr-5-ene);

(48) 19-nor-4,9(10)-androstadienedione (estra-4,9(10)-diene-3,17-dione);

(49) 19-nor-4-androstenedione (estr-4-en-3,17-dione);

(50) 19-nor-5-androstenedione (estr-5-en-3,17-dione);

(51) Norbolethone (13-beta, 17-alpha-diethyl-17-beta-hydroxygon-4-en-3-one);

(52) Norclostebol (4-chloro-17-beta-hydroxyestr-4-en-3-one);

(53) Norethandrolone (17-alpha-ethyl-17-beta-hydroxyestr-4-en-3-one);

(54) Normethandrolone (17-alpha-methyl-17-beta-hydroxyestr-4-en-3-one);

(55) Oxandrolone (17-alpha-methyl-17-beta-hydroxy-2-oxa-[5-alpha]-androstan-3-one);

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

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

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

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

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

(61) Testolactone (13-hydroxy-3-oxo-13,17-secoandrosta-1,4-dien-17-oic acid lactone);

(62) Testosterone (17-beta-hydroxyandrost-4-en-3-one);

(63) Tetrahydrogestrinone (13-beta, 17-alpha-diethyl-17-beta-hydroxy-gon-4,9,11-trien-3-one);

(64) Trenbolone (17-beta-hydroxyestr-4,9,11-trien-3-one);

(65) [3,2-c]-furazan-5 alpha-androstane-17 beta-ol;

(66) [3,2-c]pyrazole-androst-4-en-17 beta-ol;

(67) 17 alpha-methyl-androst-ene-3,17 beta-diol;

(68) 17 alpha-methyl-androsta-1,4-diene-3,17 beta-diol;

(69) 17 alpha-methyl-androstan-3-hydroxyimine-17 beta-ol;

(70) 17 beta-hydroxy-androstano[2,3-d]isoxazole;

(71) 17 beta-hydroxy-androstano[3,2-c]isoxazole;

(72) 18a-homo-3-hydroxy-estra-2,5(10)-dien-17-one;

(73) 2 alpha, 3 alpha-epithio-17 alpha-methyl-5 alpha-androstan-17 beta-ol;

(74) 4-chloro-17 alpha-methyl-17 beta-hydroxy-androst-4-en-3-one;

(75) 4-chloro-17 alpha-methyl-17 beta-hydroxy-androst-4-en-3,11-dione;

(76) 4-chloro-17 alpha-methyl-androst-4-ene-3 beta,17 beta-diol;

(77) 4-chloro-17 alpha-methyl-androsta-1,4,diene-3,17 beta-diol;

(78) 4-hydroxy-androst-4-ene-3,17-dione;

(79) 5 alpha-Androstan-3,6,17-trione;

(80) 6-bromo-androst-1,4-diene-3,17-dione;

(81) 6-bromo-androstan-3,17-dione;

(82) 6 alpha-methyl-androst-4-ene-3,17-dione;

(83) Delta 1-dihydrotestosterone;

(84) Estra-4,9,11-triene-3,17-dione; and

(85) Any salt, ester, or ether of a drug or substance described or listed in this subdivision if the salt, ester, or ether promotes muscle growth.

(e) Hallucinogenic substances known as:

(1) Dronabinol, synthetic, in sesame oil and encapsulated in a soft gelatin capsule in a drug product approved by the federal Food and Drug Administration. Some other names for dronabinol are (6aR-trans)-6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo (b,d)pyran-1-ol or (-)-delta-9-(trans)-tetrahydrocannabinol.

Schedule IV

(a) Any material, compound, mixture, or preparation which contains any quantity of the following substances, including their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Barbital;

(2) Chloral betaine;

(3) Chloral hydrate;

(4) Chlordiazepoxide, but not including librax (chlordiazepoxide hydrochloride and clindinium bromide) or menrium (chlordiazepoxide and water soluble esterified estrogens);

(5) Clonazepam;

(6) Clorazepate;

(7) Diazepam;

(8) Ethchlorvynol;

(9) Ethinamate;

(10) Flurazepam;

(11) Mebutamate;

(12) Meprobamate;

(13) Methohexital;

(14) Methylphenobarbital;

(15) Oxazepam;

(16) Paraldehyde;

(17) Petrichloral;

(18) Phenobarbital;

(19) Prazepam;

(20) Alprazolam;

(21) Bromazepam;

(22) Camazepam;

(23) Clobazam;

(24) Clotiazepam;

(25) Cloxazolam;

(26) Delorazepam;

(27) Estazolam;

(28) Ethyl loflazepate;

(29) Fludiazepam;

(30) Flunitrazepam;

(31) Halazepam;

(32) Haloxazolam;

(33) Ketazolam;

(34) Loprazolam;

(35) Lorazepam;

(36) Lormetazepam;

(37) Medazepam;

(38) Nimetazepam;

(39) Nitrazepam;

(40) Nordiazepam;

(41) Oxazolam;

(42) Pinazepam;

(43) Temazepam;

(44) Tetrazepam;

(45) Triazolam;

(46) Midazolam;

(47) Quazepam;

(48) Zolpidem;

(49) Dichloralphenazone;

(50) Zaleplon;

(51) Zopiclone;

(52) Fospropofol;

(53) Alfaxalone;

(54) Suvorexant;

(55) Carisoprodol;

(56) Brexanolone; 3 alpha-hydroxy-5 alpha-pregnan-20-one;

(57) Lemborexant;

(58) Solriamfetol; 2-amino-3-phenylpropyl carbamate;

(59) Remimazolam; and

(60) Serdexmethylphenidate.

(b) Any material, compound, mixture, or preparation which contains any quantity of the following substance, including its salts, isomers, whether optical, position, or geometric, and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible: Fenfluramine.

(c) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers, whether optical, position, or geometric, and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Diethylpropion;

(2) Phentermine;

(3) Pemoline, including organometallic complexes and chelates thereof;

(4) Mazindol;

(5) Pipradrol;

(6) SPA, ((-)-1-dimethylamino- 1,2-diphenylethane);

(7) Cathine. Another name for cathine is ((+)-norpseudoephedrine);

(8) Fencamfamin;

(9) Fenproporex;

(10) Mefenorex;

(11) Modafinil; and

(12) Sibutramine.

(d) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following narcotic drugs, or their salts or isomers calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

(1) Propoxyphene in manufactured dosage forms;

(2) Not more than one milligram of difenoxin and not less than twenty-five micrograms of atropine sulfate per dosage unit; and

(3) 2-[(dimethylamino)methyl]-1-(3-methoxyphenyl)cyclohexanol, its salts, optical and geometric isomers, and salts of these isomers to include: Tramadol.

(e) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substance, including its salts:

(1) Pentazocine; and

(2) Butorphanol (including its optical isomers).

(f) Any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible: Lorcaserin.

(g)(1) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substance, including its salts, optical isomers, and salts of such optical isomers: Ephedrine.

(2) The following drug products containing ephedrine, its salts, optical isomers, and salts of such optical isomers, are excepted from subdivision (g)(1) of Schedule IV if they (A) are stored behind a counter, in an area not accessible to customers, or in a locked case so that a customer needs assistance from an employee to access the drug product; (B) are sold by a person, eighteen years of age or older, in the course of his or her employment to a customer eighteen years of age or older with the following restrictions: No customer shall be allowed to purchase, receive, or otherwise acquire more than three and six-tenths grams of ephedrine base during a twenty-four-hour period; no customer shall purchase, receive, or otherwise acquire more than nine grams of ephedrine base during a thirty-day period; and the customer shall display a valid driver's or operator's license, a Nebraska state identification card, a military identification card, an alien registration card, or a passport as proof of identification; (C) are labeled and marketed in a manner consistent with the pertinent OTC Tentative Final or Final Monograph; (D) are manufactured and distributed for legitimate medicinal use in a manner that reduces or eliminates the likelihood of abuse; and (E) are not marketed, advertised, or represented in any manner for the indication of stimulation, mental alertness, euphoria, ecstasy, a buzz or high, heightened sexual performance, or increased muscle mass:

(i) Primatene Tablets; and

(ii) Bronkaid Dual Action Caplets.

Schedule V

(a) Any compound, mixture, or preparation containing any of the following limited quantities of narcotic drugs or salts calculated as the free anhydrous base or alkaloid, which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(1) Not more than two hundred milligrams of codeine per one hundred milliliters or per one hundred grams;

(2) Not more than one hundred milligrams of dihydrocodeine per one hundred milliliters or per one hundred grams;

(3) Not more than one hundred milligrams of ethylmorphine per one hundred milliliters or per one hundred grams;

(4) Not more than two and five-tenths milligrams of diphenoxylate and not less than twenty-five micrograms of atropine sulfate per dosage unit;

(5) Not more than one hundred milligrams of opium per one hundred milliliters or per one hundred grams; and

(6) Not more than five-tenths milligram of difenoxin and not less than twenty-five micrograms of atropine sulfate per dosage unit.

(b) Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers: Pyrovalerone.

(c) Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(1) Ezogabine (N-(2-amino-4-(4-fluorobenzylamino)-phenyl)-carbamic acid ethyl ester);

(2) Lacosamide ((R)-2-acetoamido-N-benzyl-3-methoxy-propionamide);

(3) Pregabalin ((S)-3-(aminomethyl)-5-methylhexanoic acid);

(4) Brivaracetam ((2S)-2-[(4R)-2-oxo-4-propylpyrrolidin-1-yl] butanamide) (also referred to as BRV; UCB-34714; Briviact), including its salts;

(5) Cenobamate; and

(6) Lasmiditan.

Source: Laws 1977, LB 38, § 65; Laws 1978, LB 748, § 50; Laws 1980, LB 696, § 2; Laws 1985, LB 323, § 2; Laws 1985, LB 406, § 3; Laws 1986, LB 1160, § 1; Laws 1987, LB 473, § 1; Laws 1990, LB 571, § 6; Laws 1992, LB 1019, § 32; Laws 1994, LB 1210, § 3; Laws 1995, LB 406, § 5; Laws 1996, LB 1213, § 4; Laws 1998, LB 1073, § 8; Laws 1999, LB 594, § 1; Laws 2000, LB 1115, § 2; Laws 2001, LB 113, § 10; Laws 2002, LB 500, § 1; Laws 2003, LB 245, § 1; Laws 2005, LB 382, § 2; Laws 2007, LB247, § 2; Laws 2008, LB902, § 1; Laws 2009, LB123, § 1; Laws 2009, LB151, § 1; Laws 2010, LB792, § 1; Laws 2011, LB19, § 1; Laws 2012, LB670, § 1; Laws 2013, LB298, § 1; Laws 2014, LB811, § 4; Laws 2015, LB390, § 4; Laws 2017, LB487, § 5; Laws 2018, LB906, § 1; Laws 2021, LB236, § 2; Laws 2022, LB808, § 1.
Effective date July 21, 2022.

28-410 Records of registrants; inventory; violation; penalty; storage.

(1) Each registrant manufacturing, distributing, or dispensing controlled substances in Schedule I, II, III, IV, or V of section 28-405 shall keep and

maintain a complete and accurate record of all stocks of such controlled substances on hand. Such records shall be maintained for five years.

(2) Each registrant manufacturing, distributing, storing, or dispensing such controlled substances shall prepare an annual inventory of each controlled substance in his or her possession. Such inventory shall (a) be taken within one year after the previous annual inventory date, (b) contain such information as shall be required by the Board of Pharmacy, (c) be copied and such copy forwarded to the department within thirty days after completion, (d) be maintained at the location listed on the registration for a period of five years, (e) contain the name, address, and Drug Enforcement Administration number of the registrant, the date and time of day the inventory was completed, and the signature of the person responsible for taking the inventory, (f) list the exact count or measure of all controlled substances listed in Schedules I, II, III, IV, and V of section 28-405, and (g) be maintained in permanent, read-only format separating the inventory for controlled substances listed in Schedules I and II of section 28-405 from the inventory for controlled substances listed in Schedules III, IV, and V of section 28-405. A registrant whose inventory fails to comply with this subsection shall be guilty of a Class IV misdemeanor.

(3) This section shall not apply to practitioners who prescribe or administer, as a part of their practice, controlled substances listed in Schedule II, III, IV, or V of section 28-405 unless such practitioner regularly engages in dispensing any such drug or drugs to his or her patients.

(4) Controlled substances shall be stored in accordance with the following:

(a) All controlled substances listed in Schedule I of section 28-405 must be stored in a locked cabinet; and

(b) All controlled substances listed in Schedule II, III, IV, or V of section 28-405 must be stored in a locked cabinet or distributed throughout the inventory of noncontrolled substances in a manner which will obstruct theft or diversion of the controlled substances or both.

(5) Each pharmacy which is registered with the administration and in which controlled substances are stored or dispensed shall complete a controlled-substances inventory when there is a change in the pharmacist-in-charge. The inventory shall contain the information required in the annual inventory, and the original copy shall be maintained in the pharmacy for five years after the date it is completed.

Source: Laws 1977, LB 38, § 70; Laws 1996, LB 1108, § 2; Laws 1997, LB 307, § 7; Laws 1997, LB 550, § 3; Laws 2001, LB 398, § 8; Laws 2003, LB 242, § 3; Laws 2008, LB902, § 2; Laws 2017, LB166, § 1.

28-411 Controlled substances; records; by whom kept; contents; compound controlled substances; duties.

(1) Every practitioner who is authorized to administer or professionally use controlled substances shall keep a record of such controlled substances received by him or her and a record of all such controlled substances administered or professionally used by him or her, other than by medical order issued by a practitioner authorized to prescribe, in accordance with subsection (4) of this section.

(2) Manufacturers, wholesalers, distributors, and reverse distributors shall keep records of all controlled substances compounded, mixed, cultivated, grown, or by any other process produced or prepared and of all controlled substances received and disposed of by them, in accordance with subsection (4) of this section.

(3) Pharmacies shall keep records of all controlled substances received and disposed of by them, in accordance with subsection (4) of this section.

(4)(a) The record of controlled substances received shall in every case show (i) the date of receipt, (ii) the name, address, and Drug Enforcement Administration number of the person receiving the controlled substances, (iii) the name, address, and Drug Enforcement Administration number of the person from whom received, (iv) the kind and quantity of controlled substances received, (v) the kind and quantity of controlled substances produced or removed from process of manufacture, and (vi) the date of such production or removal from process of manufacture.

(b) The record shall in every case show the proportion of morphine, cocaine, or ecgonine contained in or producible from crude opium or coca leaves received or produced. The record of all controlled substances sold, administered, dispensed, or otherwise disposed of shall show the date of selling, administering, or dispensing, the name and address of the person to whom or for whose use or the owner and species of animal for which the controlled substances were sold, administered, or dispensed, and the kind and quantity of controlled substances. For any lost, destroyed, or stolen controlled substances, the record shall list the kind and quantity of such controlled substances and the discovery date of such loss, destruction, or theft.

(c) Every such record shall be kept for a period of five years from the date of the transaction recorded.

(5) Any person authorized to compound controlled substances shall comply with section 38-2867.01.

Source: Laws 1977, LB 38, § 71; Laws 1988, LB 273, § 4; Laws 1995, LB 406, § 6; Laws 1996, LB 1044, § 69; Laws 2001, LB 398, § 9; Laws 2015, LB37, § 28; Laws 2017, LB166, § 2.

28-414 Controlled substance; Schedule II; prescription; requirements; contents.

(1) Except as otherwise provided in this section or section 28-412 or when administered directly by a practitioner to an ultimate user, a controlled substance listed in Schedule II of section 28-405 shall not be dispensed without a prescription from a practitioner authorized to prescribe. Beginning January 1, 2022, all such prescriptions shall be subject to section 38-1,146, except that all such prescriptions issued by a practitioner who is a dentist shall be subject to section 38-1,146 beginning January 1, 2024. No prescription for a controlled substance listed in Schedule II of section 28-405 shall be filled more than six months from the date of issuance. A prescription for a controlled substance listed in Schedule II of section 28-405 shall not be refilled.

(2) A prescription for controlled substances listed in Schedule II of section 28-405 must contain the following information prior to being filled by a pharmacist or dispensing practitioner: (a) Patient's name and address, (b) name of the drug, device, or biological, (c) strength of the drug or biological, if

applicable, (d) dosage form of the drug or biological, (e) quantity of the drug, device, or biological prescribed, (f) directions for use, (g) date of issuance, (h) prescribing practitioner's name and address, and (i) Drug Enforcement Administration number of the prescribing practitioner. If the prescription is a written paper prescription, the paper prescription must contain the prescribing practitioner's manual signature. If the prescription is an electronic prescription, the electronic prescription must contain all of the elements in subdivisions (a) through (i) of this subsection, must be digitally signed, and must be transmitted to and received by the pharmacy electronically to meet all of the requirements of the Controlled Substances Act, 21 U.S.C. 801 et seq., as it existed on January 1, 2014, pertaining to electronic prescribing of controlled substances.

(3)(a) In emergency situations, a controlled substance listed in Schedule II of section 28-405 may be dispensed pursuant to an oral prescription reduced to writing in accordance with subsection (2) of this section, except for the prescribing practitioner's signature, and bearing the word ''emergency''.

(b) For purposes of this section, emergency situation means a situation in which a prescribing practitioner determines that (i) immediate administration of the controlled substance is necessary for proper treatment of the patient, (ii) no appropriate alternative treatment is available, including administration of a drug which is not a controlled substance listed in Schedule II of section 28-405, and (iii) it is not reasonably possible for the prescribing practitioner to provide a signed, written or electronic prescription to be presented to the person dispensing the controlled substance prior to dispensing.

(4)(a) In nonemergency situations:

(i) A controlled substance listed in Schedule II of section 28-405 may be dispensed pursuant to a facsimile of a written, signed paper prescription if the original written, signed paper prescription is presented to the pharmacist for review before the controlled substance is dispensed, except as provided in subdivision (a)(ii) or (iii) of this subsection;

(ii) A narcotic drug listed in Schedule II of section 28-405 may be dispensed pursuant to a facsimile of a written, signed paper prescription (A) to be compounded for direct parenteral administration to a patient for the purpose of home infusion therapy or (B) for administration to a patient enrolled in a hospice care program and bearing the words ''hospice patient''; and

(iii) A controlled substance listed in Schedule II of section 28-405 may be dispensed pursuant to a facsimile of a written, signed paper prescription for administration to a resident of a long-term care facility.

(b) For purposes of subdivisions (a)(ii) and (iii) of this subsection, a facsimile of a written, signed paper prescription shall serve as the original written prescription and shall be maintained in accordance with subsection (1) of section 28-414.03.

(5)(a) A prescription for a controlled substance listed in Schedule II of section 28-405 may be partially filled if the pharmacist does not supply the full quantity prescribed and he or she makes a notation of the quantity supplied on the face of the prescription or in the electronic record. The remaining portion of the prescription may be filled no later than thirty days after the date on which the prescription is written. The pharmacist shall notify the prescribing practitioner if the remaining portion of the prescription is not or cannot be filled within such period. No further quantity may be supplied after such period without a new written, signed paper prescription or electronic prescription.

(b) A prescription for a controlled substance listed in Schedule II of section 28-405 written for a patient in a long-term care facility or for a patient with a medical diagnosis documenting a terminal illness may be partially filled. Such prescription shall bear the words ''terminally ill'' or ''long-term care facility patient'' on its face or in the electronic record. If there is any question whether a patient may be classified as having a terminal illness, the pharmacist shall contact the prescribing practitioner prior to partially filling the prescription. Both the pharmacist and the prescribing practitioner have a corresponding responsibility to assure that the controlled substance is for a terminally ill patient. For each partial filling, the dispensing pharmacist shall record on the back of the prescription or on another appropriate record, uniformly maintained and readily retrievable, the date of the partial filling, quantity dispensed, remaining quantity authorized to be dispensed, and the identification of the dispensing pharmacist. The total quantity of controlled substances listed in Schedule II which is dispensed in all partial fillings shall not exceed the total quantity prescribed. A prescription for a Schedule II controlled substance for a patient in a long-term care facility or a patient with a medical diagnosis documenting a terminal illness is valid for sixty days from the date of issuance or until discontinuance of the prescription, whichever occurs first.

Source: Laws 1977, LB 38, § 74; Laws 1988, LB 273, § 5; Laws 1995, LB 406, § 7; Laws 1996, LB 1108, § 4; Laws 1997, LB 307, § 8; Laws 1999, LB 594, § 4; Laws 2000, LB 819, § 65; Laws 2001, LB 398, § 12; Laws 2004, LB 1005, § 2; Laws 2005, LB 382, § 3; Laws 2007, LB463, § 1122; Laws 2009, LB195, § 3; Laws 2011, LB179, § 1; Laws 2014, LB811, § 6; Laws 2017, LB166, § 3; Laws 2021, LB583, § 1.

28-414.01 Controlled substance; Schedule III, IV, or V; medical order, required; prescription; requirements; contents; pharmacist; authority to adapt prescription; duties.

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

(2) A prescription for controlled substances listed in Schedule III, IV, or V of section 28-405 must contain the following information prior to being filled by a pharmacist or dispensing practitioner: (a) Patient's name and address, (b) name of the drug, device, or biological, (c) strength of the drug or biological, if applicable, (d) dosage form of the drug or biological, (e) quantity of the drug, device, or biological prescribed, (f) directions for use, (g) date of issuance, (h) number of refills, including pro re nata or PRN refills, not to exceed five refills within six months after the date of issuance, (i) prescribing practitioner's name and address, and (j) Drug Enforcement Administration number of the prescribing practitioner. Beginning January 1, 2022, all such prescriptions shall be subject to section 38-1,146, except that all such prescriptions issued by a practitioner who is a dentist shall be subject to section 38-1,146 beginning January 1, 2024. If the prescription is a written paper prescription, the paper

prescription must contain the prescribing practitioner's manual signature. If the prescription is an electronic prescription, the electronic prescription must contain all of the elements in subdivisions (a) through (j) of this subsection, must be digitally signed, and must be transmitted to and received by the pharmacy electronically to meet all of the requirements of 21 C.F.R. 1311, as the regulation existed on January 1, 2014, pertaining to electronic prescribing of controlled substances.

(3)(a) A pharmacist who is exercising reasonable care and who has obtained patient consent may do the following:

(i) Change the quantity of a drug prescribed if:

(A) The prescribed quantity or package size is not commercially available; or

(B) The change in quantity is related to a change in dosage form;

(ii) Change the dosage form of the prescription if it is in the best interest of the patient and if the directions for use are also modified to equate to an equivalent amount of drug dispensed as prescribed;

(iii) Dispense multiple months' supply of a drug if a prescription is written with sufficient refills; and

(iv) Substitute any chemically equivalent drug product for a prescribed drug to comply with a drug formulary which is covered by the patient's health insurance plan unless the prescribing practitioner specifies ''no substitution'', ''dispense as written'', or ''D.A.W.'' to indicate that substitution is not permitted. If a pharmacist substitutes any chemically equivalent drug product as permitted under this subdivision, the pharmacist shall provide notice to the prescribing practitioner or the prescribing practitioner's designee. If drug product selection occurs involving a generic substitution, the drug product selection shall comply with section 38-28,111.

(b) A pharmacist who adapts a prescription in accordance with this subsection shall document the adaptation in the patient's pharmacy record.

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

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

Source: Laws 2014, LB811, § 7; Laws 2017, LB166, § 4; Laws 2020, LB1052, § 1; Laws 2021, LB583, § 2.

28-414.03 Controlled substances; maintenance of records; label.

(1) Paper prescriptions for all controlled substances listed in Schedule II of section 28-405 shall be kept in a separate file by the dispensing practitioner and shall be maintained for a minimum of five years. The practitioner shall make all such files readily available to the department and law enforcement for inspection without a search warrant.

(2) Prescriptions for all controlled substances listed in Schedule III, IV, or V of section 28-405 shall be maintained either separately from other prescriptions or in a form in which the information required is readily retrievable from ordinary business records of the dispensing practitioner and shall be maintained for a minimum of five years. The practitioner shall make all such records readily available to the department, the administration, and law enforcement for inspection without a search warrant.

(3) Before dispensing any controlled substance listed in Schedule II, III, IV, or V of section 28-405, the dispensing practitioner shall affix a label to the container in which the controlled substance is dispensed. Such label shall bear the name and address of the pharmacy or dispensing practitioner, the name of the patient, the date of filling, the serial number of the prescription under which it is recorded in the practitioner's prescription records, the name of the prescribing practitioner, and the directions for use of the controlled substance. Unless the prescribing practitioner writes ''do not label'' or words of similar import on the original paper prescription or so designates in an electronic prescription or an oral prescription, such label shall also bear the name of the controlled substance.

(4) For multidrug containers, more than one drug, device, or biological may be dispensed in the same container when (a) such container is prepackaged by the manufacturer, packager, or distributor and shipped directly to the pharmacy in this manner or (b) the container does not accommodate greater than a thirty-one-day supply of compatible dosage units and is labeled to identify each drug or biological in the container in addition to all other information required by law.

(5) If a pharmacy fills prescriptions for controlled substances on behalf of another pharmacy under contractual agreement or common ownership, the prescription label shall contain the Drug Enforcement Administration number of the pharmacy at which the prescriptions are filled.

Source: Laws 2014, LB811, § 9; Laws 2017, LB166, § 5.

28-416 Prohibited acts; violations; penalties.

(1) Except as authorized by the Uniform Controlled Substances Act, it shall be unlawful for any person knowingly or intentionally: (a) To manufacture, distribute, deliver, dispense, or possess with intent to manufacture, distribute, deliver, or dispense a controlled substance; or (b) to create, distribute, or possess with intent to distribute a counterfeit controlled substance.

(2) Except as provided in subsections (4), (5), (7), (8), (9), and (10) of this section, any person who violates subsection (1) of this section with respect to: (a) A controlled substance classified in Schedule I, II, or III of section 28-405 which is an exceptionally hazardous drug shall be guilty of a Class II felony; (b) any other controlled substance classified in Schedule I, II, or III of section 28-405 shall be guilty of a Class IIA felony; or (c) a controlled substance classified in Schedule IV or V of section 28-405 shall be guilty of a Class IIIA felony.

(3) A person knowingly or intentionally possessing a controlled substance, except marijuana or any substance containing a quantifiable amount of the substances, chemicals, or compounds described, defined, or delineated in subdivision (c)(26) of Schedule I of section 28-405, unless such substance was obtained directly or pursuant to a medical order issued by a practitioner

authorized to prescribe while acting in the course of his or her professional practice, or except as otherwise authorized by the act, shall be guilty of a Class IV felony. A person shall not be in violation of this subsection if section 28-472 or 28-1701 applies.

(4)(a) Except as authorized by the Uniform Controlled Substances Act, any person eighteen years of age or older who knowingly or intentionally manufactures, distributes, delivers, dispenses, or possesses with intent to manufacture, distribute, deliver, or dispense a controlled substance or a counterfeit controlled substance (i) to a person under the age of eighteen years, (ii) in, on, or within one thousand feet of the real property comprising a public or private elementary, vocational, or secondary school, a community college, a public or private college, junior college, or university, or a playground, or (iii) within one hundred feet of a public or private youth center, public swimming pool, or video arcade facility shall be punished by the next higher penalty classification than the penalty prescribed in subsection (2), (7), (8), (9), or (10) of this section, depending upon the controlled substance involved, for the first violation and for a second or subsequent violation shall be punished by the next higher penalty classification than that prescribed for a first violation of this subsection, but in no event shall such person be punished by a penalty greater than a Class IB felony.

(b) For purposes of this subsection:

(i) Playground means any outdoor facility, including any parking lot appurtenant to the facility, intended for recreation, open to the public, and with any portion containing three or more apparatus intended for the recreation of children, including sliding boards, swingsets, and teeterboards;

(ii) Video arcade facility means any facility legally accessible to persons under eighteen years of age, intended primarily for the use of pinball and video machines for amusement, and containing a minimum of ten pinball or video machines; and

(iii) Youth center means any recreational facility or gymnasium, including any parking lot appurtenant to the facility or gymnasium, intended primarily for use by persons under eighteen years of age which regularly provides athletic, civic, or cultural activities.

(5)(a) Except as authorized by the Uniform Controlled Substances Act, it shall be unlawful for any person eighteen years of age or older to knowingly and intentionally employ, hire, use, cause, persuade, coax, induce, entice, seduce, or coerce any person under the age of eighteen years to manufacture, transport, distribute, carry, deliver, dispense, prepare for delivery, offer for delivery, or possess with intent to do the same a controlled substance or a counterfeit controlled substance.

(b) Except as authorized by the Uniform Controlled Substances Act, it shall be unlawful for any person eighteen years of age or older to knowingly and intentionally employ, hire, use, cause, persuade, coax, induce, entice, seduce, or coerce any person under the age of eighteen years to aid and abet any person in the manufacture, transportation, distribution, carrying, delivery, dispensing, preparation for delivery, offering for delivery, or possession with intent to do the same of a controlled substance or a counterfeit controlled substance.

(c) Any person who violates subdivision (a) or (b) of this subsection shall be punished by the next higher penalty classification than the penalty prescribed in subsection (2), (7), (8), (9), or (10) of this section, depending upon the

controlled substance involved, for the first violation and for a second or subsequent violation shall be punished by the next higher penalty classification than that prescribed for a first violation of this subsection, but in no event shall such person be punished by a penalty greater than a Class IB felony.

(6) It shall not be a defense to prosecution for violation of subsection (4) or (5) of this section that the defendant did not know the age of the person through whom the defendant violated such subsection.

(7) Any person who violates subsection (1) of this section with respect to cocaine or any mixture or substance containing a detectable amount of cocaine in a quantity of:

(a) One hundred forty grams or more shall be guilty of a Class IB felony;

(b) At least twenty-eight grams but less than one hundred forty grams shall be guilty of a Class IC felony; or

(c) At least ten grams but less than twenty-eight grams shall be guilty of a Class ID felony.

(8) Any person who violates subsection (1) of this section with respect to base cocaine (crack) or any mixture or substance containing a detectable amount of base cocaine in a quantity of:

(a) One hundred forty grams or more shall be guilty of a Class IB felony;

(b) At least twenty-eight grams but less than one hundred forty grams shall be guilty of a Class IC felony; or

(c) At least ten grams but less than twenty-eight grams shall be guilty of a Class ID felony.

(9) Any person who violates subsection (1) of this section with respect to heroin or any mixture or substance containing a detectable amount of heroin in a quantity of:

(a) One hundred forty grams or more shall be guilty of a Class IB felony;

(b) At least twenty-eight grams but less than one hundred forty grams shall be guilty of a Class IC felony; or

(c) At least ten grams but less than twenty-eight grams shall be guilty of a Class ID felony.

(10) Any person who violates subsection (1) of this section with respect to amphetamine, its salts, optical isomers, and salts of its isomers, or with respect to methamphetamine, its salts, optical isomers, and salts of its isomers, in a quantity of:

(a) One hundred forty grams or more shall be guilty of a Class IB felony;

(b) At least twenty-eight grams but less than one hundred forty grams shall be guilty of a Class IC felony; or

(c) At least ten grams but less than twenty-eight grams shall be guilty of a Class ID felony.

(11) Any person knowingly or intentionally possessing marijuana weighing more than one ounce but not more than one pound shall be guilty of a Class III misdemeanor.

(12) Any person knowingly or intentionally possessing marijuana weighing more than one pound shall be guilty of a Class IV felony.

(13) Except as provided in section 28-1701, any person knowingly or intentionally possessing marijuana weighing one ounce or less or any substance

containing a quantifiable amount of the substances, chemicals, or compounds described, defined, or delineated in subdivision (c)(26) of Schedule I of section 28-405 shall:

(a) For the first offense, be guilty of an infraction, receive a citation, be fined three hundred dollars, and be assigned to attend a course as prescribed in section 29-433 if the judge determines that attending such course is in the best interest of the individual defendant;

(b) For the second offense, be guilty of a Class IV misdemeanor, receive a citation, and be fined four hundred dollars and may be imprisoned not to exceed five days; and

(c) For the third and all subsequent offenses, be guilty of a Class IIIA misdemeanor, receive a citation, be fined five hundred dollars, and be imprisoned not to exceed seven days.

(14) Any person convicted of violating this section, if placed on probation, shall, as a condition of probation, satisfactorily attend and complete appropriate treatment and counseling on drug abuse provided by a program authorized under the Nebraska Behavioral Health Services Act or other licensed drug treatment facility.

(15) Any person convicted of violating this section, if sentenced to the Department of Correctional Services, shall attend appropriate treatment and counseling on drug abuse.

(16) Any person knowingly or intentionally possessing a firearm while in violation of subsection (1) of this section shall be punished by the next higher penalty classification than the penalty prescribed in subsection (2), (7), (8), (9), or (10) of this section, but in no event shall such person be punished by a penalty greater than a Class IB felony.

(17) A person knowingly or intentionally in possession of money used or intended to be used to facilitate a violation of subsection (1) of this section shall be guilty of a Class IV felony.

(18) In addition to the existing penalties available for a violation of subsection (1) of this section, including any criminal attempt or conspiracy to violate subsection (1) of this section, a sentencing court may order that any money, securities, negotiable instruments, firearms, conveyances, or electronic communication devices as defined in section 28-833 or any equipment, components, peripherals, software, hardware, or accessories related to electronic communication devices be forfeited as a part of the sentence imposed if it finds by clear and convincing evidence adduced at a separate hearing in the same prosecution, following conviction for a violation of subsection (1) of this section, and conducted pursuant to section 28-1601, that any or all such property was derived from, used, or intended to be used to facilitate a violation of subsection (1) of this section.

(19) In addition to the penalties provided in this section:

(a) If the person convicted or adjudicated of violating this section is eighteen years of age or younger and has one or more licenses or permits issued under the Motor Vehicle Operator's License Act:

(i) For the first offense, the court may, as a part of the judgment of conviction or adjudication, (A) impound any such licenses or permits for thirty days and (B) require such person to attend a drug education class;

(ii) For a second offense, the court may, as a part of the judgment of conviction or adjudication, (A) impound any such licenses or permits for ninety days and (B) require such person to complete no fewer than twenty and no more than forty hours of community service and to attend a drug education class; and

(iii) For a third or subsequent offense, the court may, as a part of the judgment of conviction or adjudication, (A) impound any such licenses or permits for twelve months and (B) require such person to complete no fewer than sixty hours of community service, to attend a drug education class, and to submit to a drug assessment by a licensed alcohol and drug counselor; and

(b) If the person convicted or adjudicated of violating this section is eighteen years of age or younger and does not have a permit or license issued under the Motor Vehicle Operator's License Act:

(i) For the first offense, the court may, as part of the judgment of conviction or adjudication, (A) prohibit such person from obtaining any permit or any license pursuant to the act for which such person would otherwise be eligible until thirty days after the date of such order and (B) require such person to attend a drug education class;

(ii) For a second offense, the court may, as part of the judgment of conviction or adjudication, (A) prohibit such person from obtaining any permit or any license pursuant to the act for which such person would otherwise be eligible until ninety days after the date of such order and (B) require such person to complete no fewer than twenty hours and no more than forty hours of community service and to attend a drug education class; and

(iii) For a third or subsequent offense, the court may, as part of the judgment of conviction or adjudication, (A) prohibit such person from obtaining any permit or any license pursuant to the act for which such person would otherwise be eligible until twelve months after the date of such order and (B) require such person to complete no fewer than sixty hours of community service, to attend a drug education class, and to submit to a drug assessment by a licensed alcohol and drug counselor.

A copy of an abstract of the court's conviction or adjudication shall be transmitted to the Director of Motor Vehicles pursuant to sections 60-497.01 to 60-497.04 if a license or permit is impounded or a juvenile is prohibited from obtaining a license or permit under this subsection.

Source: Laws 1977, LB 38, § 76; Laws 1978, LB 808, § 2; Laws 1980, LB 696, § 3; Laws 1985, LB 406, § 4; Laws 1986, LB 504, § 1; Laws 1989, LB 592, § 2; Laws 1991, LB 742, § 1; Laws 1993, LB 117, § 2; Laws 1995, LB 371, § 6; Laws 1997, LB 364, § 8; Laws 1999, LB 299, § 1; Laws 2001, LB 398, § 14; Laws 2003, LB 46, § 1; Laws 2004, LB 1083, § 86; Laws 2005, LB 117, § 3; Laws 2008, LB844, § 1; Laws 2010, LB800, § 4; Laws 2011, LB19, § 2; Laws 2011, LB463, § 1; Laws 2013, LB298, § 2; Laws 2015, LB605, § 26; Laws 2016, LB1106, § 5; Laws 2017, LB487, § 6; Laws 2022, LB519, § 4; Laws 2022, LB808, § 2.
Effective date July 21, 2022.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB519, section 4, with LB808, section 2, to reflect all amendments.

Cross References

Motor Vehicle Operator's License Act, see section 60-462.
Nebraska Behavioral Health Services Act, see section 71-801.

28-441 Drug paraphernalia; use or possession; unlawful; penalty.

(1) It shall be unlawful for any person to use, or to possess with intent to use, drug paraphernalia to manufacture, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of sections 28-101, 28-431, and 28-439 to 28-444.

(2) Any person who violates this section shall be guilty of an infraction.

(3) A person shall not be in violation of this section if section 28-472 or 28-1701 applies.

Source: Laws 1980, LB 991, § 3; Laws 2017, LB487, § 7; Laws 2022, LB519, § 5.
Effective date July 21, 2022.

28-442 Drug paraphernalia; deliver or manufacture; unlawful; exception; penalty.

(1) It shall be unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing, or under circumstances in which one reasonably should know, that it will be used to manufacture, inject, ingest, or inhale or otherwise be used to introduce into the human body a controlled substance in violation of sections 28-101, 28-431, and 28-439 to 28-444.

(2) This section shall not apply to pharmacists, pharmacist interns, pharmacy technicians, and pharmacy clerks who sell hypodermic syringes or needles for the prevention of the spread of infectious diseases.

(3) Any person who violates this section shall be guilty of a Class II misdemeanor.

Source: Laws 1980, LB 991, § 4; Laws 2001, LB 398, § 18; Laws 2017, LB166, § 6.

28-470 Naloxone; authorized activities; immunity from administrative action, criminal prosecution, or civil liability.

(1) A health professional who is authorized to prescribe or dispense naloxone, if acting with reasonable care, may prescribe, administer, or dispense naloxone to any of the following persons without being subject to administrative action or criminal prosecution:

(a) A person who is apparently experiencing or who is likely to experience an opioid-related overdose; or

(b) A family member, friend, or other person in a position to assist a person who is apparently experiencing or who is likely to experience an opioid-related overdose.

(2) A family member, friend, or other person who is in a position to assist a person who is apparently experiencing or who is likely to experience an opioid-related overdose, other than an emergency responder or peace officer, is not subject to actions under the Uniform Credentialing Act, administrative action, or criminal prosecution if the person, acting in good faith, obtains naloxone from a health professional or a prescription for naloxone from a health

professional and administers the naloxone obtained from the health professional or acquired pursuant to the prescription to a person who is apparently experiencing an opioid-related overdose.

(3) An emergency responder who, acting in good faith, obtains naloxone from the emergency responder's emergency medical service organization and administers the naloxone to a person who is apparently experiencing an opioid-related overdose shall not be:

(a) Subject to administrative action or criminal prosecution; or

(b) Personally liable in any civil action to respond in damages as a result of his or her acts of commission or omission arising out of and in the course of his or her rendering such care or services or arising out of his or her failure to act to provide or arrange for further medical treatment or care for the person who is apparently experiencing an opioid-related overdose, unless the emergency responder caused damage or injury by his or her willful, wanton, or grossly negligent act of commission or omission. This subdivision shall not affect the liability of such emergency medical service organization for the emergency responder's acts of commission or omission.

(4) A peace officer or law enforcement employee who, acting in good faith, obtains naloxone from the peace officer's or employee's law enforcement agency and administers the naloxone to a person who is apparently experiencing an opioid-related overdose shall not be:

(a) Subject to administrative action or criminal prosecution; or

(b) Personally liable in any civil action to respond in damages as a result of his or her acts of commission or omission arising out of and in the course of his or her rendering such care or services or arising out of his or her failure to act to provide or arrange for further medical treatment or care for the person who is apparently experiencing an opioid-related overdose, unless the peace officer or employee caused damage or injury by his or her willful, wanton, or grossly negligent act of commission or omission. This subdivision shall not affect the liability of such law enforcement agency for the peace officer's or employee's acts of commission or omission.

(5) For purposes of this section:

(a) Administer has the same meaning as in section 38-2806;

(b) Dispense has the same meaning as in section 38-2817;

(c) Emergency responder means an emergency medical responder, an emergency medical technician, an advanced emergency medical technician, or a paramedic licensed under the Emergency Medical Services Practice Act or practicing pursuant to the EMS Personnel Licensure Interstate Compact;

(d) Health professional means a physician, physician assistant, nurse practitioner, or pharmacist licensed under the Uniform Credentialing Act;

(e) Law enforcement agency means a police department, a town marshal, the office of sheriff, or the Nebraska State Patrol;

(f) Law enforcement employee means an employee of a law enforcement agency, a contractor of a law enforcement agency, or an employee of such contractor who regularly, as part of his or her duties, handles, processes, or is likely to come into contact with any evidence or property which may include or contain opioids;

(g) Naloxone means naloxone hydrochloride; and

(h) Peace officer has the same meaning as in section 49-801.

Source: Laws 2015, LB390, § 11; Laws 2017, LB487, § 9; Laws 2018, LB923, § 1; Laws 2018, LB1034, § 2.

Cross References

Emergency Medical Services Practice Act, see section 38-1201.
EMS Personnel Licensure Interstate Compact, see section 38-3801.
Uniform Credentialing Act, see section 38-101.

28-472 Drug overdose; exception from criminal liability; conditions.

(1) A person shall not be in violation of section 28-441 or subsection (3) of section 28-416 if:

(a) Such person made a good faith request for emergency medical assistance in response to a drug overdose of himself, herself, or another;

(b) Such person made a request for medical assistance as soon as the drug overdose was apparent;

(c) The evidence for the violation of section 28-441 or subsection (3) of section 28-416 was obtained as a result of the drug overdose and the request for medical assistance; and

(d) When emergency medical assistance was requested for the drug overdose of another person:

(i) Such requesting person remained on the scene until medical assistance or law enforcement personnel arrived; and

(ii) Such requesting person cooperated with medical assistance and law enforcement personnel.

(2) The exception from criminal liability provided in subsection (1) of this section applies to any person who makes a request for emergency medical assistance and complies with the requirements of subsection (1) of this section.

(3) A person shall not be in violation of section 28-441 or subsection (3) of section 28-416 if such person was experiencing a drug overdose and the evidence for such violation was obtained as a result of the drug overdose and a request for medical assistance by another person made in compliance with subsection (1) of this section.

(4) A person shall not initiate or maintain an action against a peace officer or the state agency or political subdivision employing such officer based on the officer's compliance with subsections (1) through (3) of this section.

(5) Nothing in this section shall be interpreted to interfere with or prohibit the investigation, arrest, or prosecution of any person for, or affect the admissibility or use of evidence in, cases involving:

(a) Drug-induced homicide;

(b) Except as provided in subsections (1) through (3) of this section, violations of section 28-441 or subsection (3) of section 28-416; or

(c) Any other criminal offense.

(6) As used in this section, drug overdose means an acute condition including, but not limited to, physical illness, coma, mania, hysteria, or death resulting from the consumption or use of a controlled substance or the consumption or use of another substance with which a controlled substance was

combined and which condition a layperson would reasonably believe requires emergency medical assistance.

Source: Laws 2017, LB487, § 8.

28-473 Transferred to section 38-1,144.

28-474 Transferred to section 38-1,145.

28-475 Opiates; receipt; identification required.

(1) Unless the individual taking receipt of dispensed opiates listed in Schedule II, III, or IV of section 28-405 is personally and positively known to the pharmacist or dispensing practitioner, the individual shall display a valid driver's or operator's license, a state identification card, a military identification card, an alien registration card, or a passport as proof of identification.

(2) This section does not apply to a patient who is a resident of a health care facility licensed pursuant to the Health Care Facility Licensure Act.

Source: Laws 2018, LB931, § 5.

Cross References

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

28-476 Hemp; carry or transport; requirements; peace officer; powers; violation; penalty.

(1) Any person other than the Department of Agriculture, a cultivator, a processor-handler, or an approved testing facility who is transporting hemp shall carry with such hemp being transported (a) a bill of lading indicating the owner of the hemp, the point of origin of the hemp, and the destination of the hemp and (b) either a copy of the test results pertaining to such hemp or other documentation affirming that the hemp was produced in compliance with the federal Agriculture Improvement Act of 2018.

(2)(a) No person shall carry or transport hemp in this state unless such hemp is:

(i) Produced in compliance with:

(A) For hemp originating in this state, the requirements of the federal Agriculture Improvement Act of 2018 under the Nebraska Hemp Farming Act and any rules and regulations adopted and promulgated thereunder, a tribal hemp production plan approved by the United States Secretary of Agriculture, or the United States Department of Agriculture Domestic Hemp Production Plan; or

(B) For hemp originating outside this state, the requirements of the federal Agriculture Improvement Act of 2018; and

(ii) Carried or transported as provided in section 2-515 or subsection (1) of this section.

(b) No person shall transport hemp in this state concurrently with any other plant material that is not hemp.

(3)(a) A peace officer may detain any person carrying or transporting hemp in this state if such person does not provide the documentation required by this section and section 2-515. Unless the peace officer has probable cause to believe the hemp is, or is being carried or transported with, marijuana or any other controlled substance, the peace officer shall immediately release the

hemp and the person carrying or transporting such hemp upon production of such documentation.

(b) The failure of a person detained as described in this subsection to produce documentation required by this section shall constitute probable cause to believe the hemp may be marijuana or another controlled substance. In such case, a peace officer may collect such hemp for testing to determine the delta-9 tetrahydrocannabinol concentration in the hemp, and, if the peace officer has probable cause to believe the person detained is carrying or transporting marijuana or any other controlled substance in violation of state or federal law, the peace officer may seize and impound the hemp or marijuana or other controlled substance and arrest such person.

(c) This subsection does not limit or restrict in any way the power of a peace officer to enforce violations of the Uniform Controlled Substances Act and federal law regulating marijuana and other controlled substances.

(4) In addition to any other penalties provided by law, including those imposed under the Nebraska Hemp Farming Act, any person who intentionally violates this section shall be guilty of a Class IV misdemeanor and fined not more than one thousand dollars.

(5) This section does not apply to a person transporting hemp products purchased at retail in small amounts for personal or household use and not intended for resale.

(6) For purposes of this section:

(a) Agriculture Improvement Act of 2018 has the same meaning as in section 2-503;

(b) Approved testing facility has the same meaning as in section 2-503;

(c) Cultivator has the same meaning as in section 2-503; and

(d) Processor-handler has the same meaning as in section 2-503.

Source: Laws 2020, LB1152, § 16.

Cross References

Nebraska Hemp Farming Act, see section 2-501.

ARTICLE 5
OFFENSES AGAINST PROPERTY

Section
28-513. Theft by extortion.
28-521. Criminal trespass, second degree; penalty.

28-513 Theft by extortion.

(1) A person commits theft if he or she obtains property, money, or other thing of value of another by threatening to:

(a) Inflict bodily injury on anyone or commit any other criminal offense;

(b) Accuse anyone of a criminal offense;

(c) Expose any secret tending to subject any person to hatred, contempt or ridicule, or to impair his or her credit or business repute;

(d) Take or withhold action as an official, or cause an official to take or withhold action;

(e) Bring about or continue a strike, boycott, or other collective unofficial action, if the property, money, or other thing of value is not demanded or received for the benefit of the group in whose interest the actor purports to act;

(f) Testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or

(g) Distribute or otherwise make public an image or video of a person's intimate area or of a person engaged in sexually explicit conduct without that person's consent.

(2) It is an affirmative defense to prosecution based on subdivision (1)(b), (1)(c), or (1)(d) of this section that the property, money, or other thing of value obtained by threat of accusation, exposure, lawsuit, or other invocation of official action was honestly claimed as restitution or indemnification for harm done in the circumstances to which such accusation, exposure, lawsuit, or other official action relates, or as compensation for property or lawful services.

Source: Laws 1977, LB 38, § 112; Laws 2019, LB630, § 2.

28-521 Criminal trespass, second degree; penalty.

(1) A person commits second degree criminal trespass if, knowing that he or she is not licensed or privileged to do so, he or she enters or remains in any place as to which notice against trespass is given by:

(a) Actual communication to the actor; or

(b) Posting in a manner prescribed by law or reasonably likely to come to the attention of intruders; or

(c) Fencing or other enclosure manifestly designed to exclude intruders except as otherwise provided in section 28-520.

(2) A person commits second degree criminal trespass if, knowing that he or she is not licensed or privileged to do so, he or she intentionally causes an electronic device, such as an unmanned aircraft, to enter into, upon, or above the property of another, including such property owned by such person and leased or rented to another, with the intent to observe another person without his or her consent in a place of solitude or seclusion.

(3) For purposes of this section, unmanned aircraft means an aircraft, including an aircraft commonly known as a drone, which is operated without the possibility of direct human intervention from within or on the aircraft.

(4) Second degree criminal trespass is a Class III misdemeanor, except as provided for in subsection (5) of this section.

(5) Second degree criminal trespass is a Class II misdemeanor if the offender defies an order to leave personally communicated to him or her by the owner of the premises or other authorized person.

Source: Laws 1977, LB 38, § 120; Laws 2009, LB238, § 2; Laws 2022, LB922, § 6.
Operative date July 21, 2022.

ARTICLE 6

OFFENSES INVOLVING FRAUD

Section
28-611. Issuing or passing a bad check or similar order; penalty; collection procedures.
28-612. False statement or book entry; destruction or secretion of records; penalty.

28-611 Issuing or passing a bad check or similar order; penalty; collection procedures.

(1) Whoever obtains property, services, child support credit, spousal support credit, or present value of any kind by issuing or passing a check, draft, assignment of funds, or similar signed order for the payment of money, knowing that he or she does not have sufficient funds in or credit with the drawee for the payment of the check, draft, assignment of funds, or order in full upon presentation, commits the offense of issuing a bad check. Issuing a bad check is:

(a) A Class IIA felony if the amount of the check, draft, assignment of funds, or order is five thousand dollars or more;

(b) A Class IV felony if the amount of the check, draft, assignment of funds, or order is one thousand five hundred dollars or more, but less than five thousand dollars;

(c) A Class I misdemeanor if the amount of the check, draft, assignment of funds, or order is five hundred dollars or more, but less than one thousand five hundred dollars; and

(d) A Class II misdemeanor if the amount of the check, draft, assignment of funds, or order is less than five hundred dollars.

(2) The aggregate amount of any series of checks, drafts, assignments, or orders issued or passed within a sixty-day period in one county may be used in determining the classification of the offense pursuant to subsection (1) of this section, except that checks, drafts, assignments, or orders may not be aggregated into more than one offense.

(3) For any second or subsequent offense under subdivision (1)(c) or (1)(d) of this section, any person so offending shall be guilty of a Class IV felony.

(4) Whoever otherwise issues or passes a check, draft, assignment of funds, or similar signed order for the payment of money, knowing that he or she does not have sufficient funds in or credit with the drawee for the payment of the check, draft, assignment of funds, or order in full upon its presentation, shall be guilty of a Class II misdemeanor.

(5) Any person in violation of this section who makes voluntary restitution to the injured party for the value of the check, draft, assignment of funds, or order shall also pay ten dollars to the injured party and any reasonable handling fee imposed on the injured party by a financial institution.

(6) In any prosecution for issuing a bad check, the person issuing the check, draft, assignment of funds, or order shall be presumed to have known that he or she did not have sufficient funds in or credit with the drawee for the payment of the check, draft, assignment of funds, or order in full upon presentation if, within thirty days after issuance of the check, draft, assignment of funds, or

order, he or she was notified that the drawee refused payment for lack of funds and he or she failed within ten days after such notice to make the check, draft, assignment of funds, or order good or, in the absence of such notice, he or she failed to make the check, draft, assignment of funds, or order good within ten days after notice that such check, draft, assignment of funds, or order has been returned to the depositor was sent to him or her by the county attorney or his or her deputy, by United States mail addressed to such person at his or her last-known address. Upon request of the depositor and the payment of ten dollars for each check, draft, assignment of funds, or order, the county attorney or his or her deputy shall be required to mail notice to the person issuing the check, draft, assignment of funds, or order as provided in this subsection. The ten-dollar payment shall be payable to the county treasurer and credited to the county general fund. No such payment shall be collected from any county office to which such a check, draft, assignment of funds, or order is issued in the course of the official duties of the office.

(7) Any person convicted of violating this section may, in addition to a fine or imprisonment, be ordered to make restitution to the party injured for the value of the check, draft, assignment of funds, or order and to pay ten dollars to the injured party and any reasonable handling fee imposed on the injured party by a financial institution. If the court, in addition to sentencing any person to imprisonment under this section, also enters an order of restitution, the time permitted to make such restitution shall not be concurrent with the sentence of imprisonment.

(8) The fact that restitution to the party injured has been made and that ten dollars and any reasonable handling fee imposed on the injured party by a financial institution have been paid to the injured party shall be a mitigating factor in the imposition of punishment for any violation of this section.

Source: Laws 1977, LB 38, § 133; Laws 1978, LB 748, § 8; Laws 1983, LB 208, § 1; Laws 1985, LB 445, § 1; Laws 1987, LB 254, § 1; Laws 1992, LB 111, § 3; Laws 2009, LB155, § 15; Laws 2015, LB605, § 34; Laws 2019, LB514, § 1.

28-612 False statement or book entry; destruction or secretion of records; penalty.

(1) A person commits a Class IV felony if he or she:

(a) Willfully and knowingly subscribes to, makes, or causes to be made any false statement or entry in the books of an organization; or

(b) Knowingly subscribes to or exhibits false papers with the intent to deceive any person or persons authorized to examine into the affairs of any such organization; or

(c) Makes, states, or publishes any false statement of the amount of the assets or liabilities of any such organization; or

(d) Fails to make true and correct entry in the books and records of such organization of its business and transactions in the manner and form prescribed by the Department of Banking and Finance; or

(e) Mutilates, alters, destroys, secretes, or removes any of the books or records of such organization, without the consent of the Director of Banking and Finance.

(2) As used in this section, organization means:

(a) Any trust company transacting a business under the Nebraska Trust Company Act;

(b) Any association organized for the purpose set forth in section 8-302;

(c) Any bank as defined in section 8-101.03; or

(d) Any credit union transacting business in this state under the Credit Union Act.

Source: Laws 1977, LB 38, § 134; Laws 1983, LB 440, § 1; Laws 1984, LB 979, § 1; Laws 1995, LB 384, § 16; Laws 1996, LB 948, § 122; Laws 1998, LB 1321, § 77; Laws 2002, LB 1094, § 13; Laws 2003, LB 131, § 24; Laws 2017, LB140, § 150.

Cross References

Credit Union Act, see section 21-1701.
Nebraska Trust Company Act, see section 8-201.01.

28-632 Payment cards; terms, defined.

For purposes of this section and sections 28-633 and 28-634:

(1) Encoding machine means an electronic device that is used to encode information onto a payment card;

(2) Merchant means:

(a) An owner or operator of any retail mercantile establishment or any agent, employee, lessee, consignee, officer, director, franchisee, or independent contractor of such owner or operator;

(b) An establishing financial institution as defined in section 8-157.01; or

(c) A person who receives from an authorized user of a payment card, or someone the person believes to be an authorized user, a payment card or information from a payment card, or what the person believes to be a payment card or information from a payment card, as the instrument for obtaining, purchasing, or receiving goods, services, money, or anything else of value from the person;

(3) Payment card means a credit card, charge card, debit card, or any other card that is issued to an authorized card user and that allows the user to obtain, purchase, or receive goods, services, money, or anything else of value from a merchant;

(4) Person means an individual, firm, partnership, association, corporation, limited liability company, or other business entity; and

(5) Scanning device means a scanner, a reader, a wireless access device, a radio-frequency identification scanner, near-field communication technology, or any other electronic device that is used to access, read, scan, obtain, memorize, or store, temporarily or permanently, information encoded on a payment card.

Source: Laws 2002, LB 276, § 4; Laws 2018, LB773, § 1.

28-634 Payment cards; prohibited acts relating to scanning device or encoding machine; violation; penalty.

(1) It is unlawful for a person to intentionally and knowingly:

(a) Use a scanning device to access, read, scan, obtain, memorize, or store, temporarily or permanently, information encoded on a payment card without

the permission of the authorized user of the payment card, the issuer of the authorized user's payment card, or a merchant;

(b) Possess a scanning device with the intent to obtain information encoded on a payment card without the permission of the authorized user, the issuer of the authorized user's payment card, or a merchant or possess a scanning device with knowledge that some other person intends to use the scanning device to obtain information encoded on a payment card without the permission of the authorized user, the issuer of the authorized user's payment card, or a merchant;

(c) Use an encoding machine to place information encoded on a payment card onto a different card without the permission of the authorized user of the card from which the information was obtained, the issuer of the authorized user's payment card, or a merchant; or

(d) Possess an encoding machine with the intent to place information encoded on a payment card onto a different payment card without the permission of the user, the issuer of the authorized user's payment card, or a merchant.

(2) A violation of this section is a Class IV felony for the first offense and a Class IIIA felony for a second or subsequent offense.

Source: Laws 2002, LB 276, § 6; Laws 2018, LB773, § 2.

28-635 Repealed. Laws 2019, LB7, § 7.

28-641 Counterfeit airbags; act, how cited.

Sections 28-641 to 28-644 shall be known and may be cited as the Counterfeit Airbag Prevention Act.

Source: Laws 2019, LB7, § 2.

28-642 Counterfeit airbags; terms, defined.

For purposes of the Counterfeit Airbag Prevention Act, unless the context otherwise requires:

(1) Airbag means a motor vehicle inflatable occupant restraint system device that is part of a supplemental restraint system;

(2) Counterfeit supplemental restraint system component means a supplemental restraint system component that displays a mark identical or substantially similar to the genuine mark of a motor vehicle manufacturer or a supplier of parts to the manufacturer of a motor vehicle without authorization from such manufacturer or supplier;

(3) Nonfunctional airbag means an airbag that meets any of the following criteria:

(a) The airbag was previously deployed or damaged;

(b) The airbag has an electric fault that is detected by the motor vehicle's diagnostic system when the installation procedure is completed and (i) the motor vehicle is returned to the customer who requested the work to be performed or (ii) ownership is intended to be transferred;

(c) The airbag includes a part or object installed in a motor vehicle to mislead the owner or operator of the motor vehicle into believing that a functional airbag has been installed; or

(d) The airbag is subject to the prohibitions of subsection (j) of 49 U.S.C. 30120, as such section existed on January 1, 2019; and

(4) Supplemental restraint system means an inflatable restraint system as defined in 49 C.F.R. 571.208, as such regulation existed on January 1, 2019, designed for use in conjunction with an active safety system. A supplemental restraint system includes one or more airbags and all components required to ensure that an airbag works as designed by the motor vehicle manufacturer, including both of the following:

(a) The airbag operates as necessary in the event of a crash; and

(b) The airbag is designed in accordance with federal motor vehicle safety standards for the specific make, model, and year of the motor vehicle in which it is or will be installed.

Source: Laws 2019, LB7, § 3.

28-643 Counterfeit airbags; prohibited acts.

A person violates the Counterfeit Airbag Prevention Act if the person does any of the following:

(1) Knowingly and intentionally manufactures, imports, installs, reinstalls, distributes, sells, or offers for sale any device intended to replace a supplemental restraint system component in any motor vehicle if the device is a counterfeit supplemental restraint system component or a nonfunctional airbag or does not meet federal safety requirements as provided in 49 C.F.R. 571.208, as such regulation existed on January 1, 2019;

(2) Knowingly and intentionally sells, installs, or reinstalls a device that causes a motor vehicle's diagnostic system to fail to warn when the motor vehicle is equipped with a counterfeit supplemental restraint system component or a nonfunctional airbag or when no airbag is installed;

(3) Knowingly and intentionally represents to another person that a counterfeit supplemental restraint system component or nonfunctional airbag installed in a motor vehicle is not a counterfeit supplemental restraint system component or a nonfunctional airbag; or

(4) Causes another person to violate this section or assists another person in violating this section.

Source: Laws 2019, LB7, § 4.

28-644 Counterfeit airbags; violations; penalties.

(1) Except as otherwise provided in this section, a violation of the Counterfeit Airbag Prevention Act is a Class IV felony.

(2) A violation of the act is a Class IIIA felony if the defendant has been previously convicted of a violation of the act.

(3) A violation of the act is a Class III felony if the violation resulted in an individual suffering bodily injury.

(4) A violation of the act is a Class IIA felony if the violation resulted in an individual suffering serious bodily injury.

(5) A violation of the act is a Class II felony if the violation resulted in the death of an individual.

Source: Laws 2019, LB7, § 5.

28-645 Criminal impersonation by stolen valor; penalty; restitution.

(1) A person commits the offense of criminal impersonation by stolen valor if such person:

(a)(i) Pretends to be an active member or veteran of the United States Navy, Army, Air Force, Marines, Coast Guard, or Space Force, including armed forces reserves and the National Guard, through the unauthorized manufacture, sale, possession, or use of military regalia or gear, including the wearing of military uniforms or the use of falsified military identification; and

(ii) Does an act in such fictitious capacity with the intent to:

(A) Gain a pecuniary benefit for such person or another person; and

(B) Deceive or harm another person; or

(b) With the intent to deceive or harm another, fraudulently represents such person to be a recipient of the Congressional Medal of Honor, Distinguished Service Cross, Navy Cross, Air Force Cross, Silver Star, Purple Heart, Combat Infantryman Badge, Combat Action Badge, Combat Medical Badge, Combat Action Ribbon, Air Force Combat Action Medal, or another similar award or honor and obtains money, property, or anything of value through such fraudulent representation.

(2) A violation of this section is a Class I misdemeanor.

(3) A person found guilty of violating this section may, in addition to the penalty under subsection (2) of this section, be ordered to make restitution pursuant to sections 29-2280 to 29-2289.

Source: Laws 2022, LB922, § 7.
Operative date July 21, 2022.

ARTICLE 7

OFFENSES INVOLVING THE FAMILY RELATION

Section
28-707. Child abuse; privileges not available; penalties.
28-710. Act, how cited; terms, defined.
28-710.01. Legislative declarations.
28-712. Reports of child abuse or neglect; department; determination; alternative response; department; use; advisory committee; recommendations; rules and regulations.
28-712.01. Reports of child abuse or neglect; alternative response assigned; criteria; Review, Evaluate, and Decide Team; duties; department; duties; Inspector General's review.
28-713. Reports of child abuse or neglect; law enforcement agency; department; duties; rules and regulations.
28-713.01. Cases of child abuse or neglect; completion of investigation; notice; when; right to amend or expunge information.
28-713.02. Non-court-involved cases; right of parent; caregiver authority; department; powers and duties.
28-713.03. Rules and regulations.
28-716. Person participating in an investigation or the making of a report or providing information or assistance; immune from liability; civil or criminal.
28-718. Child protection cases; central registry; name-change order; treatment; fee; waiver.
28-719. Child abuse and neglect records; access; when.
28-726. Information; access.
28-728. Legislative findings and intent; child abuse and neglect investigation team; child advocacy center; child abuse and neglect treatment team; powers and duties.

28-707 Child abuse; privileges not available; penalties.

(1) A person commits child abuse if he or she knowingly, intentionally, or negligently causes or permits a minor child to be:

(a) Placed in a situation that endangers his or her life or physical or mental health;

(b) Cruelly confined or cruelly punished;

(c) Deprived of necessary food, clothing, shelter, or care;

(d) Placed in a situation to be sexually exploited through sex trafficking of a minor as defined in section 28-830 or by allowing, encouraging, or forcing such minor child to engage in debauchery, public indecency, or obscene or pornographic photography, films, or depictions;

(e) Placed in a situation to be sexually abused as defined in section 28-319, 28-319.01, or 28-320.01; or

(f) Placed in a situation to be a trafficking victim as defined in section 28-830.

(2) The statutory privilege between patient and physician, between client and professional counselor, and between husband and wife shall not be available for excluding or refusing testimony in any prosecution for a violation of this section.

(3) Child abuse is a Class I misdemeanor if the offense is committed negligently and does not result in serious bodily injury as defined in section 28-109 or death.

(4) Child abuse is a Class IIIA felony if the offense is committed knowingly and intentionally and does not result in serious bodily injury as defined in section 28-109 or death.

(5) Child abuse is a Class IIIA felony if the offense is committed negligently and results in serious bodily injury as defined in section 28-109.

(6) Child abuse is a Class IIA felony if the offense is committed negligently and results in the death of such child.

(7) Child abuse is a Class II felony if the offense is committed knowingly and intentionally and results in serious bodily injury as defined in such section.

(8) Child abuse is a Class IB felony if the offense is committed knowingly and intentionally and results in the death of such child.

(9) For purposes of this section, negligently refers to criminal negligence and means that a person knew or should have known of the danger involved and acted recklessly, as defined in section 28-109, with respect to the safety or health of the minor child.

Source: Laws 1977, LB 38, § 146; Laws 1982, LB 347, § 10; Laws 1993, LB 130, § 3; Laws 1993, LB 430, § 3; Laws 1994, LB 908, § 1; Laws 1996, LB 645, § 15; Laws 1997, LB 364, § 9; Laws 2006, LB 1199, § 9; Laws 2010, LB507, § 3; Laws 2012, LB799, § 2; Laws 2013, LB255, § 1; Laws 2015, LB605, § 44; Laws 2019, LB519, § 9.

Cross References

Appointment of guardian ad litem, see section 43-272.01.
Registration of sex offenders, see sections 29-4001 to 29-4014.

28-710 Act, how cited; terms, defined.

(1) Sections 28-710 to 28-727 shall be known and may be cited as the Child Protection and Family Safety Act.

(2) For purposes of the Child Protection and Family Safety Act:

(a) Alternative response means a comprehensive assessment of (i) child safety, (ii) the risk of future child abuse or neglect, (iii) family strengths and needs, and (iv) the provision of or referral for necessary services and support. Alternative response is an alternative to traditional response and does not include an investigation or a formal determination as to whether child abuse or neglect has occurred, and the subject of the report shall not be entered into the central registry of child protection cases maintained pursuant to section 28-718;

(b) Child abuse or neglect means knowingly, intentionally, or negligently causing or permitting a minor child to be:

(i) Placed in a situation that endangers his or her life or physical or mental health;

(ii) Cruelly confined or cruelly punished;

(iii) Deprived of necessary food, clothing, shelter, or care;

(iv) Left unattended in a motor vehicle if such minor child is six years of age or younger;

(v) Placed in a situation to be sexually abused;

(vi) Placed in a situation to be sexually exploited through sex trafficking of a minor as defined in section 28-830 or by allowing, encouraging, or forcing such person to engage in debauchery, public indecency, or obscene or pornographic photography, films, or depictions; or

(vii) Placed in a situation to be a trafficking victim as defined in section 28-830;

(c) Child advocacy center means a community-based organization that (i) provides an appropriate site for conducting forensic interviews as defined in section 28-728 and referring victims of child abuse or neglect and appropriate caregivers for such victims to needed evaluation, services, and supports, (ii) assists county attorneys in facilitating case reviews, developing and updating protocols, and arranging training opportunities for the teams established pursuant to sections 28-728 and 28-729, and (iii) is a member, in good standing, of a state chapter as defined in 34 U.S.C. 20302;

(d) Comprehensive assessment means an analysis of child safety, risk of future child abuse or neglect, and family strengths and needs on a report of child abuse or neglect using an evidence-informed and validated tool. Comprehensive assessment does not include a finding as to whether the child abuse or neglect occurred but does determine the need for services and support, if any, to address the safety of children and the risk of future abuse or neglect;

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

(f) Investigation means fact gathering by the department, using an evidence-informed and validated tool, or by law enforcement related to the current safety

of a child and the risk of future child abuse or neglect that determines whether child abuse or neglect has occurred and whether child protective services are needed;

(g) Kin caregiver means a person with whom a child in foster care has been placed or with whom a child is residing pursuant to a temporary living arrangement in a non-court-involved case, who has previously lived with or is a trusted adult that has a preexisting, significant relationship with the child or with a sibling of such child placed pursuant to section 43-1311.02;

(h) Law enforcement agency means the police department or town marshal in incorporated municipalities, the office of the sheriff in unincorporated areas, and the Nebraska State Patrol;

(i) Non-court-involved case means an ongoing case opened by the department following a report of child abuse or neglect in which the department has determined that ongoing services are required to maintain the safety of a child or alleviate the risk of future abuse or neglect and in which the family voluntarily engages in child protective services without a filing in a juvenile court;

(j) Out-of-home child abuse or neglect means child abuse or neglect occurring outside of a child's family home, including in day care homes, foster homes, day care centers, residential child-caring agencies as defined in section 71-1926, other child care facilities or institutions, and the community. Out-of-home child abuse or neglect also includes cases in which the subject of the report of child abuse or neglect is not a member of the child's household, no longer has access to the child, is unknown, or cannot be identified;

(k) Relative caregiver means a person with whom a child is placed by the department and who is related to the child, or to a sibling of such child pursuant to section 43-1311.02, by blood, marriage, or adoption or, in the case of an Indian child, is an extended family member as defined in section 43-1503;

(l) Report means any communication received by the department or a law enforcement agency pursuant to the Child Protection and Family Safety Act that describes child abuse or neglect and contains sufficient content to identify the child who is the alleged victim of child abuse or neglect;

(m) Review, Evaluate, and Decide Team means an internal team of staff within the department and shall include no fewer than two supervisors or administrators and two staff members knowledgeable on the policies and practices of the department, including, but not limited to, the structured review process. County attorneys, child advocacy centers, or law enforcement agency personnel may attend team reviews upon request of a party;

(n) School employee means a person nineteen years of age or older who is employed by a public, private, denominational, or parochial school approved or accredited by the State Department of Education;

(o) Student means a person less than nineteen years of age enrolled in or attending a public, private, denominational, or parochial school approved or accredited by the State Department of Education, or who was such a person enrolled in or who attended such a school within ninety days of any violation of section 28-316.01;

(p) Traditional response means an investigation by a law enforcement agency or the department pursuant to section 28-713 which requires a formal determination of whether child abuse or neglect has occurred; and

(q) Subject of the report of child abuse or neglect or subject of the report means the person or persons identified in the report as responsible for the child abuse or neglect.

Source: Laws 1977, LB 38, § 149; Laws 1979, LB 505, § 1; Laws 1982, LB 522, § 3; Laws 1985, LB 447, § 10; Laws 1988, LB 463, § 42; Laws 1992, LB 1184, § 9; Laws 1994, LB 1035, § 2; Laws 1996, LB 1044, § 71; Laws 1997, LB 119, § 1; Laws 2005, LB 116, § 1; Laws 2013, LB265, § 29; Laws 2014, LB853, § 1; Laws 2019, LB519, § 10; Laws 2020, LB881, § 9; Laws 2020, LB1061, § 1.

28-710.01 Legislative declarations.

(1) The Legislature declares that the public policy of the State of Nebraska is to protect children whose health or welfare may be jeopardized by abuse or neglect. The Legislature recognizes that most families want to keep their children safe, but circumstances or conditions sometimes interfere with their ability to do so. Families and children are best served by interventions that engage their protective capacities and address immediate safety concerns and ongoing risks of child abuse or neglect. In furtherance of this public policy and the family policy and principles set forth in sections 43-532 and 43-533, it is the intent of the Legislature to strengthen the family and make the home, school, and community safe for children by promoting responsible child care in all settings and to provide, when necessary, a safe temporary or permanent home environment for abused or neglected children.

(2) In addition, it is the policy of this state to: Require the reporting of child abuse or neglect in home, school, and community settings; provide for alternative response to reports as permitted by law and the rules and regulations of the department; provide for traditional response to reports as required by law and the rules and regulations of the department; and provide protective and supportive services designed to preserve and strengthen the family in appropriate cases.

Source: Laws 2014, LB853, § 2; Laws 2020, LB1061, § 2.

28-712 Reports of child abuse or neglect; department; determination; alternative response; department; use; advisory committee; recommendations; rules and regulations.

(1) Upon receipt of a report pursuant to section 28-711, the department shall determine whether to (a) accept the report for traditional response and an investigation pursuant to section 28-713, (b) accept the report for alternative response pursuant to section 28-712.01, (c) accept the report for screening by the Review, Evaluate, and Decide Team to determine eligibility for alternative response, or (d) classify the report as requiring no further action by the department.

(2)(a) The Nebraska Children's Commission shall appoint an advisory committee to examine the department's alternative response to reports of child abuse or neglect and to make recommendations to the Legislature, the department, and the commission regarding (i) the receipt and screening of reports of child abuse or neglect by the department, (ii) the ongoing use of alternative response, (iii) the ongoing use of traditional response, and (iv) the provision of services within alternative response and non-court-involved cases to ensure child safety, to reduce the risk of child abuse or neglect, and to engage families.

The advisory committee may request, receive, and review data from the department regarding such processes.

(b) The members of the advisory committee shall include, but not be limited to, a representative of (i) the department, (ii) law enforcement agencies, (iii) county attorneys or other prosecutors, (iv) the state chapter of child advocacy centers as defined in 34 U.S.C. 20302, (v) attorneys for parents, (vi) guardians ad litem, (vii) a child welfare advocacy organization, (viii) families with experience in the child welfare system, (ix) family caregivers, (x) the Foster Care Review Office, and (xi) the office of Inspector General of Nebraska Child Welfare. Members of the advisory committee shall be appointed for terms of two years. The Nebraska Children's Commission shall appoint the chairperson of the advisory committee and may fill vacancies on the advisory committee as they occur.

(3) The department shall adopt and promulgate rules and regulations to carry out this section and sections 28-710.01, 28-712.01, and 28-713. Such rules and regulations shall include, but not be limited to, provisions on (a) the transfer of cases from alternative response to traditional response, (b) notice to families subject to a comprehensive assessment and served through alternative response of the alternative response process and their rights, including the opportunity to challenge agency determinations, (c) the provision of services through alternative response, and (d) the collection, sharing, and reporting of data.

Source: Laws 2014, LB853, § 3; Laws 2017, LB225, § 1; Laws 2020, LB1061, § 3.

28-712.01 Reports of child abuse or neglect; alternative response assigned; criteria; Review, Evaluate, and Decide Team; duties; department; duties; Inspector General's review.

(1)(a) The department may assign a report for alternative response consistent with the Child Protection and Family Safety Act.

(b) No report involving any of the following shall be assigned to alternative response but shall be immediately forwarded to law enforcement or the county attorney:

(i) Murder in the first or second degree as defined in section 28-303 or 28-304 or manslaughter as defined in section 28-305;

(ii) Assault in the first, second, or third degree or assault by strangulation or suffocation as defined in section 28-308, 28-309, 28-310, or 28-310.01;

(iii) Sexual abuse, including acts prohibited by section 28-319, 28-319.01, 28-320, 28-320.01, 28-320.02, 28-322.01, 28-322.02, 28-322.03, 28-322.04, 28-322.05, 28-703, or 28-707;

(iv) Labor trafficking of a minor or sex trafficking of a minor as defined in section 28-830;

(v) Neglect of a minor child that results in serious bodily injury as defined in section 28-109, requires hospitalization of the child, or results in an injury to the child that requires ongoing medical care, behavioral health care, or physical or occupational therapy, including a growth delay, which may be referred to as failure to thrive, that has been diagnosed by a physician and is due to parental neglect;

(vi) Physical abuse to the head or torso of a child or physical abuse that results in bodily injury;

(vii) An allegation that requires a forensic interview at a child advocacy center or coordination with the child abuse and neglect investigation team pursuant to section 28-728;

(viii) Out-of-home child abuse or neglect;

(ix) An allegation being investigated by a law enforcement agency at the time of the assignment;

(x) A history of termination of parental rights;

(xi) Absence of a caretaker without having given an alternate caregiver authority to make decisions and grant consents for necessary care, treatment, and education of a child or without having made provision to be contacted to make such decisions or grant such consents;

(xii) Domestic violence involving a caretaker in situations in which the alleged perpetrator has access to the child or caretaker;

(xiii) A household member illegally manufactures methamphetamine or opioids;

(xiv) A child has had contact with methamphetamine or other nonprescribed opioids, including a positive drug screening or test; or

(xv) For a report involving an infant, a household member tests positive for methamphetamine or nonprescribed opioids at the birth of such infant.

(c) The department may adopt and promulgate rules and regulations to (i) provide additional ineligibility criteria for assignment to alternative response and (ii) establish additional criteria requiring review by the Review, Evaluate, and Decide Team.

(d) A report that includes any of the following may be eligible for alternative response but shall first be reviewed by the Review, Evaluate, and Decide Team prior to assignment to alternative response:

(i) Domestic assault as defined in section 28-323 or domestic violence in the family home;

(ii) Use of alcohol or controlled substances as defined in section 28-401 or 28-405 by a caregiver that impairs the caregiver's ability to care and provide safety for the child; or

(iii) A family member residing in the home or a caregiver that has been the subject of a report accepted for traditional response or assigned to alternative response in the past six months.

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

(3) In the case of an alternative response, the department shall complete a comprehensive assessment. The department shall transfer the case being given alternative response to traditional response if the department determines that a

child is unsafe or if the concern for the safety of the child is due to a temporary living arrangement. Upon completion of the comprehensive assessment, if it is determined that the child is safe, participation in services offered to the family receiving an alternative response is voluntary, the case shall not be transferred to traditional response based upon the family's failure to enroll or participate in such services, and the subject of the report shall not be entered into the central registry of child protection cases maintained pursuant to section 28-718.

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

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

Source: Laws 2014, LB853, § 4; Laws 2017, LB225, § 2; Laws 2020, LB1061, § 4.

28-713 Reports of child abuse or neglect; law enforcement agency; department; duties; rules and regulations.

(1) Unless a report is assigned to alternative response, upon the receipt of a call reporting child abuse and neglect as required by section 28-711, it is the duty of the law enforcement agency to investigate the report, to take immediate steps to protect the child, and to institute legal proceedings consistent with section 43-247 if the child is seriously endangered in the child's surroundings and immediate removal is necessary for the protection of the child. The law enforcement agency may request assistance from the department during the investigation and shall, by the next working day, notify either the hotline established under section 28-711 or the department of receipt of the report, including whether or not an investigation is being undertaken by the law enforcement agency. A copy of all reports, whether or not an investigation is being undertaken, shall be provided to the department.

(2)(a) When a report is assigned for traditional response, the department shall utilize an evidence-informed and validated tool to assess the safety of the child at the time of the assessment, the risk of future child abuse or neglect, the need for services to protect and assist the child and to preserve the family, and whether the case shall be entered into the central registry pursuant to section 28-720. As part of such investigation, the department may request assistance from the appropriate law enforcement agency or refer the matter to the county attorney to initiate legal proceedings.

(b) If in the course of an investigation the department finds a child is seriously endangered in the child's surroundings and immediate removal is necessary for the protection of the child, the department shall make an immediate request for the county attorney to institute legal proceedings consistent with section 43-247.

(3) When a report contains an allegation of out-of-home child abuse or neglect, a law enforcement agency or the department shall immediately notify each person having custody of each child who has allegedly been abused or neglected that such report has been made unless the person to be notified is the subject of such report. The department or the law enforcement agency shall provide such person with information about the nature of the alleged child abuse or neglect and any other necessary information. The department shall also provide such social services as are necessary and appropriate under the circumstances to protect and assist the child and to preserve the family.

(4)(a) In situations of alleged out-of-home child abuse or neglect, if the subject of the report of child abuse or neglect is a school employee and the child is a student in the school to which such school employee is assigned for work, the department shall immediately notify the Commissioner of Education of receipt of the report, including whether or not an investigation is being undertaken by the law enforcement agency or the department.

(b) In situations of alleged out-of-home child abuse or neglect, if the subject of the report of child abuse or neglect is a child care provider or a child care staff member as defined by subdivision (5)(h) of section 71-1912, the Division of Children and Family Services of the Department of Health and Human Services shall immediately notify the Division of Public Health of the Department of Health and Human Services of receipt of the report, including whether or not an investigation is being undertaken by the law enforcement agency or the department.

(5) The department shall, by the next working day after receiving a report of child abuse or neglect under this section, make a written report or a summary on forms provided by the department to the proper law enforcement agency in the county and enter in the tracking system of child protection cases maintained pursuant to section 28-715 all reports of child abuse or neglect opened for investigation and any action taken.

(6) The department shall, upon request, make available to the appropriate investigating law enforcement agency and the county attorney a copy of all reports relative to a case of suspected child abuse or neglect.

(7)(a) In addition to the responsibilities under subsections (1) through (6) of this section, upon the receipt of any report that a child is a reported or suspected victim of sex trafficking of a minor or labor trafficking of a minor as defined in section 28-830 and without regard to the subject of the report, the department shall:

(i) Assign the case to staff for an in-person investigation. The department shall assign a report for investigation regardless of whether or not the subject of the report is a member of the child's household or family or whether the subject is known or unknown, including cases of out-of-home child abuse and neglect;

(ii) Conduct an in-person investigation and appropriately coordinate with law enforcement agencies, the local child advocacy center, and the child abuse and neglect investigation team under section 28-729;

(iii) Use specialized screening and assessment instruments to identify whether the child is a victim of sex trafficking of a minor or labor trafficking of a minor or at high risk of becoming such a victim and determine the needs of the child and family to prevent or respond to abuse, neglect, and exploitation. On or before December 1, 2019, the department shall develop and adopt these instruments in consultation with knowledgeable organizations and individuals, including representatives of child advocacy centers, behavioral health providers, child welfare and juvenile justice service providers, law enforcement representatives, and prosecutors; and

(iv) Provide for or refer and connect the child and family to services deemed appropriate by the department in the least restrictive environment, or provide for safe and appropriate placement, medical services, mental health care, or other needs as determined by the department based upon the department's assessment of the safety, risk, and needs of the child and family to respond to or prevent abuse, neglect, and exploitation.

(b) On or before July 1, 2020, the department shall adopt rules and regulations on the process of investigation, screening, and assessment of reports of child abuse or neglect and the criteria for opening an ongoing case upon allegations of sex trafficking of a minor or labor trafficking of a minor.

(8) When a preponderance of the evidence indicates that a child is a victim of abuse or neglect as a result of being a trafficking victim as defined in section 28-830, the department shall identify the child as a victim of trafficking, regardless of whether the subject of the report is a member of the child's household or family or whether the subject is known or unknown. The child shall be included in the department's data and reporting on the numbers of child victims of abuse, neglect, and trafficking.

Source: Laws 1977, LB 38, § 152; Laws 1979, LB 505, § 4; Laws 1982, LB 522, § 5; Laws 1988, LB 463, § 45; Laws 1992, LB 1184, § 10; Laws 1996, LB 1044, § 72; Laws 1997, LB 119, § 2; Laws 1997, LB 307, § 13; Laws 2005, LB 116, § 3; Laws 2007, LB296, § 37; Laws 2014, LB853, § 5; Laws 2019, LB519, § 11; Laws 2020, LB881, § 10; Laws 2020, LB1061, § 5; Laws 2022, LB1173, § 7.
Operative date July 21, 2022.

28-713.01 Cases of child abuse or neglect; completion of investigation; notice; when; right to amend or expunge information.

(1) Upon completion of the investigation pursuant to section 28-713:

(a) In situations of alleged out-of-home child abuse or neglect, the person or persons having custody of the allegedly abused or neglected child or children shall be given written notice of the results of the investigation and any other

information the law enforcement agency or department deems necessary. Such notice and information shall be sent by first-class mail;

(b) The subject of the report of child abuse or neglect shall be given written notice of the determination of the case and whether the subject of the report of child abuse or neglect will be entered into the central registry of child protection cases maintained pursuant to section 28-718 under the criteria provided in section 28-720; and

(c) If the subject of the report of child abuse or neglect is a school employee and the child is a student in the school to which such school employee is assigned for work, the notice described in subdivision (1)(b) of this section shall also be sent to the Commissioner of Education.

(2) If the subject of the report will be entered into the central registry, the notice to the subject shall be sent by certified mail with return receipt requested or first-class mail to the last-known address of the subject of the report of child abuse or neglect and shall include:

(a) The nature of the report;

(b) The classification of the report under section 28-720;

(c) Notification of the right of the subject of the report of child abuse or neglect to request the department to amend or expunge identifying information from the report or to remove the substantiated report from the central registry in accordance with section 28-723; and

(d) If the subject of the report of child abuse or neglect is a minor child who is twelve years of age or older but younger than nineteen years of age:

(i) Notification of the mandatory expungement hearing to be held according to section 28-721, a waiver form to waive the hearing, and an explanation of the hearing process;

(ii) An explanation of the implications of being entered in the central registry as a subject;

(iii) Notification of any other procedures determined appropriate in rules and regulations adopted and promulgated by the department; and

(iv) Provision of a copy of all notice materials required to be provided to the subject under this subsection to the minor child's attorney of record, parent or guardian, and guardian ad litem, if applicable.

(3) If the subject of the report will not be entered into the central registry, the notice to the subject shall be sent by first-class mail and shall include:

(a) The nature of the report; and

(b) The classification of the report under section 28-720.

Source: Laws 1994, LB 1035, § 3; Laws 1997, LB 119, § 3; Laws 2005, LB 116, § 4; Laws 2012, LB1051, § 17; Laws 2014, LB853, § 6; Laws 2015, LB292, § 1; Laws 2020, LB881, § 11.

28-713.02 Non-court-involved cases; right of parent; caregiver authority; department; powers and duties.

(1) In all non-court-involved cases in which a child lives temporarily with a kin caregiver or a relative caregiver until reunification can be safely achieved:

(a) A parent shall have the right to have his or her child returned to such parent's home upon demand unless the child is seriously endangered by the child's surroundings and removal is necessary for the child's protection; and

(b) The kin caregiver or the relative caregiver shall have temporary parental authority to exercise powers regarding the care, custody, and property of the child except (i) the power to consent to marriage and adoption of the child and (ii) for other limitations placed on the delegation of parental authority to the kin caregiver or the relative caregiver by the parent.

(2) If a child is seriously endangered and removal is necessary, the department shall inform the parent that he or she may be referred for a court-involved case or for a petition to be filed pursuant to subdivision (3)(a) of section 43-247.

(3) The department may reimburse a kin caregiver or a relative caregiver for facilitating services for the child and shall notify such caregiver if such caregiver is eligible for the child-only Temporary Assistance for Needy Families program established in 42 U.S.C. 601 et seq., and any other public benefit for which such caregiver may be eligible, and shall assist such caregiver in applying for such program or benefit.

(4) In all non-court-involved cases, the department shall provide a written notice of rights to any parent, and, if applicable, to any kin caregiver or relative caregiver, that complies with due process and includes notice (a) of the specific factual basis of the department's involvement, (b) of the possibility that a petition under section 43-247 could be filed in the future if it is determined that the safety of the child is not or cannot be assured, and (c) that the participation of the parent, kin caregiver, or relative caregiver in receiving prevention services could be relevant evidence presented in any future proceedings.

(5) Nothing in this section shall be construed to affect the otherwise existing rights of a child or parent who is involved in a non-court-involved case.

Source: Laws 2020, LB1061, § 6.

28-713.03 Rules and regulations.

(1) The department shall adopt and promulgate rules and regulations consistent with Laws 2020, LB1061, and shall revoke any rules and regulations inconsistent with Laws 2020, LB1061, by July 1, 2021.

(2) The department shall adopt and promulgate rules and regulations regarding (a) the maximum time allowed between receiving a report of child abuse or neglect and an assigned caseworker making contact with the affected family, (b) the maximum amount of time between receipt of a report and the completion of an assessment or investigation, (c) the transfer of cases from alternative response to traditional response, (d) the criteria and process to be used by the Review, Evaluate, and Decide Team, and (e) the process used to accept and categorize reports, including the operation of the hotline established under section 28-711.

(3) The department shall adopt and promulgate rules and regulations describing the process for non-court-involved cases, the right of any child, parent, kin caregiver, or relative caregiver to an administrative appeal of any department action or inaction in a non-court-involved case, and the process for finding that a child is seriously endangered.

Source: Laws 2020, LB1061, § 7.

28-716 Person participating in an investigation or the making of a report or providing information or assistance; immune from liability; civil or criminal.

Any person participating in an investigation or the making of a report of child abuse or neglect required by section 28-711 pursuant to or participating in a judicial proceeding resulting therefrom or providing information or assistance, including a medical evaluation or consultation in connection with an investigation, a report, or a judicial proceeding pursuant to a report of child abuse or neglect, shall be immune from any liability, civil or criminal, that might otherwise be incurred or imposed, except for maliciously false statements.

Source: Laws 1977, LB 38, § 155; Laws 1994, LB 1035, § 5; Laws 2005, LB 116, § 7; Laws 2020, LB1148, § 3.

28-718 Child protection cases; central registry; name-change order; treatment; fee; waiver.

(1) There shall be a central registry of child protection cases maintained in the department containing records of all reports of child abuse or neglect opened for investigation as provided in section 28-713 and classified as either court substantiated or agency substantiated as provided in section 28-720.

(2) The department shall determine whether a name-change order received from the clerk of a district court pursuant to section 25-21,271 is for a person on the central registry of child protection cases and, if so, shall include the changed name with the former name in the registry and file or cross-reference the information under both names.

(3) The department may charge a reasonable fee in an amount established by the department in rules and regulations to recover expenses in carrying out central registry records checks. The fee shall not exceed three dollars for each request to check the records of the central registry. The department shall remit the fees to the State Treasurer for credit to the Health and Human Services Cash Fund. The department may waive the fee if the requesting party shows the fee would be an undue financial hardship. The department shall use the fees to defray costs incurred to carry out such records checks. The department may adopt and promulgate rules and regulations to carry out this section.

Source: Laws 1979, LB 505, § 6; Laws 2005, LB 116, § 9; Laws 2009, LB122, § 1; Laws 2010, LB147, § 3; Laws 2014, LB853, § 7; Laws 2017, LB225, § 3.

28-719 Child abuse and neglect records; access; when.

Upon complying with identification requirements established by regulation of the department, or when ordered by a court of competent jurisdiction, any person legally authorized by section 28-722, 28-726, or 28-727 to have access to records relating to child abuse and neglect may request and shall be immediately provided the information requested in accordance with the requirements of the Child Protection and Family Safety Act. Except for such information provided to department personnel and county attorneys, such information shall not include the name and address of the person making the report of child abuse or neglect. The names and other identifying data and the dates and the circumstances of any persons requesting or receiving information from the

central registry of child protection cases maintained pursuant to section 28-718 shall be entered in the central registry record.

Source: Laws 1979, LB 505, § 7; Laws 2005, LB 116, § 10; Laws 2014, LB853, § 8; Laws 2020, LB1148, § 4.

28-726 Information; access.

Except as provided in this section and sections 28-722 and 81-3126, no person, official, or agency shall have access to information in the tracking system of child protection cases maintained pursuant to section 28-715 or in records in the central registry of child protection cases maintained pursuant to section 28-718 unless in furtherance of purposes directly connected with the administration of the Child Protection and Family Safety Act. Such persons, officials, and agencies having access to such information shall include, but not be limited to:

(1) A law enforcement agency investigating a report of known or suspected child abuse or neglect;

(2) A county attorney in preparation of a child abuse or neglect petition or termination of parental rights petition;

(3) A physician who has before him or her a child whom he or she reasonably suspects may be abused or neglected;

(4) An agency having the legal responsibility or authorization to care for, treat, or supervise an abused or neglected child or a parent, a guardian, or other person responsible for the abused or neglected child's welfare who is the subject of the report of child abuse or neglect;

(5) Any person engaged in bona fide research or auditing. No information identifying the subjects of the report of child abuse or neglect shall be made available to the researcher or auditor;

(6) The Foster Care Review Office and the designated local foster care review board when the information relates to a child in a foster care placement as defined in section 43-1301. The information provided to the office and local board shall not include the name or identity of any person making a report of suspected child abuse or neglect;

(7) The designated protection and advocacy system authorized pursuant to the Developmental Disabilities Assistance and Bill of Rights Act of 2000, 42 U.S.C. 15001, as the act existed on January 1, 2005, and the Protection and Advocacy for Mentally Ill Individuals Act, 42 U.S.C. 10801, as the act existed on September 1, 2001, acting upon a complaint received from or on behalf of a person with developmental disabilities or mental illness;

(8) The person or persons having custody of the abused or neglected child in situations of alleged out-of-home child abuse or neglect;

(9) The department, as required or authorized by state law, federal law, federal regulation, or applicable federal program provisions and in furtherance of its programs;

(10) A probation officer administering juvenile intake services pursuant to section 29-2260.01, conducting court-ordered predispositional investigations prior to disposition, or supervising a juvenile upon disposition; and

(11) A child advocacy center pursuant to team protocols and in connection with a specific case under review or investigation by a child abuse and neglect

investigation team or a child abuse and neglect treatment team convened by a county attorney.

Source: Laws 1979, LB 505, § 14; Laws 1982, LB 522, § 9; Laws 1988, LB 463, § 47; Laws 1990, LB 1222, § 1; Laws 1992, LB 643, § 2; Laws 1994, LB 1035, § 7; Laws 1997, LB 119, § 4; Laws 2001, LB 214, § 2; Laws 2002, LB 642, § 8; Laws 2005, LB 116, § 18; Laws 2007, LB296, § 39; Laws 2008, LB782, § 3; Laws 2012, LB998, § 1; Laws 2013, LB561, § 1; Laws 2014, LB853, § 16; Laws 2020, LB1148, § 5.

28-728 Legislative findings and intent; child abuse and neglect investigation team; child advocacy center; child abuse and neglect treatment team; powers and duties.

(1) The Legislature finds that child abuse and neglect are community problems requiring a coordinated response by law enforcement, child advocacy centers, prosecutors, the Department of Health and Human Services, and other agencies or entities designed to protect children. It is the intent of the Legislature to create a child abuse and neglect investigation team in each county or contiguous group of counties and to create a child abuse and neglect treatment team in each county or contiguous group of counties.

(2) Each county or contiguous group of counties will be assigned by the Department of Health and Human Services to a child advocacy center. The purpose of a child advocacy center is to provide a child-focused location for conducting forensic interviews and medical evaluations for alleged child victims of abuse and neglect and for coordinating a multidisciplinary team response that supports the physical, emotional, and psychological needs of children who are alleged victims of abuse or neglect. Each child advocacy center shall meet accreditation criteria set forth by the National Children's Alliance. Nothing in this section shall prevent a child from receiving treatment or other services at a child advocacy center which has received or is in the process of receiving accreditation.

(3) Each county attorney or the county attorney representing a contiguous group of counties is responsible for convening the child abuse and neglect investigation team and ensuring that protocols are established and implemented. A representative of the child advocacy center assigned to the team shall assist the county attorney in facilitating case review, developing and updating protocols, and arranging training opportunities for the team. Each team must have protocols which, at a minimum, shall include procedures for:

(a) Mandatory reporting of child abuse and neglect as outlined in section 28-711 to include training to professionals on identification and reporting of abuse;

(b) Assigning roles and responsibilities between law enforcement and the Department of Health and Human Services for the initial response;

(c) Outlining how reports will be shared between law enforcement and the Department of Health and Human Services under sections 28-712.01 and 28-713;

(d) Coordinating the investigative response including, but not limited to:

(i) Defining cases that require a priority response;

(ii) Contacting the reporting party;

(iii) Arranging for a video-recorded forensic interview at a child advocacy center for children who are three to eighteen years of age and are alleged to be victims of sexual abuse or serious physical abuse or neglect, have witnessed a violent crime, are found in a drug-endangered environment, or have been recovered from a kidnapping;

(iv) Assessing the need for and arranging, when indicated, a medical evaluation of the alleged child victim;

(v) Assessing the need for and arranging, when indicated, appropriate mental health services for the alleged child victim or nonoffender caregiver;

(vi) Conducting collateral interviews with other persons with information pertinent to the investigation including other potential victims;

(vii) Collecting, processing, and preserving physical evidence including photographing the crime scene as well as any physical injuries as a result of the alleged child abuse and neglect; and

(viii) Interviewing the alleged perpetrator;

(e) Reducing the risk of harm to alleged child abuse and neglect victims;

(f) Ensuring that the child is in safe surroundings, including removing the perpetrator when necessary or arranging for temporary custody of the child when the child is seriously endangered in his or her surroundings and immediate removal appears to be necessary for the child's protection as provided in section 43-248;

(g) Sharing of case information between team members; and

(h) Outlining what cases will be reviewed by the investigation team including, but not limited to:

(i) Cases of sexual abuse, serious physical abuse and neglect, drug-endangered children, and serious or ongoing domestic violence;

(ii) Cases determined by the Department of Health and Human Services to be high or very high risk for further maltreatment; and

(iii) Any other case referred by a member of the team when a system-response issue has been identified.

(4) Each county attorney or the county attorney representing a contiguous group of counties is responsible for convening the child abuse and neglect treatment team and ensuring that protocols are established and implemented. A representative of the child advocacy center appointed to the team shall assist the county attorney in facilitating case review, developing and updating protocols, and arranging training opportunities for the team. Each team must have protocols which, at a minimum, shall include procedures for:

(a) Case coordination and assistance, including the location of services available within the area;

(b) Case staffings and the coordination, development, implementation, and monitoring of treatment or safety plans particularly in those cases in which ongoing services are provided by the Department of Health and Human Services or a contracted agency but the juvenile court is not involved;

(c) Reducing the risk of harm to child abuse and neglect victims;

(d) Assisting those child abuse and neglect victims who are abused and neglected by perpetrators who do not reside in their homes; and

(e) Working with multiproblem status offenders and delinquent youth.

(5) For purposes of sections 28-728 to 28-730, forensic interview means a video-recorded interview of an alleged child victim conducted at a child advocacy center by a professional with specialized training designed to elicit details about alleged incidents of abuse or neglect, and such interview may result in intervention in criminal or juvenile court.

Source: Laws 1992, LB 1184, § 1; Laws 1996, LB 1044, § 73; Laws 1999, LB 594, § 6; Laws 2006, LB 1113, § 24; Laws 2007, LB296, § 40; Laws 2012, LB993, § 1; Laws 2014, LB853, § 17; Laws 2020, LB1148, § 6.

28-730 Records and information; access; disclosure; limitation; review of cases; immunity; violation; penalty; video recording of forensic interviews; maintain; release or use; prohibited; exceptions.

(1) Notwithstanding any other provision of law regarding the confidentiality of records and when not prohibited by the federal Privacy Act of 1974, as amended, juvenile court records and any other pertinent information that may be in the possession of school districts, law enforcement agencies, county attorneys, the Attorney General, the Department of Health and Human Services, child advocacy centers, and other team members concerning a child whose case is being investigated or discussed by a child abuse and neglect investigation team or a child abuse and neglect treatment team shall be shared with the respective team members as part of the discussion and coordination of efforts for investigative or treatment purposes. Upon request by a team, any individual or agency with information or records concerning a particular child shall share all relevant information or records with the team as determined by the team pursuant to the appropriate team protocol. Only a team which has accepted the child's case for investigation or treatment shall be entitled to access to such information.

(2) All information acquired by a team member or other individuals pursuant to protocols developed by the team shall be confidential and shall not be disclosed except to the extent necessary to perform case consultations, to carry out a treatment plan or recommendations, or for use in a legal proceeding instituted by a county attorney or the Child Protection Division of the office of the Attorney General. Information, documents, or records otherwise available from the original sources shall not be immune from discovery or use in any civil or criminal action merely because the information, documents, or records were presented during a case consultation if the testimony sought is otherwise permissible and discoverable. Any person who presented information before the team or who is a team member shall not be prevented from testifying as to matters within the person's knowledge.

(3) Each team may review any case arising under the Nebraska Criminal Code when a child is a victim or any case arising under the Nebraska Juvenile Code. A member of a team who participates in good faith in team discussion or any person who in good faith cooperates with a team by providing information or records about a child whose case has been accepted for investigation or treatment by a team shall be immune from any civil or criminal liability. The provisions of this subsection or any other section granting or allowing the grant of immunity from liability shall not be extended to any person alleged to have committed an act of child abuse or neglect.

(4) A member of a team who publicly discloses information regarding a case consultation in a manner not consistent with sections 28-728 to 28-730 shall be guilty of a Class III misdemeanor.

(5) A child advocacy center shall maintain the video recording of all forensic interviews conducted at that child advocacy center. Such maintenance shall be in accordance with child abuse and neglect investigation team protocols established pursuant to section 28-728. The recording may be maintained digitally if adequate security measures are in place to ensure no unauthorized access.

(6) Information obtained through forensic interviews may be shared with members of child abuse and neglect investigation teams and child abuse and neglect treatment teams.

(7) A custodian of a video recording of a forensic interview shall not release or use the video recording or copies of such recording or consent, by commission or omission, to the release or use of the video recording or copies to or by any other party without a court order, notwithstanding any consent or release by the child victim or child witness, except that:

(a) The child advocacy center where a forensic interview is conducted may use the video recording for purposes of supervision and peer review required to meet national accreditation standards;

(b) Any custodian shall release or consent to the release or use of the video recording upon request to law enforcement agencies authorized to investigate, or agencies authorized to prosecute, any juvenile or criminal conduct described in the forensic interview;

(c) Any custodian shall release or consent to the release or use of the video recording upon request pursuant to a request under the Office of Inspector General of Nebraska Child Welfare Act;

(d) Any custodian shall provide secure access to view a video recording of a forensic interview upon request by a representative of the Department of Health and Human Services for purposes of classifying cases of child abuse and neglect pursuant to section 28-720 or determining the risk of harm to the child and needed social services of the family pursuant to section 28-713. Such representative shall be subject to the same release and use restrictions as any custodian under this subsection; and

(e) Any custodian shall release or consent to the release or use of the video recording pursuant to a court order issued under section 29-1912 or 29-1926.

Source: Laws 1992, LB 1184, § 3; Laws 1996, LB 1044, § 75; Laws 2006, LB 1113, § 26; Laws 2020, LB1148, § 7.

Cross References

Nebraska Juvenile Code, see section 43-2,129.
Office of Inspector General of Nebraska Child Welfare Act, see section 43-4301.

ARTICLE 8

OFFENSES RELATING TO MORALS

Section
28-802. Pandering; penalty.
28-806. Public indecency; penalty.
28-813.01. Sexually explicit conduct; visual depiction; unlawful; penalty; affirmative defense; forfeiture of property.

28-802 Pandering; penalty.

(1) A person commits pandering if such person:

(a) Entices another person to become a prostitute;

(b) Procures or harbors therein an inmate for a house of prostitution or for any place where prostitution is practiced or allowed;

(c) Inveigles, entices, persuades, encourages, or procures any person to come into or leave this state for the purpose of prostitution or debauchery; or

(d) Receives or gives or agrees to receive or give any money or other thing of value for procuring or attempting to procure any person to become a prostitute or commit an act of prostitution or come into this state or leave this state for the purpose of prostitution or debauchery.

(2) Pandering is a Class II felony.

Source: Laws 1977, LB 38, § 158; Laws 2012, LB1145, § 1; Laws 2013, LB255, § 4; Laws 2015, LB294, § 10; Laws 2017, LB289, § 7.

Cross References

Registration of sex offenders, see sections 29-4001 to 29-4014.

28-806 Public indecency; penalty.

(1) A person, eighteen years of age or over, commits public indecency if such person performs or procures, or assists any other person to perform, in a public place and where the conduct may reasonably be expected to be viewed by members of the public:

(a) An act of sexual penetration; or

(b) An exposure of the genitals of the body done with intent to affront or alarm any person; or

(c) A lewd fondling or caressing of the body of another person of the same or opposite sex.

(2) Public indecency is a Class II misdemeanor.

(3) It shall not be a violation of this section for an individual to breast-feed a child in a public place.

Source: Laws 1977, LB 38, § 162; Laws 2019, LB209, § 4.

28-813.01 Sexually explicit conduct; visual depiction; unlawful; penalty; affirmative defense; forfeiture of property.

(1) It shall be unlawful for a person nineteen years of age or older to knowingly possess any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers. Violation of this subsection is a Class IIA felony.

(2) It shall be unlawful for a person under nineteen years of age to knowingly and intentionally possess any visual depiction of sexually explicit conduct which has a child other than the defendant as one of its participants or portrayed

observers. Violation of this subsection is a Class I misdemeanor. A second or subsequent conviction under this subsection is a Class IV felony.

(3) It shall be an affirmative defense to a charge made pursuant to subsection (2) of this section that:

(a)(i) The defendant was less than nineteen years of age; (ii) the visual depiction of sexually explicit conduct portrays a child who is fifteen years of age or older; (iii) the visual depiction was knowingly and voluntarily generated by the child depicted therein; (iv) the visual depiction was knowingly and voluntarily provided by the child depicted in the visual depiction; (v) the visual depiction contains only one child; (vi) the defendant has not provided or made available the visual depiction to another person except the child depicted who originally sent the visual depiction to the defendant; and (vii) the defendant did not coerce the child in the visual depiction to either create or send the visual depiction; or

(b)(i) The defendant was less than eighteen years of age; (ii) the difference in age between the defendant and the child portrayed is less than four years; (iii) the visual depiction was knowingly and voluntarily generated by the child depicted therein; (iv) the visual depiction was knowingly and voluntarily provided by the child depicted in the visual depiction; (v) the visual depiction contains only one child; (vi) the defendant has not provided or made available the visual depiction to another person except the child depicted who originally sent the visual depiction to the defendant; and (vii) the defendant did not coerce the child in the visual depiction to either create or send the visual depiction.

(4) Any person who violates subsection (1) or (2) of this section and has previously been convicted of a violation of this section or section 28-308, 28-309, 28-310, 28-311, 28-313, 28-314, 28-315, 28-319, 28-319.01, 28-320.01, 28-833, 28-1463.03, or 28-1463.05 or subsection (1) or (2) of section 28-320 shall be guilty of a Class IC felony for each offense.

(5) In addition to the penalties provided in this section, a sentencing court may order that any money, securities, negotiable instruments, firearms, conveyances, or electronic communication devices as defined in section 28-833 or any equipment, components, peripherals, software, hardware, or accessories related to electronic communication devices be forfeited as a part of the sentence imposed if it finds by clear and convincing evidence adduced at a separate hearing in the same prosecution, conducted pursuant to section 28-1601, that any or all such property was derived from, used, or intended to be used to facilitate a violation of this section.

(6) The definitions in section 28-1463.02 shall apply to this section.

Source: Laws 1988, LB 117, § 6; Laws 2003, LB 111, § 1; Laws 2009, LB97, § 15; Laws 2015, LB605, § 45; Laws 2016, LB1106, § 7; Laws 2019, LB630, § 3.

Cross References

Registration of sex offenders, see sections 29-4001 to 29-4014.

28-814 Criminal prosecutions; trial by jury; waiver; instructions to jury; expert witness.

(1) Criminal prosecutions involving the ultimate issue of obscenity, as distinguished from the issue of probable cause, shall be tried by jury, unless the

defendant shall waive a jury trial in writing or by statement in open court entered on the record.

(2) The judge shall instruct the jury that the guidelines in determining whether a work, material, conduct, or live exhibition is obscene are: (a) The average person applying contemporary community standards would find the work taken as a whole goes substantially beyond contemporary limits of candor in description or presentation of such matters and predominantly appeals to the prurient, shameful, or morbid interest; (b) the work depicts in a patently offensive way sexual conduct specifically referred to in sections 28-807 to 28-829; (c) the work as a whole lacks serious literary, artistic, political, or scientific value; and (d) in applying these guidelines to the determination of whether or not the work, material, conduct, or live exhibition is obscene, each element of each guideline must be established beyond a reasonable doubt.

(3) In any proceeding, civil or criminal, under sections 28-807 to 28-829, where there is an issue as to whether or not the matter is obscene, either party shall have the right to introduce, in addition to all other relevant evidence, the testimony of expert witnesses on such issue as to any artistic, literary, scientific, political, or other societal value in the determination of the issue of obscenity.

Source: Laws 1977, LB 38, § 170; Laws 2018, LB193, § 49.

28-830 Human trafficking; forced labor or services; terms, defined.

For purposes of sections 28-830 and 28-831, the following definitions apply:

(1) Actor means a person who solicits, procures, or supervises the services or labor of another person;

(2) Commercial sexual activity means any sex act on account of which anything of value is given, promised to, or received by any person;

(3) Debt bondage means inducing another person to provide:

(a) Commercial sexual activity in payment toward or satisfaction of a real or purported debt; or

(b) Labor or services in payment toward or satisfaction of a real or purported debt if:

(i) The reasonable value of the labor or services is not applied toward the liquidation of the debt; or

(ii) The length of the labor or services is not limited and the nature of the labor or services is not defined;

(4) Financial harm means theft by extortion as described by section 28-513;

(5) Forced labor or services means labor or services that are performed or provided by another person and are obtained or maintained through:

(a) Inflicting or threatening to inflict serious personal injury, as defined by section 28-318, on another person;

(b) Physically restraining or threatening to physically restrain the other person;

(c) Abusing or threatening to abuse the legal process against another person to cause arrest or deportation for violation of federal immigration law;

(d) Controlling or threatening to control another person's access to a controlled substance listed in Schedule I, II or III of section 28-405;

(e) Exploiting another person's substantial functional impairment as defined in section 28-368 or substantial mental impairment as defined in section 28-369;

(f) Knowingly destroying, concealing, removing, confiscating, or possessing any actual or purported passport or other immigration document or any other actual or purported government identification document of the other person; or

(g) Causing or threatening to cause financial harm to another person, including debt bondage;

(6) Labor or services means work or activity of economic or financial value;

(7) Labor trafficking means knowingly recruiting, enticing, harboring, transporting, providing, or obtaining by any means or attempting to recruit, entice, harbor, transport, provide, or obtain by any means a person eighteen years of age or older intending or knowing that the person will be subjected to forced labor or services;

(8) Labor trafficking of a minor means knowingly recruiting, enticing, harboring, transporting, providing, or obtaining by any means or attempting to recruit, entice, harbor, transport, provide, or obtain by any means a minor intending or knowing that the minor will be subjected to forced labor or services;

(9) Maintain means, in relation to labor or services, to secure continued performance thereof, regardless of any initial agreement by the other person to perform such type of service;

(10) Minor means a person younger than eighteen years of age;

(11) Sex trafficking means knowingly recruiting, enticing, harboring, transporting, providing, soliciting, or obtaining by any means or knowingly attempting to recruit, entice, harbor, transport, provide, solicit, or obtain by any means a person eighteen years of age or older for the purpose of having such person engage without consent, as defined in section 28-318, in commercial sexual activity, sexually explicit performance, or the production of pornography or to cause or attempt to cause a person eighteen years of age or older to engage without consent, as defined in section 28-318, in commercial sexual activity, sexually explicit performance, or the production of pornography;

(12) Sex trafficking of a minor means knowingly recruiting, enticing, harboring, transporting, providing, soliciting, or obtaining by any means or knowingly attempting to recruit, entice, harbor, transport, provide, solicit, or obtain by any means a minor for the purpose of having such minor engage in commercial sexual activity, sexually explicit performance, or the production of pornography or to cause or attempt to cause a minor to engage in commercial sexual activity, sexually explicit performance, or the production of pornography;

(13) Sexually-explicit performance means a live or public play, dance, show, or other exhibition intended to arouse or gratify sexual desire or to appeal to prurient interests; and

(14) Trafficking victim means a person subjected to any act or acts prohibited by section 28-831.

Source: Laws 2006, LB 1086, § 10; Laws 2013, LB1, § 1; Laws 2013, LB255, § 6; Laws 2014, LB998, § 4; Laws 2017, LB289, § 8.

28-831 Human trafficking; labor trafficking or sex trafficking; labor trafficking of a minor or sex trafficking of a minor; prohibited acts; penalties.

(1) Any person who engages in labor trafficking of a minor or sex trafficking of a minor is guilty of a Class IB felony.

(2) Any person who engages in labor trafficking or sex trafficking is guilty of a Class II felony.

(3) Any person, other than a trafficking victim, who knowingly benefits from or participates in a venture which has, as part of the venture, an act that is in violation of this section is guilty of a Class IIA felony.

(4) It is not a defense in a prosecution under this section (a) that consent was given by the minor victim, (b) that the defendant believed that the minor victim gave consent, or (c) that the defendant believed that the minor victim was an adult.

Source: Laws 2006, LB 1086, § 11; Laws 2013, LB255, § 7; Laws 2014, LB998, § 5; Laws 2015, LB294, § 12; Laws 2017, LB289, § 9.

ARTICLE 9

OFFENSES INVOLVING INTEGRITY AND EFFECTIVENESS OF GOVERNMENT OPERATION

Section

28-902 Physical injury related to criminal offense; report by health care provider; sexual assault; duties of health care provider; law enforcement agency; duties; violation; penalty.

(1) Except as provided in subsection (2) of this section, every health care provider shall immediately report to law enforcement every case in which the health care provider is consulted for medical care for physical injury which appears to have been received in connection with, or as a result of, the commission of a criminal offense. Such report shall include the name of the victim, a brief description of the victim's physical injury, and, if ascertainable,

the victim's residential address and the location of the offense. Any other law or rule of evidence relative to confidential communications is suspended insofar as compliance with this section is concerned.

(2) When a health care provider is consulted for medical care for physical injury which reasonably appears to have been received in connection with, or as a result of, the commission of an actual or attempted sexual assault and the victim was eighteen years of age or older at the time of such actual or attempted sexual assault, the health care provider shall:

(a) Provide the victim with information detailing the reporting options available under subdivision (2)(b) of this section;

(b) Ask the victim either:

(i) To provide written consent to report such actual or attempted sexual assault as provided in subsection (1) of this section. If the victim provides such written consent, the health care provider shall make the report required by subsection (1) of this section and submit to law enforcement a sexual assault evidence collection kit if one has been obtained; or

(ii) To sign a written acknowledgment that such actual or attempted sexual assault will not be reported except as provided in subdivision (2)(c) or subsection (3) of this section, but that the health care provider will submit to law enforcement a sexual assault evidence collection kit, if one has been obtained, using an anonymous reporting protocol. A health care provider may use the anonymous reporting protocol developed by the Attorney General under section 84-218 or may use a different anonymous reporting protocol;

(c) Regardless of the victim's decision under subdivision (2)(b) of this section, if the victim is suffering from a serious bodily injury, or any bodily injury where a deadly weapon was used to inflict such injury, which appears to have been received in connection with, or as a result of, the commission of an actual or attempted sexual assault, the health care provider shall report such injury to law enforcement as provided in subsection (1) of this section; and

(d) Unless declined by the victim, refer him or her to an advocate.

(3) When a health care provider is consulted for medical care for physical injury which reasonably appears to have been received in connection with, or as a result of, the commission of an actual or attempted sexual assault, the health care provider shall, regardless of the victim's age or the victim's decision under subdivision (2)(b) of this section, provide law enforcement with a sexual assault evidence collection kit if one has been obtained.

(4) A law enforcement agency receiving a sexual assault evidence collection kit under this section shall preserve such kit for twenty years after the date of receipt or as otherwise ordered by a court.

(5) Any health care provider who knowingly fails to make any report required by subsection (1) of this section is guilty of a Class III misdemeanor. If multiple health care providers are involved in the consultation of a person in a given occurrence, this section does not require each health care provider to make a separate report, so long as one of such health care providers makes the report required by this section.

(6) For purposes of this section:

(a) Advocate has the same meaning as in section 29-4302;

(b) Anonymous reporting protocol means a reporting protocol that allows the identity of the victim, his or her personal or identifying information, and the details of the sexual assault or attempted sexual assault to remain confidential and undisclosed by the health care provider, other than submission to law enforcement of any sexual assault evidence collection kit, unless and until the victim consents to the release of such information;

(c) Health care provider means any of the following individuals who are licensed, certified, or registered to perform specified health services consistent with state law: A physician, physician assistant, nurse, or advanced practice registered nurse;

(d) Law enforcement means a law enforcement agency in the county in which the consultation occurred; and

(e) Victim means the person seeking medical care.

Source: Laws 1977, LB 38, § 187; Laws 2018, LB1132, § 1.

28-907 False reporting; penalty.

(1) A person commits the offense of false reporting if he or she:

(a) Furnishes material information he or she knows to be false to any peace officer or other official with the intent to instigate an investigation of an alleged criminal matter or to impede the investigation of an actual criminal matter;

(b) Furnishes information he or she knows to be false alleging the existence of the need for the assistance of an emergency medical service or emergency care provider or an emergency in which human life or property are in jeopardy to any hospital, emergency medical service, or other person or governmental agency;

(c) Furnishes any information, or causes such information to be furnished or conveyed by electric, electronic, telephonic, or mechanical means, knowing the same to be false concerning the need for assistance of a fire department or any personnel or equipment of such department;

(d) Furnishes any information he or she knows to be false concerning the location of any explosive in any building or other property to any person; or

(e) Furnishes material information he or she knows to be false to any governmental department or agency with the intent to instigate an investigation or to impede an ongoing investigation and which actually results in causing or impeding such investigation.

(2)(a) False reporting pursuant to subdivisions (1)(a) through (d) of this section is a Class I misdemeanor.

(b) False reporting pursuant to subdivision (1)(e) of this section is an infraction.

Source: Laws 1977, LB 38, § 192; Laws 1982, LB 347, § 12; Laws 1994, LB 907, § 1; Laws 1997, LB 138, § 36; Laws 2020, LB1002, § 4.

28-915 Perjury; subornation of perjury; penalty.

(1) A person is guilty of perjury if, in any (a) official proceeding he or she makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of a statement previously made, when the statement is material and he or she does not believe it to be true or (b) official proceeding in the State of Nebraska he or she makes a false statement in any unsworn

declaration meeting the requirements of the Uniform Unsworn Foreign Declarations Act under penalty of perjury when the statement is material and he or she does not believe it to be true. Perjury is a Class III felony.

(2) A person is guilty of subornation of perjury if he or she persuades, procures, or suborns any other person to commit perjury. Subornation of perjury is a Class III felony.

(3) A falsification shall be material, regardless of the admissibility of the statement under rules of evidence, if it could have affected the course or outcome of the proceeding. It shall not be a defense that the declarant mistakenly believed the falsification to be immaterial. Whether a falsification is material in a given factual situation shall be a question of law.

(4) It shall not be a defense to prosecution under this section that the oath or affirmation was administered or taken in an irregular manner or that the declarant was not competent to make the statement. A document purporting to be made upon oath or affirmation at any time when the actor presents it as being so verified shall be deemed to have been duly sworn or affirmed. A document purporting to meet the requirements of the Uniform Unsworn Foreign Declarations Act shall be deemed to have been made under penalty of perjury.

(5) No person shall be guilty of an offense under this section if he or she retracted the falsification in the course of the proceeding in which it was made before it became manifest that the falsification was or would be exposed and before the falsification substantially affected the proceeding.

(6) When the defendant made inconsistent statements under oath or equivalent affirmation, both having been made within the period of the statute of limitations, the prosecution may proceed by setting forth the inconsistent statements in a single count alleging in the alternative that one or the other was false and not believed by the defendant. In such case it shall not be necessary for the prosecution to prove which statement was false but only that one or the other was false and not believed by the defendant to be true.

(7) No person shall be convicted of an offense under this section when proof of falsity rests solely upon contradiction by testimony of a single person other than the defendant.

Source: Laws 1977, LB 38, § 200; Laws 1987, LB 451, § 3; Laws 2017, LB57, § 1.

Cross References

Uniform Unsworn Foreign Declarations Act, see section 49-1801.

28-915.01 False statement under oath or affirmation; penalty; applicability of section.

(1) A person who makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of such a statement previously made, or makes a false statement in an unsworn declaration that meets the requirements of the Uniform Unsworn Foreign Declarations Act, when he or she does not believe the statement to be true, is guilty of a Class I misdemeanor if the falsification:

(a) Occurs in an official proceeding; or

(b) Is intended to mislead a public servant in performing his or her official function.

(2) A person who makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of such a statement previously made, or makes a false statement in an unsworn declaration that meets the requirements of the Uniform Unsworn Foreign Declarations Act, when he or she does not believe the statement to be true, is guilty of a Class II misdemeanor if the statement is one which is required by law to be sworn or affirmed before a notary or other person authorized to administer oaths.

(3) Subsections (4) through (7) of section 28-915 shall apply to subsections (1) and (2) of this section.

(4) This section shall not apply to reports, statements, affidavits, or other documents made or filed pursuant to the Nebraska Political Accountability and Disclosure Act.

Source: Laws 1987, LB 451, § 4; Laws 2007, LB464, § 1; Laws 2013, LB79, § 1; Laws 2017, LB57, § 2.

Cross References

Nebraska Political Accountability and Disclosure Act, see section 49-1401.
Uniform Unsworn Foreign Declarations Act, see section 49-1801.

28-916 Terms, defined.

As used in sections 28-916 to 28-923, unless the context otherwise requires:

(1) Juror means any person who is a member of any petit jury or grand jury, impaneled by any court of this state or by any public servant authorized by law to impanel a jury. The word juror also includes any person who has been drawn or summoned to attend as a potential juror;

(2) Testimony means oral or written statements, documents, or any other evidence that may be offered by or through a witness in an official proceeding; and

(3) Official proceeding means a proceeding heard or which may be heard before any legislative, judicial, administrative, or other governmental agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony or deposition in connection with any such proceeding.

Source: Laws 1977, LB 38, § 201; Laws 2020, LB387, § 40.

28-916.01 Terms, defined.

As used in this section and sections 28-915, 28-915.01, 28-919, and 28-922, unless the context otherwise requires:

(1) Administrative proceeding shall mean any proceeding, other than a judicial proceeding, the outcome of which is required to be based on a record or documentation prescribed by law, or in which law or regulation is particularized in application to individuals;

(2) Benefit shall mean gain or advantage, or anything regarded by the beneficiary as gain or advantage, including benefit to any other person or entity in whose welfare he or she is interested, but not an advantage promised generally to a group or class of voters as a consequence of public measures which a candidate engages to support or oppose;

(3) Government shall include any branch, subdivision, or agency of the government of the state or any locality within it;

(4) Harm shall mean loss, disadvantage, or injury, or anything so regarded by the person affected, including loss, disadvantage, or injury to any other person or entity in whose welfare he or she is interested;

(5) Pecuniary benefit shall mean benefit in the form of money, property, commercial interests, or anything else the primary significance of which is economic gain;

(6) Public servant shall mean any officer or employee of government, including legislators and judges, and any person participating as juror, advisor, consultant, or otherwise, in performing a governmental function, but the term shall not include witnesses;

(7) Official proceeding shall mean a proceeding heard or which may be heard before any legislative, judicial, administrative, or other governmental agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony or deposition in connection with any such proceeding; and

(8) Statement shall mean any representation, but shall include a representation of opinion, belief, or other state of mind only if the representation clearly relates to state of mind apart from or in addition to any facts which are the subject of the representation.

Source: Laws 1987, LB 451, § 2; Laws 2019, LB496, § 1.

28-919 Tampering with witness or informant; jury tampering; penalty.

(1) A person commits the offense of tampering with a witness or informant if, believing that an official proceeding or investigation of a criminal or civil matter is pending or about to be instituted, he or she attempts to induce or otherwise cause a witness or informant to:

(a) Testify or inform falsely;

(b) Withhold any testimony, information, document, or thing;

(c) Elude legal process summoning him or her to testify or supply evidence; or

(d) Absent himself or herself from any proceeding or investigation to which he or she has been legally summoned.

(2) A person commits the offense of jury tampering if, with intent to influence a juror's vote, opinion, decision, or other action in a case, he or she attempts directly or indirectly to communicate with a juror other than as a part of the proceedings in the trial of the case.

(3) Tampering with witnesses or informants is a Class IV felony, except that if such offense involves a pending criminal proceeding which alleges a violation of another offense classified:

(a) As a Class II misdemeanor or a lower classification or a violation of a city or village ordinance, the offense is a Class I misdemeanor; or

(b) As a Class II felony or a higher classification, the offense is a Class II felony.

(4) Jury tampering is a Class IV felony, except that if such offense involves a pending criminal proceeding which alleges a violation of another offense

classified as a Class II felony or a higher classification, the offense is a Class II felony.

Source: Laws 1977, LB 38, § 204; Laws 1994, LB 906, § 1; Laws 2019, LB496, § 2.

28-922 Tampering with physical evidence; penalty; physical evidence, defined.

(1) A person commits the offense of tampering with physical evidence if, believing that an official proceeding is pending or about to be instituted and acting without legal right or authority, he or she:

(a) Destroys, mutilates, conceals, removes, or alters physical evidence with the intent to impair its verity or availability in the pending or prospective official proceeding; or

(b) Knowingly makes, presents, or offers any false physical evidence with intent that it be introduced in the pending or prospective official proceeding.

(2) Physical evidence, as used in this section, shall mean any article, object, document, record, or other thing of physical substance.

(3) Tampering with physical evidence is a Class IV felony, except that if such offense involves a pending criminal proceeding which alleges a violation of another offense classified:

(a) As a Class II misdemeanor or a lower classification or a violation of a city or village ordinance, the offense is a Class I misdemeanor; or

(b) As a Class II felony or a higher classification, the offense is a Class II felony.

Source: Laws 1977, LB 38, § 207; Laws 2019, LB496, § 3.

28-929 Assault on an officer, an emergency responder, certain employees, or a health care professional in the first degree; penalty.

(1) A person commits the offense of assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the first degree if:

(a) He or she intentionally or knowingly causes serious bodily injury:

(i) To a peace officer, a probation officer, a firefighter, an emergency care provider, or an employee of the Department of Correctional Services;

(ii) To an employee of the Department of Health and Human Services if the person committing the offense is committed as a dangerous sex offender under the Sex Offender Commitment Act; or

(iii) To a health care professional; and

(b) The offense is committed while such officer, firefighter, emergency care provider, or employee is engaged in the performance of his or her official duties or while the health care professional is on duty at a hospital or a health clinic.

(2) Assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the first degree shall be a Class ID felony.

Source: Laws 1982, LB 465, § 3; Laws 2005, LB 538, § 1; Laws 2009, LB63, § 7; Laws 2010, LB771, § 4; Laws 2012, LB677, § 1; Laws 2014, LB811, § 17; Laws 2020, LB1002, § 5.

Cross References

Sex Offender Commitment Act, see section 71-1201.

28-929.01 Assault on an emergency care provider or a health care professional; terms, defined.

For purposes of sections 28-929, 28-929.02, 28-930, 28-931, and 28-931.01:

(1) Emergency care provider means (a) an emergency medical responder; (b) an emergency medical technician; (c) an advanced emergency medical technician; (d) a community paramedic; (e) a critical care paramedic; or (f) a paramedic, as those persons are licensed and classified under the Emergency Medical Services Practice Act;

(2) Health care professional means a physician or other health care practitioner who is licensed, certified, or registered to perform specified health services consistent with state law who practices at a hospital or a health clinic;

(3) Health clinic has the definition found in section 71-416; and

(4) Hospital has the definition found in section 71-419.

Source: Laws 2012, LB677, § 4; Laws 2014, LB811, § 18; Laws 2020, LB1002, § 6.

Cross References

Emergency Medical Services Practice Act, see section 38-1201.

28-929.02 Assault on a health care professional; hospital and health clinic; sign required.

Every hospital and health clinic shall display at all times in a prominent place a printed sign with a minimum height of twenty inches and a minimum width of fourteen inches, with each letter to be a minimum of one-fourth inch in height, which shall read as follows:

WARNING: ASSAULTING A HEALTH CARE PROFESSIONAL WHO IS ENGAGED IN THE PERFORMANCE OF HIS OR HER OFFICIAL DUTIES, INCLUDING STRIKING A HEALTH CARE PROFESSIONAL WITH ANY BODILY FLUID, IS A SERIOUS CRIME WHICH MAY BE PUNISHABLE AS A FELONY.

Source: Laws 2012, LB677, § 5; Laws 2018, LB913, § 1.

28-930 Assault on an officer, an emergency responder, certain employees, or a health care professional in the second degree; penalty.

(1) A person commits the offense of assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the second degree if:

(a) He or she:

(i) Intentionally or knowingly causes bodily injury with a dangerous instrument:

(A) To a peace officer, a probation officer, a firefighter, an emergency care provider, or an employee of the Department of Correctional Services;

(B) To an employee of the Department of Health and Human Services if the person committing the offense is committed as a dangerous sex offender under the Sex Offender Commitment Act; or

(C) To a health care professional; or

(ii) Recklessly causes bodily injury with a dangerous instrument:

(A) To a peace officer, a probation officer, a firefighter, an emergency care provider, or an employee of the Department of Correctional Services;

(B) To an employee of the Department of Health and Human Services if the person committing the offense is committed as a dangerous sex offender under the Sex Offender Commitment Act; or

(C) To a health care professional; and

(b) The offense is committed while such officer, firefighter, emergency care provider, or employee is engaged in the performance of his or her official duties or while the health care professional is on duty at a hospital or a health clinic.

(2) Assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the second degree shall be a Class II felony.

Source: Laws 1982, LB 465, § 4; Laws 2005, LB 538, § 2; Laws 2009, LB63, § 8; Laws 2010, LB771, § 5; Laws 2012, LB677, § 2; Laws 2014, LB811, § 19; Laws 2020, LB1002, § 7.

Cross References

Sex Offender Commitment Act, see section 71-1201.

28-931 Assault on an officer, an emergency responder, certain employees, or a health care professional in the third degree; penalty.

(1) A person commits the offense of assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the third degree if:

(a) He or she intentionally, knowingly, or recklessly causes bodily injury:

(i) To a peace officer, a probation officer, a firefighter, an emergency care provider, or an employee of the Department of Correctional Services;

(ii) To an employee of the Department of Health and Human Services if the person committing the offense is committed as a dangerous sex offender under the Sex Offender Commitment Act; or

(iii) To a health care professional; and

(b) The offense is committed while such officer, firefighter, emergency care provider, or employee is engaged in the performance of his or her official duties or while the health care professional is on duty at a hospital or a health clinic.

(2) Assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the third degree shall be a Class IIIA felony.

Source: Laws 1982, LB 465, § 5; Laws 1997, LB 364, § 11; Laws 2005, LB 538, § 3; Laws 2010, LB771, § 6; Laws 2012, LB677, § 3; Laws 2014, LB811, § 20; Laws 2020, LB1002, § 8.

Cross References

Sex Offender Commitment Act, see section 71-1201.

28-931.01 Assault on an officer, an emergency responder, certain employees, or a health care professional using a motor vehicle; penalty.

(1) A person commits the offense of assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional using a motor vehicle if:

(a) By using a motor vehicle to run over or to strike an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional or by using a motor vehicle to collide with an officer's, an emergency responder's, a state correctional employee's, a Department of Health and Human Services employee's, or a health care professional's motor vehicle, he or she intentionally and knowingly causes bodily injury:

(i) To a peace officer, a probation officer, a firefighter, an emergency care provider, or an employee of the Department of Correctional Services;

(ii) To an employee of the Department of Health and Human Services if the person committing the offense is committed as a dangerous sex offender under the Sex Offender Commitment Act; or

(iii) To a health care professional; and

(b) The offense is committed while such officer, firefighter, emergency care provider, or employee is engaged in the performance of his or her official duties or while the health care professional is on duty at a hospital or a health clinic.

(2) Assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional using a motor vehicle shall be a Class IIIA felony.

Source: Laws 1995, LB 371, § 31; Laws 1997, LB 364, § 12; Laws 2005, LB 538, § 4; Laws 2010, LB771, § 7; Laws 2014, LB811, § 21; Laws 2020, LB1002, § 9.

Cross References

Sex Offender Commitment Act, see section 71-1201.

28-934 Assault with a bodily fluid against a public safety officer; penalty; order to collect evidence.

(1) Any person who knowingly and intentionally strikes any public safety officer with any bodily fluid is guilty of assault with a bodily fluid against a public safety officer.

(2) Except as provided in subsection (3) of this section, assault with a bodily fluid against a public safety officer is a Class I misdemeanor.

(3) Assault with a bodily fluid against a public safety officer is a Class IIIA felony if the person committing the offense strikes with a bodily fluid the eyes, mouth, or skin of a public safety officer and knew the source of the bodily fluid was infected with the human immunodeficiency virus, hepatitis B, or hepatitis C at the time the offense was committed.

(4) Upon a showing of probable cause by affidavit to a judge of this state that an offense as defined in subsection (1) of this section has been committed and that identifies the probable source of the bodily fluid or bodily fluids used to commit the offense, the judge shall grant an order or issue a search warrant authorizing the collection of any evidence, including any bodily fluid or medical records or the performance of any medical or scientific testing or analysis, that may assist with the determination of whether or not the person committing the offense or the person from whom the person committing the offense obtained

the bodily fluid or bodily fluids is infected with the human immunodeficiency virus, hepatitis B, or hepatitis C.

(5) As used in this section:

(a) Bodily fluid means any naturally produced secretion or waste product generated by the human body and shall include, but not be limited to, any quantity of human blood, urine, saliva, mucus, vomitus, seminal fluid, or feces; and

(b) Public safety officer includes any of the following persons who are engaged in the performance of their official duties at the time of the offense: A peace officer; a probation officer; a firefighter; an emergency care provider as defined in section 28-929.01; a health care professional as defined in section 28-929.01; an employee of a county, city, or village jail; an employee of the Department of Correctional Services; an employee of the secure youth confinement facility operated by the Department of Correctional Services, if the person committing the offense is committed to such facility; an employee of a youth rehabilitation and treatment center; or an employee of the Department of Health and Human Services if the person committing the offense is committed as a dangerous sex offender under the Sex Offender Commitment Act.

Source: Laws 2011, LB226, § 2; Laws 2014, LB811, § 22; Laws 2018, LB913, § 2; Laws 2020, LB1002, § 10; Laws 2021, LB273, § 1.

Cross References

Sex Offender Commitment Act, see section 71-1201.

28-936 Electronic communication device; possession within facility; provided to inmate; penalty; seizure; disposition.

(1) A person commits an offense if he or she intentionally introduces within a facility, or intentionally provides an inmate of a facility with, any electronic communication device. An inmate commits an offense if he or she intentionally procures, makes, or otherwise provides himself or herself with, or has in his or her possession, any electronic communication device.

(2) This section does not apply to:

(a) An attorney or an attorney's agent visiting an inmate who is a client of such attorney;

(b) The Public Counsel or any employee of his or her office;

(c) A peace officer acting under his or her authority;

(d) An emergency responder or a firefighter responding to emergency incidents within a facility; or

(e) Any person acting with the permission of the Director of Correctional Services or in accordance with rules, regulations, or policies of the Department of Correctional Services.

(3) For purposes of this section:

(a) Facility has the same meaning as in section 83-170; and

(b) Electronic communication device means any device which, in its ordinary and intended use, transmits by electronic means writings, sounds, visual images, or data of any nature to another electronic communication device. Electronic communication device does not include any device provided to an inmate by the Department of Correctional Services.

(4) A violation of this section is a Class I misdemeanor.

(5) An electronic communication device involved in a violation of this section shall be subject to seizure by the Department of Correctional Services or a peace officer, and disposition may be made in accordance with the method of disposition directed for contraband in sections 29-818 and 29-820.

Source: Laws 2019, LB686, § 3.

ARTICLE 10

OFFENSES AGAINST ANIMALS

28-1008 Terms, defined.

For purposes of sections 28-1008 to 28-1017, 28-1019, and 28-1020:

(1) Abandon means to leave any animal in one's care, whether as owner or custodian, for any length of time without making effective provision for its food, water, or other care as is reasonably necessary for the animal's health;

(2) Animal means any vertebrate member of the animal kingdom. Animal does not include an uncaptured wild creature or a livestock animal as defined in section 54-902;

(3) Cruelly mistreat means to knowingly and intentionally kill, maim, disfigure, torture, beat, kick, hit, strike in any manner, mutilate, burn, scald, or otherwise inflict harm upon any animal;

(4) Cruelly neglect means to fail to provide any animal in one's care, whether as owner or custodian, with food, water, or other care as is reasonably necessary for the animal's health;

(5) Humane killing means the destruction of an animal by a method which causes the animal a minimum of pain and suffering;

(6) Law enforcement officer means any member of the Nebraska State Patrol, any county or deputy sheriff, any member of the police force of any city or village, or any other public official authorized by a city or village to enforce state or local animal control laws, rules, regulations, or ordinances. Law enforcement officer also includes a special investigator appointed as a deputy state sheriff as authorized pursuant to section 81-201 while acting within the authority of the Director of Agriculture under the Commercial Dog and Cat Operator Inspection Act;

(7) Mutilation means intentionally causing permanent injury, disfigurement, degradation of function, incapacitation, or imperfection to an animal. Mutilation does not include conduct performed by a veterinarian licensed to practice veterinary medicine and surgery in this state or conduct that conforms to accepted veterinary practices;

(8) Owner or custodian means any person owning, keeping, possessing, harboring, or knowingly permitting an animal to remain on or about any premises owned or occupied by such person;

(9) Police animal means a horse or dog owned or controlled by the State of Nebraska or any county, city, or village for the purpose of assisting a law enforcement officer in the performance of his or her official enforcement duties;

(10) Repeated beating means intentional successive strikes to an animal by a person resulting in serious injury or illness or death to the animal;

(11) Serious injury or illness includes any injury or illness to any animal which creates a substantial risk of death or which causes broken bones, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ; and

(12) Torture means intentionally subjecting an animal to extreme pain, suffering, or agony. Torture does not include conduct performed by a veterinarian licensed to practice veterinary medicine and surgery in this state or conduct that conforms to accepted veterinary practices.

Source: Laws 1990, LB 50, § 1; Laws 1995, LB 283, § 2; Laws 2003, LB 273, § 4; Laws 2006, LB 856, § 11; Laws 2007, LB227, § 1; Laws 2008, LB764, § 2; Laws 2008, LB1055, § 2; Laws 2009, LB494, § 1; Laws 2010, LB865, § 13; Laws 2012, LB721, § 2; Laws 2015, LB360, § 2; Laws 2022, LB851, § 1.
Effective date July 21, 2022.

Cross References

Commercial Dog and Cat Operator Inspection Act, see section 54-625.

28-1009 Abandonment; cruel neglect; harassment of a police animal; penalty.

(1) A person who intentionally, knowingly, or recklessly abandons or cruelly neglects an animal is guilty of a Class I misdemeanor unless the abandonment or cruel neglect results in serious injury or illness or death of the animal, in which case it is a Class IV felony.

(2)(a) Except as provided in subdivision (b) of this subsection, a person who cruelly mistreats an animal is guilty of a Class I misdemeanor for the first offense and a Class IIIA felony for any subsequent offense.

(b) A person who cruelly mistreats an animal is guilty of a Class IIIA felony if such cruel mistreatment involves the knowing and intentional torture, repeated beating, or mutilation of the animal.

(3) A person commits harassment of a police animal if he or she knowingly and intentionally teases or harasses a police animal in order to distract, agitate, or harm the police animal for the purpose of preventing such animal from performing its legitimate official duties. Harassment of a police animal is a Class IV misdemeanor unless the harassment is the proximate cause of the death of the police animal, in which case it is a Class IIIA felony.

(4) A person convicted of a Class I misdemeanor under this section may also be subject to section 28-1019. A person convicted of a felony under this section shall also be subject to section 28-1019.

Source: Laws 1990, LB 50, § 2; Laws 1995, LB 283, § 3; Laws 2002, LB 82, § 6; Laws 2003, LB 273, § 5; Laws 2007, LB227, § 2; Laws

2013, LB329, § 3; Laws 2014, LB674, § 1; Laws 2015, LB605, § 49; Laws 2022, LB829, § 1.
Effective date July 21, 2022.

28-1009.01 Violence on a service animal; interference with a service animal; penalty.

(1) A person commits the offense of violence on a service animal when he or she (a) intentionally injures, harasses, or threatens to injure or harass or (b) attempts to intentionally injure, harass, or threaten an animal that he or she knows or has reason to believe is a service animal for a blind or visually impaired person, a deaf or hard of hearing person, or a physically limited person.

(2) A person commits the offense of interference with a service animal when he or she (a) intentionally impedes, interferes, or threatens to impede or interfere or (b) attempts to intentionally impede, interfere, or threaten to impede or interfere with an animal that he or she knows or has reason to believe is a service animal for a blind or visually impaired person, a deaf or hard of hearing person, or a physically limited person.

(3) Evidence that the defendant initiated or continued conduct toward an animal as described in subsection (1) or (2) of this section after being requested to avoid or discontinue such conduct by the blind, visually impaired, deaf or hard of hearing, or physically limited person being served or assisted by the animal shall create a rebuttable presumption that the conduct of the defendant was initiated or continued intentionally.

(4) For purposes of this section:

(a) Blind person means a person with totally impaired vision or with vision, with or without correction, which is so severely impaired that the primary means of receiving information is through other sensory input, including, but not limited to, braille, mechanical reproduction, synthesized speech, or readers;

(b) Deaf person means a person with totally impaired hearing or with hearing, with or without amplification, which is so severely impaired that the primary means of receiving spoken language is through other sensory input, including, but not limited to, lip reading, sign language, finger spelling, or reading;

(c) Hard of hearing person means a person who is unable to hear air conduction thresholds at an average of forty decibels or greater in the person's better ear;

(d) Physically limited person means a person having limited ambulatory abilities, including, but not limited to, having a permanent impairment or condition that requires the person to use a wheelchair or to walk with difficulty or insecurity to the extent that the person is insecure or exposed to danger; and

(e) Visually impaired person means a person having a visual acuity of 20/200 or less in the person's better eye with correction or having a limitation to the person's field of vision so that the widest diameter of the visual field subtends an angular distance not greater than twenty degrees.

(5) Violence on a service animal or interference with a service animal is a Class III misdemeanor.

Source: Laws 1997, LB 814, § 1; Laws 2008, LB806, § 11; Laws 2019, LB248, § 5.

28-1012 Law enforcement officer; powers and duties; immunity; seizure; court powers.

(1) A law enforcement officer who has reason to believe that an animal has been abandoned or is being cruelly neglected or cruelly mistreated may seek a warrant authorizing entry upon private property to inspect, care for, or impound the animal.

(2) It shall be the duty of a law enforcement officer who has reason to believe that an animal has been abandoned or is being cruelly neglected or cruelly mistreated to make prompt investigation of such violation. A law enforcement officer may, in lieu of making an arrest, issue a citation to the owner or custodian as prescribed in sections 29-422 to 29-429.

(3) Any equipment, device, or other property or things involved in a violation of section 28-1009 or 28-1010 shall be subject to seizure, and distribution or disposition may be made in such manner as the court may direct. Any animal involved in a violation of section 28-1009 or 28-1010 shall be subject to seizure. Distribution or disposition shall be made under section 28-1012.01 as the court may direct.

(4) Any law enforcement officer acting under this section shall not be liable for damage to property if such damage is not the result of the officer's negligence.

Source: Laws 1990, LB 50, § 4; Laws 1997, LB 551, § 3; Laws 2002, LB 82, § 7; Laws 2010, LB712, § 12; Laws 2015, LB360, § 4; Laws 2022, LB851, § 2.
Effective date July 21, 2022.

28-1012.01 Animal seized; court powers; county attorney; duties; hearing; notice; animal abandoned or cruelly neglected or mistreated; bond or other security; appeal; section, how construed.

(1) Any animal seized under a search warrant or validly seized without a warrant may be kept on the property of the owner or custodian by the law enforcement officer seizing the animal. When a criminal complaint has been filed in connection with a seized animal, the court in which such complaint was filed shall have exclusive jurisdiction for disposition of the animal and to determine any rights therein, including questions respecting the title, possession, control, and disposition thereof as provided in this section.

(2) Within ten business days after the date an animal has been seized pursuant to section 28-1006 or 28-1012, the county attorney of the county where the animal was seized shall file an application with the court having appropriate jurisdiction for a hearing to determine the disposition and the cost for the care of the animal. Notice of such hearing shall be given to the owner or custodian from whom such animal was seized and to any holder of a lien or security interest of record in such animal specifying the date, time, and place of such hearing. Such notice shall be served by personal or residential service or by certified mail. If such notice cannot be served by such methods, service may be made by publication in the county where such animal was seized. Such publication shall be made after application and order of the court. The hearing shall be held as soon as practicable and not more than ten business days after the date of application for the hearing unless otherwise determined and ordered by the court.

(3) If the court finds that probable cause exists that an animal has been abandoned or cruelly neglected or mistreated, the court may:

(a) Order immediate forfeiture of the animal to the agency that took custody of the animal and authorize appropriate disposition of the animal including adoption, donation to a suitable shelter, humane destruction, or any other manner of disposition approved by the court. The court may consider adoption alternatives through humane societies or comparable institutions and the protection of such animal's welfare. For a humane society or comparable institution to be considered as an adoption alternative under this subsection, it must first be licensed by the Department of Agriculture as having passed the inspection requirements in the Commercial Dog and Cat Operator Inspection Act and paid the fee for inspection under the act. The court may prohibit an adopting or purchasing party from selling such animal for a period not to exceed one year;

(b) Issue an order to the owner or custodian setting forth the conditions under which custody of the animal shall be returned to the owner or custodian from whom the animal was seized or to any other person claiming an interest in the animal. Such order may include any management actions deemed necessary and prudent by the court, including reducing the number of animals harbored or owned by the owner or custodian by humane destruction or forfeiture and securing necessary care, including veterinary care, sufficient for the maintenance of any remaining animals; or

(c) Order the owner or custodian from whom the animal was seized to post a bond or other security or to otherwise order payment in an amount that is sufficient to reimburse all reasonable expenses, as determined by the court, for the care of the animal including veterinary care incurred by the agency from the date of seizure and necessitated by the possession of the animal. Payments shall be for a succeeding thirty-day period with the first payment due on or before the tenth day following the hearing. Payments for each subsequent thirty-day period, if any, shall be due on or before the tenth day of such period. The bond or security shall be placed with, or payments ordered under this subdivision shall be paid to, the agency that took custody of the animal. The agency shall provide an accounting of expenses to the court when the animal is no longer in the custody of the agency or upon request by the court. The county attorney of the county where the animal was seized may apply to the court for a subsequent hearing under this section at any time. The hearing shall be held as soon as practicable and not more than ten business days after the date of application for the hearing unless otherwise determined and ordered by the court. When all expenses covered by the bond or security are exhausted and subsequent bond or security has not been posted, or if a person becomes delinquent in his or her payments for the expenses of the animal, the animal shall be forfeited to the agency.

(4) If custody of an animal is returned to the owner or custodian prior to seizure, any proceeds of a bond or security or any payment or portion of payment ordered under this section not used for the care of the animal during the time the animal was held by the agency shall be returned to the owner or custodian.

(5) Nothing in this section shall prevent the humane destruction of a seized animal at any time as determined necessary by a licensed veterinarian or as authorized by court order.

(6) An appeal may be filed within ten days after a hearing held under this section. Any person filing an appeal shall post a bond or security sufficient to pay reasonable costs of care of the animal for thirty days. Such bond or surety shall be required for each succeeding thirty-day period until the appeal is final.

(7) If the owner or custodian from whom the animal was seized is found not guilty in an associated criminal proceeding, all funds paid for the expenses of the animal remaining after the actual expenses incurred by the agency have been paid shall be returned to the owner or custodian.

(8) This section shall not preempt any ordinance of a city of the metropolitan or primary class.

Source: Laws 2015, LB360, § 5; Laws 2022, LB829, § 2.
Effective date July 21, 2022.

Cross References

Commercial Dog and Cat Operator Inspection Act, see section 54-625.

28-1019 Conviction; order prohibiting ownership, possession, or residing with animal; duration; violation; penalty; seizure of animal.

(1)(a) If a person is convicted of a felony under section 28-1005 or 28-1009, the sentencing court shall order such person not to own, possess, or reside with any animal for at least five years after the date of conviction, but such time restriction shall not exceed fifteen years. Any person violating such court order shall be guilty of a Class I misdemeanor.

(b) If a person is convicted of a Class I misdemeanor under section 28-1005.01 or 28-1009 or a Class III misdemeanor under section 28-1010, the sentencing court may order such person not to own, possess, or reside with any animal after the date of conviction, but such time restriction, if any, shall not exceed five years. Any person violating such court order shall be guilty of a Class IV misdemeanor.

(c) Any animal involved in a violation of a court order under subdivision (a) or (b) of this subsection shall be subject to seizure by law enforcement. Distribution or disposition shall be made under section 28-1012.01.

(2) This section shall not apply to any person convicted under section 28-1005, 28-1005.01, or 28-1009 if a licensed physician confirms in writing that ownership or possession of or residence with an animal is essential to the health of such person.

Source: Laws 2008, LB1055, § 3; Laws 2010, LB252, § 5; Laws 2010, LB712, § 13; Laws 2014, LB674, § 2; Laws 2015, LB360, § 10; Laws 2022, LB829, § 3.
Effective date July 21, 2022.

ARTICLE 11
GAMBLING

Section

28-1101 Terms, defined.

As used in this article, unless the context otherwise requires:

(1) A person advances gambling activity if, acting other than as a player, he or she engages in conduct that materially aids any form of gambling activity. Conduct of this nature includes, but shall not be limited to, conduct directed toward (a) the creation or establishment of the particular game, contest, scheme, device, or activity involved, (b) the acquisition or maintenance of premises, paraphernalia, equipment, or apparatus therefor, or (c) engaging in the procurement, sale, or offering for sale within this state of any chance, share, or interest in a lottery of another state or government whether or not such chance, share, or interest is an actual lottery ticket, receipt, contingent promise to pay, order to purchase, or other record of such interest except as provided in the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, the State Lottery Act, the Nebraska Racetrack Gaming Act, or section 9-701;

(2) Bookmaking shall mean advancing gambling activity by unlawfully accepting bets from members of the public as a business upon the outcome of future contingent events;

(3) A person profits from gambling activity if, other than as a player, he or she accepts or receives money or other property pursuant to an agreement or understanding with any person whereby he or she participates or is to participate in the proceeds of gambling activity;

(4) A person engages in gambling if he or she bets something of value upon the outcome of a future event, which outcome is determined by an element of chance, or upon the outcome of a game, contest, or election, or conducts or participates in any bingo, lottery by the sale of pickle cards, lottery, raffle, gift enterprise, or other scheme not authorized or conducted in accordance with the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, the State Lottery Act, the Nebraska Racetrack Gaming Act, or section 9-701, but a person does not engage in gambling by:

(a) Entering into a lawful business transaction;

(b) Playing an amusement device or a coin-operated mechanical game which confers as a prize an immediate, unrecorded right of replay not exchangeable for something of value;

(c) Conducting or participating in a prize contest; or

(d) Conducting or participating in any bingo, lottery by the sale of pickle cards, lottery, raffle, game of chance, or gift enterprise conducted in accordance with the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, the State Lottery Act, the Nebraska Racetrack Gaming Act, or section 9-701;

(5) Gambling device shall mean any device, machine, paraphernalia, writing, paper, instrument, article, or equipment that is used or usable for engaging in gambling, whether that activity consists of gambling between persons or gambling by a person involving the playing of a machine. Gambling device shall also include any mechanical gaming device, computer gaming device, electronic gaming device, or video gaming device which has the capability of awarding

something of value, free games redeemable for something of value, instant-win tickets which also provide the possibility of participating in a subsequent drawing or event, or tickets or stubs redeemable for something of value, except as authorized in the furtherance of parimutuel wagering. Supplies, equipment, cards, tickets, stubs, and other items used in any bingo, lottery by the sale of pickle cards, other lottery, raffle, game of chance, or gift enterprise conducted in accordance with the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, the State Lottery Act, the Nebraska Racetrack Gaming Act, or section 9-701 are not gambling devices within this definition;

(6) Something of value shall mean any money or property, any token, object, or article exchangeable for money or property, or any form of credit or promise directly or indirectly contemplating transfer of money or property or of any interest therein, or involving extension of a service or entertainment; and

(7) Prize contest shall mean any competition in which one or more competitors are awarded something of value as a consequence of winning or achieving a certain result in the competition and (a) the value of such awards made to competitors participating in the contest does not depend upon the number of participants in the contest or upon the amount of consideration, if any, paid for the opportunity to participate in the contest or upon chance and (b) the value or identity of such awards to be made to competitors is published before the competition begins.

Source: Laws 1977, LB 38, § 217; Laws 1978, LB 900, § 1; Laws 1979, LB 152, § 1; Laws 1983, LB 259, § 36; Laws 1983, LB 374, § 1; Laws 1984, LB 744, § 1; Laws 1984, LB 949, § 72; Laws 1986, LB 1027, § 192; Laws 1991, LB 849, § 64; Laws 1993, LB 138, § 66; Laws 1995, LB 343, § 6; Initiative Law 2020, No. 430, § 8.

Cross References

Constitutional provisions, see Article III, section 24, Constitution of Nebraska.
Nebraska Bingo Act, see section 9-201.
Nebraska County and City Lottery Act, see section 9-601.
Nebraska Lottery and Raffle Act, see section 9-401.
Nebraska Pickle Card Lottery Act, see section 9-301.
Nebraska Racetrack Gaming Act, see section 9-1101.
Nebraska Small Lottery and Raffle Act, see section 9-501.
State Lottery Act, see section 9-801.

28-1105 Possession of gambling records; penalty.

(1) A person commits the offense of possession of gambling records if, other than as a player, he or she knowingly possesses any writing, paper, instrument, or article which is:

(a) Of a kind commonly used in the operation or promotion of a bookmaking scheme or enterprise and such writing, paper, instrument, or article has been used for the purpose of recording, memorializing, or registering any bet, wager, or other gambling information; or

(b) Of a kind commonly used in the operation, promotion, or playing of a lottery or mutuel scheme or enterprise or other scheme not conducted pursuant to the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, the State Lottery Act, the Nebraska Racetrack Gaming Act, or section 9-701 and such writing, paper, instrument, or

article has been used for the purpose of recording, memorializing, or registering any bet, wager, or other gambling information not permitted by such acts or section.

(2) Possession of gambling records in the first degree is a Class II misdemeanor.

Source: Laws 1977, LB 38, § 221; Laws 1979, LB 152, § 5; Laws 1983, LB 259, § 37; Laws 1985, LB 408, § 39; Laws 1986, LB 1027, § 193; Laws 1991, LB 849, § 65; Laws 1993, LB 138, § 67; Initiative Law 2020, No. 430, § 9.

Cross References

Nebraska Bingo Act, see section 9-201.
Nebraska County and City Lottery Act, see section 9-601.
Nebraska Lottery and Raffle Act, see section 9-401.
Nebraska Pickle Card Lottery Act, see section 9-301.
Nebraska Racetrack Gaming Act, see section 9-1101.
Nebraska Small Lottery and Raffle Act, see section 9-501.
State Lottery Act, see section 9-801.

28-1107 Possession of a gambling device; penalty; affirmative defense.

(1) A person commits the offense of possession of a gambling device if he or she manufactures, sells, transports, places, possesses, or conducts or negotiates any transaction affecting or designed to affect ownership, custody, or use of any gambling device, knowing that it shall be used in the advancement of unlawful gambling activity.

(2) The owner or operator of a retail establishment who is not a manufacturer, distributor, or seller of mechanical amusement devices as defined under the Mechanical Amusement Device Tax Act, shall have an affirmative defense to possession of a gambling device described in subsection (1) of this section if the device bears an unexpired mechanical amusement device decal as required by such act. However, such affirmative defense may be overcome if the owner or operator had actual knowledge that operation of the device constituted unlawful gambling activity at any time such device was operated on the premises of the retail establishment.

(3) Notwithstanding any other provisions of this section, any mechanical game or device classified by the federal government as an illegal gambling device and requiring a federal Gambling Device Tax Stamp as required by the Internal Revenue Service in its administration of 26 U.S.C. 4461 and 4462, amended July 1, 1965, by Public Law 89-44, is hereby declared to be illegal.

(4) Possession of a gambling device is a Class II misdemeanor.

Source: Laws 1977, LB 38, § 223; Laws 1978, LB 900, § 2; Laws 1979, LB 152, § 7; Laws 1987, LB 523, § 4; Laws 2019, LB538, § 1.

Cross References

Mechanical Amusement Device Tax Act, see section 77-3011.

28-1113 Article, how construed.

Nothing in this article shall be construed to:

(1) Apply to or prohibit wagering on the results of horseraces by the parimutuel or certificate method when conducted by licensees within the racetrack enclosure at licensed horserace meetings;

(2) Prohibit or punish the conducting or participating in any bingo, lottery by the sale of pickle cards, lottery, raffle, or gift enterprise when conducted in accordance with the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, the State Lottery Act, or section 9-701; or

(3) Apply to or prohibit the operation of games of chance, whether using a gambling device or otherwise, by authorized gaming operators within licensed racetrack enclosures or the participation or playing of such games of chance, whether participated in or played using a gambling device or otherwise, by individuals twenty-one years of age or older within licensed racetrack enclosures as provided in the Nebraska Racetrack Gaming Act.

Source: Laws 1977, LB 38, § 229; Laws 1979, LB 164, § 19; Laws 1983, LB 259, § 38; Laws 1984, LB 949, § 73; Laws 1986, LB 1027, § 195; Laws 1991, LB 849, § 66; Laws 1993, LB 138, § 68; Initiative Law 2020, No. 430, § 10.

Cross References

Nebraska Bingo Act, see section 9-201.
Nebraska County and City Lottery Act, see section 9-601.
Nebraska Lottery and Raffle Act, see section 9-401.
Nebraska Pickle Card Lottery Act, see section 9-301.
Nebraska Racetrack Gaming Act, see section 9-1101.
Nebraska Small Lottery and Raffle Act, see section 9-501.
State Lottery Act, see section 9-801.

ARTICLE 12

OFFENSES AGAINST PUBLIC HEALTH AND SAFETY

Section

28-1201 Terms, defined.

For purposes of sections 28-1201 to 28-1212.04, unless the context otherwise requires:

(1) Firearm means any weapon which is designed to or may readily be converted to expel any projectile by the action of an explosive or frame or receiver of any such weapon;

(2) Fugitive from justice means any person who has fled or is fleeing from any peace officer to avoid prosecution or incarceration for a felony;

(3) Handgun means any firearm with a barrel less than sixteen inches in length or any firearm designed to be held and fired by the use of a single hand;

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

(5) Knife means:

(a) Any dagger, dirk, knife, or stiletto with a blade over three and one-half inches in length and which, in the manner it is used or intended to be used, is capable of producing death or serious bodily injury; or

(b) Any other dangerous instrument which is capable of inflicting cutting, stabbing, or tearing wounds and which, in the manner it is used or intended to be used, is capable of producing death or serious bodily injury;

(6) Knuckles and brass or iron knuckles means any instrument that consists of finger rings or guards made of a hard substance and that is designed, made, or adapted for the purpose of inflicting serious bodily injury or death by striking a person with a fist enclosed in the knuckles;

(7) Machine gun means any firearm, whatever its size and usual designation, that shoots automatically more than one shot, without manual reloading, by a single function of the trigger;

(8) School means a public, private, denominational, or parochial elementary, vocational, or secondary school, a private postsecondary career school as defined in section 85-1603, a community college, a public or private college, a junior college, or a university;

(9) Short rifle means a rifle having a barrel less than sixteen inches long or an overall length of less than twenty-six inches; and

(10) Short shotgun means a shotgun having a barrel or barrels less than eighteen inches long or an overall length of less than twenty-six inches.

Source: Laws 1977, LB 38, § 233; Laws 1994, LB 988, § 2; Laws 2009, LB63, § 9; Laws 2009, LB430, § 6; Laws 2017, LB558, § 1; Laws 2018, LB990, § 2.

28-1202 Carrying concealed weapon; penalty; affirmative defense; applicability of provisions.

(1)(a) Except as otherwise provided in this section, any person who carries a weapon or weapons concealed on or about his or her person, such as a handgun, a knife, brass or iron knuckles, or any other deadly weapon, commits the offense of carrying a concealed weapon.

(b) It is an affirmative defense that the defendant was engaged in any lawful business, calling, or employment at the time he or she was carrying any weapon or weapons and the circumstances in which such person was placed at the time were such as to justify a prudent person in carrying the weapon or weapons for the defense of his or her person, property, or family.

(2) This section does not apply to a person who is the holder of a valid permit issued under the Concealed Handgun Permit Act if the concealed weapon the defendant is carrying is a handgun.

(3)(a) This section does not apply to storing or transporting a firearm in a motor vehicle for any lawful purpose or to transporting a firearm directly to or from a motor vehicle to or from any place where such firearm may be lawfully possessed or carried by such person, if such firearm is unloaded, kept separate from ammunition, and enclosed in a case. This subsection shall not apply to any person prohibited by state or federal law from possessing, carrying, transporting, shipping, or receiving a firearm.

(b) For purposes of this subsection, case means (i) a hard-sided or soft-sided box, container, or receptacle intended or designed for the primary purpose of storing or transporting a firearm or (ii) the firearm manufacturer's original packaging.

(4) Carrying a concealed weapon is a Class I misdemeanor.

(5) In the case of a second or subsequent conviction under this section, carrying a concealed weapon is a Class IV felony.

Source: Laws 1977, LB 38, § 234; Laws 1984, LB 1095, § 1; Laws 2006, LB 454, § 22; Laws 2009, LB63, § 10; Laws 2021, LB236, § 3.

Cross References

Concealed Handgun Permit Act, see section 69-2427.

28-1204.04 Unlawful possession of a firearm at a school; penalty; exceptions; confiscation of certain firearms; disposition.

(1) Any person who possesses a firearm in a school, on school grounds, in a school-owned vehicle, or at a school-sponsored activity or athletic event is guilty of the offense of unlawful possession of a firearm at a school. Unlawful possession of a firearm at a school is a Class IV felony. This subsection shall not apply to (a) the issuance of firearms to or possession by members of the armed forces of the United States, active or reserve, National Guard of this state, or Reserve Officers Training Corps or peace officers or other duly authorized law enforcement officers when on duty or training, (b) the possession of firearms by peace officers or other duly authorized law enforcement officers when contracted by a school to provide school security or school event control services, (c) firearms which may lawfully be possessed by the person receiving instruction, for instruction under the immediate supervision of an adult instructor, (d) firearms which may lawfully be possessed by a member of a college or university firearm team, to include rifle, pistol, and shotgun disciplines, within the scope of such person's duties as a member of the team, (e) firearms which may lawfully be possessed by a person employed by a college or university in this state as part of an agriculture or a natural resources program of such college or university, within the scope of such person's employment, (f) firearms contained within a private vehicle operated by a nonstudent adult which are not loaded and (i) are encased or (ii) are in a locked firearm rack that is on a motor vehicle, (g) firearms which may lawfully be possessed by a person for the purpose of using them, with the approval of the school, in a historical reenactment, in a hunter education program, or as part of an honor guard, or (h) a handgun carried as a concealed handgun by a valid holder of a permit issued under the Concealed Handgun Permit Act in a vehicle or on his or her person while riding in or on a vehicle into or onto any parking area, which is open to the public and used by a school if, prior to exiting the vehicle, the handgun is locked inside the glove box, trunk, or other compartment of the vehicle, a storage box securely attached to the vehicle, or, if the vehicle is a motorcycle, other than an autocycle, a hardened compartment securely attached to the motorcycle while the vehicle is in or on such parking area, except as prohibited by federal law. For purposes of this subsection, encased means enclosed in a case that is expressly made for the purpose of containing a firearm and that is completely zipped, snapped, buckled, tied, or otherwise fastened with no part of the firearm exposed.

(2) Any firearm possessed in violation of subsection (1) of this section shall be confiscated without warrant by a peace officer or may be confiscated without warrant by school administrative or teaching personnel. Any firearm confiscated by school administrative or teaching personnel shall be delivered to a peace officer as soon as practicable.

(3) Any firearm confiscated by or given to a peace officer pursuant to subsection (2) of this section shall be declared a common nuisance and shall be held by the peace officer prior to his or her delivery of the firearm to the property division of the law enforcement agency which employs the peace officer. The property division of such law enforcement agency shall hold such firearm for as long as the firearm is needed as evidence. After the firearm is no longer needed as evidence, it shall be destroyed in such manner as the court may direct.

(4) Whenever a firearm is confiscated and held pursuant to this section or section 28-1204.02, the peace officer who received such firearm shall cause to be filed within ten days after the confiscation a petition for destruction of such firearm. The petition shall be filed in the district court of the county in which the confiscation is made. The petition shall describe the firearm held, state the name of the owner, if known, allege the essential elements of the violation which caused the confiscation, and conclude with a prayer for disposition and destruction in such manner as the court may direct. At any time after the confiscation of the firearm and prior to court disposition, the owner of the firearm seized may petition the district court of the county in which the confiscation was made for possession of the firearm. The court shall release the firearm to such owner only if the claim of ownership can reasonably be shown to be true and either (a) the owner of the firearm can show that the firearm was taken from his or her property or place of business unlawfully or without the knowledge and consent of the owner and that such property or place of business is different from that of the person from whom the firearm was confiscated or (b) the owner of the firearm is acquitted of the charge of unlawful possession of a handgun in violation of section 28-1204, unlawful transfer of a firearm to a juvenile, or unlawful possession of a firearm at a school. No firearm having significant antique value or historical significance as determined by the Nebraska State Historical Society shall be destroyed. If a firearm has significant antique value or historical significance, it shall be sold at auction and the proceeds shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 1994, LB 988, § 6; Laws 2002, LB 82, § 8; Laws 2009, LB63, § 13; Laws 2009, LB430, § 8; Laws 2011, LB512, § 1; Laws 2014, LB390, § 1; Laws 2018, LB321, § 1; Laws 2018, LB909, § 1.

Cross References

Concealed Handgun Permit Act, see section 69-2427.

28-1204.05 Unlawful possession of a firearm by a prohibited juvenile offender; penalty; exceptions; reinstatement of right to possess firearm; procedure; court; considerations; order; how construed.

(1) Except as provided in subsections (3) and (4) of this section, a person under the age of twenty-five years who knowingly possesses a firearm commits

the offense of possession of a firearm by a prohibited juvenile offender if he or she has previously been adjudicated an offender in juvenile court for an act which would constitute a felony or an act which would constitute a misdemeanor or crime of domestic violence.

(2) Possession of a firearm by a prohibited juvenile offender is a Class IV felony for a first offense and a Class IIIA felony for a second or subsequent offense.

(3) Subsection (1) of this section does not apply to the possession of firearms by members of the armed forces of the United States, active or reserve, National Guard of this state, or Reserve Officers Training Corps or peace officers or other duly authorized law enforcement officers when on duty or training.

(4)(a) Prior to reaching the age of twenty-five years, a person subject to the prohibition of subsection (1) of this section may file a petition for exemption from such prohibition and thereby have his or her right to possess a firearm reinstated. A petitioner who is younger than nineteen years of age shall petition the juvenile court in which he or she was adjudicated for the underlying offense. A petitioner who is nineteen years of age or older shall petition the district court in the county in which he or she resides.

(b) In determining whether to grant a petition filed under subdivision (4)(a) of this section, the court shall consider:

(i) The behavior of the person after the underlying adjudication;

(ii) The likelihood that the person will engage in further criminal activity; and

(iii) Any other information the court considers relevant.

(c) The court may grant a petition filed under subdivision (4)(a) of this section and issue an order exempting the person from the prohibition of subsection (1) of this section when in the opinion of the court the order will be in the best interests of the person and consistent with the public welfare.

(5) The fact that a person subject to the prohibition under subsection (1) of this section has reached the age of twenty-five or that a court has granted a petition under subdivision (4)(a) of this section shall not be construed to mean that such adjudication has been set aside. Nothing in this section shall be construed to authorize the setting aside of such an adjudication or conviction except as otherwise provided by law.

(6) For purposes of this section, misdemeanor crime of domestic violence has the same meaning as in section 28-1206.

Source: Laws 2018, LB990, § 3.

28-1206 Possession of a deadly weapon by a prohibited person; penalty.

(1) A person commits the offense of possession of a deadly weapon by a prohibited person if he or she:

(a) Possesses a firearm, a knife, or brass or iron knuckles and he or she:

(i) Has previously been convicted of a felony;

(ii) Is a fugitive from justice;

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

(iv) Is on probation pursuant to a deferred judgment for a felony under section 29-2292; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Archery equipment means:

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

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

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

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

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

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

Source: Laws 1977, LB 38, § 238; Laws 1978, LB 748, § 19; Laws 1995, LB 371, § 9; Laws 2009, LB63, § 15; Laws 2010, LB771, § 10; Laws 2017, LB289, § 10; Laws 2017, LB478, § 1; Laws 2018, LB848, § 1; Laws 2019, LB686, § 4.

28-1212.03 Stolen firearm; prohibited acts; violation; penalty.

(1) Any person who possesses, receives, retains, or disposes of a stolen firearm knowing that it has been or believing that it has been stolen shall be guilty of a Class IIA felony unless the firearm is possessed, received, retained, or disposed of with intent to restore it to the owner.

(2) Any person who possesses, receives, retains, or disposes of a stolen firearm when such person should have known, or had reasonable cause to believe, that such firearm has been stolen shall be guilty of a Class IIA felony unless the firearm is possessed, received, retained, or disposed of with intent to restore it to the owner.

Source: Laws 1991, LB 477, § 1; Laws 2009, LB63, § 19; Laws 2015, LB605, § 53; Laws 2020, LB582, § 1.

28-1241 Fireworks; definitions.

As used in sections 28-1239.01 and 28-1241 to 28-1252, unless the context otherwise requires:

(1) 1.3G explosives, also known as display fireworks or Class B fireworks or by United Nations shipping classification number UN0335, means any items classified as 1.3G explosives by the United States Department of Transportation in Title 49 of the Code of Federal Regulations, as such regulations existed on January 1, 2021;

(2) 1.4G explosives, also known as consumer fireworks or Class C fireworks or by United Nations shipping classification number UN0336, means any items classified as 1.4G explosives by the United States Department of Transportation in Title 49 of the Code of Federal Regulations, as such regulations existed on January 1, 2021;

(3) Distributor means any person engaged in the business of making sales of fireworks at wholesale in this state to any person engaged in the business of making sales of fireworks either as a jobber or as a retailer or both;

(4) Jobber means any person engaged in the business of making sales of fireworks at wholesale to any other person engaged in the business of making sales at retail;

(5) Retailer means any person engaged in the business of making sales of fireworks at retail to consumers or to persons other than distributors or jobbers;

(6) Sale includes barter, exchange, or gift or offer therefor and each such transaction made by any person, whether as principal, proprietor, agent, servant, or employee;

(7) Fireworks means any composition or device designed for the purpose of producing a visible or audible effect by combustion, deflagration, or detonation and which meets the definition of consumer or special fireworks set forth by the United States Department of Transportation in Title 49 of the Code of Federal Regulations;

(8)(a) Consumer fireworks means any device that (i) meets the requirements set forth in 16 C.F.R. parts 1500 and 1507, as such regulations existed on January 1, 2021, and (ii) is tested and approved by a nationally recognized testing facility or by the State Fire Marshal.

(b) 1.4G explosives shall be considered consumer fireworks.

(c) Consumer fireworks does not include:

(i) Wire sparklers; or

(ii) Fireworks that have been tested by the State Fire Marshal as a response to complaints and have been deemed to be unsafe; and

(9) Display fireworks means those materials manufactured exclusively for use in public exhibitions or displays of fireworks designed to produce visible or audible effects by combustion, deflagration, or detonation. Display fireworks includes, but is not limited to, firecrackers containing more than one hundred thirty milligrams of explosive composition, aerial shells containing more than forty grams of explosive composition, and other display pieces which exceed the limits for classification as consumer fireworks. 1.3G explosives shall be considered display fireworks. Display fireworks shall be considered an explosive as defined in section 28-1213 and shall be subject to sections 28-1213 to 28-1239, except that display fireworks may be purchased, received, and discharged by the holder of an approved display permit issued pursuant to section 28-1239.01.

Source: Laws 1977, LB 38, § 273; Laws 1986, LB 969, § 2; Laws 1988, LB 893, § 3; Laws 2006, LB 1007, § 2; Laws 2010, LB880, § 3; Laws 2021, LB152, § 1.

28-1243 Fireworks item deemed unsafe; quarantined; testing; test results; effect.

(1) If the State Fire Marshal deems any fireworks item to be unsafe pursuant to subdivision (8)(c)(ii) of section 28-1241, such fireworks item shall be quarantined from other fireworks. Any licensed distributor, jobber, or retailer may request, at the distributor's, jobber's, or retailer's expense, that such fireworks item be tested by an independent, nationally recognized testing facility to determine if such fireworks item meets the requirements set forth by the United States Consumer Product Safety Commission for 1.4G explosives. A copy of the results of all testing done pursuant to this section shall be provided to the State Fire Marshal.

(2) If such fireworks item is in compliance with such requirements and otherwise permitted under section 28-1241, such fireworks item that was determined to be unsafe pursuant to subdivision (8)(c)(ii) of section 28-1241 shall be deemed a consumer firework and be permitted for retail sale or distribution.

(3) If such fireworks item is in compliance with such requirements but is otherwise not deemed consumer fireworks, such fireworks item shall not be sold at retail or distributed to retailers for sale in this state, but a distributor, jobber, or retailer may sell such fireworks item to another distributor or retailer in a state that permits the sale of such fireworks item.

(4) If such fireworks item is not in compliance with such requirements, then the distributor, jobber, or retailer shall destroy such fireworks item under the supervision of the State Fire Marshal. If such fireworks item is not destroyed under the supervision of the State Fire Marshal, notarized documentation shall be provided to the State Fire Marshal detailing and confirming the fireworks item's destruction.

Source: Laws 2010, LB880, § 4; Laws 2021, LB152, § 2.

28-1253 Liquefied petroleum gas; prohibited acts; violation; penalty; enforcement.

(1) The distribution, sale, or use of refrigerants containing liquefied petroleum gas for use in mobile air conditioning systems is prohibited.

(2) For purposes of this section:

(a) Liquefied petroleum gas means material composed predominantly of any of the following hydrocarbons or mixtures of such hydrocarbons: Propane, propylene, butanes (normal butane or isobutane), and butylenes;

(b) Mobile air conditioning system means mechanical vapor compression equipment which is used to cool the driver or passenger compartment of any motor vehicle; and

(c) Motor vehicle has the same meaning as in section 60-638.

(3) Any person violating this section is guilty of a Class IV misdemeanor.

(4) The State Fire Marshal may adopt and promulgate rules and regulations for enforcement of this section and, together with peace officers of the state and its political subdivisions, is charged with enforcement of this section.

Source: Laws 1999, LB 163, § 2; Laws 2021, LB37, § 1.

ARTICLE 13
MISCELLANEOUS OFFENSES

(c) TELEPHONE COMMUNICATIONS

(r) UNLAWFUL MEMBERSHIP RECRUITMENT

(s) PUBLIC PROTECTION ACT

(c) TELEPHONE COMMUNICATIONS

28-1310 Intimidation by telephone call or electronic communication; penalty.

(1) A person commits the offense of intimidation by telephone call or electronic communication if, with intent to intimidate, threaten, or harass an individual, the person telephones such individual or transmits an electronic communication directly to such individual, whether or not conversation or an electronic response ensues, and the person:

(a) Uses obscene language or suggests any obscene act;

(b) Threatens to inflict physical or mental injury to such individual or any other person or physical injury to the property of such individual or any other person; or

(c) Attempts to extort property, money, or other thing of value from such individual or any other person.

(2) The offense shall be deemed to have been committed either at the place where the call or electronic communication was initiated or where it was received.

(3) Intimidation by telephone call or electronic communication is a Class III misdemeanor.

(4) For purposes of this section, electronic communication means any writing, sound, visual image, or data of any nature that is received or transmitted by an electronic communication device as defined in section 28-833.

Source: Laws 1977, LB 38, § 294; Laws 2002, LB 1105, § 433; Laws 2018, LB773, § 3; Laws 2019, LB630, § 4.

(r) UNLAWFUL MEMBERSHIP RECRUITMENT

28-1351 Unlawful membership recruitment into an organization or association; penalty.

(1) A person commits the offense of unlawful membership recruitment into an organization or association when he or she knowingly and intentionally coerces, intimidates, threatens, or inflicts bodily harm upon another person in order to entice that other person to join or prevent that other person from leaving any organization, group, enterprise, or association whose members, individually or collectively, engage in or have engaged in any of the following

criminal acts for the benefit of, at the direction of, or on behalf of the organization, group, enterprise, or association or any of its members:

(a) Robbery under section 28-324;

(b) Arson in the first, second, or third degree under section 28-502, 28-503, or 28-504, respectively;

(c) Burglary under section 28-507;

(d) Murder in the first degree, murder in the second degree, or manslaughter under section 28-303, 28-304, or 28-305, respectively;

(e) Violations of the Uniform Controlled Substances Act that involve possession with intent to deliver, distribution, delivery, or manufacture of a controlled substance;

(f) Unlawful use, possession, or discharge of a firearm or other deadly weapon under sections 28-1201 to 28-1212.04;

(g) Assault in the first degree or assault in the second degree under section 28-308 or 28-309, respectively;

(h) Assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the first, second, or third degree under section 28-929, 28-930, or 28-931, respectively, or assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional using a motor vehicle under section 28-931.01;

(i) Theft by unlawful taking or disposition under section 28-511;

(j) Theft by receiving stolen property under section 28-517;

(k) Theft by deception under section 28-512;

(l) Theft by extortion under section 28-513;

(m) Kidnapping under section 28-313;

(n) Any forgery offense under sections 28-602 to 28-605;

(o) Criminal impersonation under section 28-638;

(p) Tampering with a publicly exhibited contest under section 28-614;

(q) Unauthorized use of a financial transaction device or criminal possession of a financial transaction device under section 28-620 or 28-621, respectively;

(r) Pandering under section 28-802;

(s) Bribery, bribery of a witness, or bribery of a juror under section 28-917, 28-918, or 28-920, respectively;

(t) Tampering with a witness or an informant or jury tampering under section 28-919;

(u) Unauthorized application of graffiti under section 28-524;

(v) Dogfighting, cockfighting, bearbaiting, or pitting an animal against another under section 28-1005; or

(w) Promoting gambling in the first degree under section 28-1102.

(2) Unlawful membership recruitment into an organization or association is a Class IV felony.

Source: Laws 2009, LB63, § 21; Laws 2014, LB811, § 23; Laws 2018, LB990, § 4.

Cross References

Uniform Controlled Substances Act, see section 28-401.01.

(s) PUBLIC PROTECTION ACT

28-1354 Terms, defined.

For purposes of the Public Protection Act:

(1) Enterprise means any individual, sole proprietorship, partnership, corporation, trust, association, or any legal entity, union, or group of individuals associated in fact although not a legal entity, and shall include illicit as well as licit enterprises as well as other entities;

(2) Pattern of racketeering activity means a cumulative loss for one or more victims or gains for the enterprise of not less than one thousand five hundred dollars resulting from at least two acts of racketeering activity, one of which occurred after August 30, 2009, and the last of which occurred within ten years, excluding any period of imprisonment, after the commission of a prior act of racketeering activity;

(3) Until January 1, 2017, person means any individual or entity, as defined in section 21-2014, holding or capable of holding a legal, equitable, or beneficial interest in property. Beginning January 1, 2017, person means any individual or entity, as defined in section 21-214, holding or capable of holding a legal, equitable, or beneficial interest in property;

(4) Prosecutor includes the Attorney General of the State of Nebraska, the deputy attorney general, assistant attorneys general, a county attorney, a deputy county attorney, or any person so designated by the Attorney General, a county attorney, or a court of the state to carry out the powers conferred by the act;

(5) Racketeering activity includes the commission of, criminal attempt to commit, conspiracy to commit, aiding and abetting in the commission of, aiding in the consummation of, acting as an accessory to the commission of, or the solicitation, coercion, or intimidation of another to commit or aid in the commission of any of the following:

(a) Offenses against the person which include: Murder in the first degree under section 28-303; murder in the second degree under section 28-304; manslaughter under section 28-305; assault in the first degree under section 28-308; assault in the second degree under section 28-309; assault in the third degree under section 28-310; terroristic threats under section 28-311.01; kidnapping under section 28-313; false imprisonment in the first degree under section 28-314; false imprisonment in the second degree under section 28-315; sexual assault in the first degree under section 28-319; and robbery under section 28-324;

(b) Offenses relating to controlled substances which include: To unlawfully manufacture, distribute, deliver, dispense, or possess with intent to manufacture, distribute, deliver, or dispense a controlled substance under subsection (1) of section 28-416; possession of marijuana weighing more than one pound under subsection (12) of section 28-416; possession of money used or intended to be used to facilitate a violation of subsection (1) of section 28-416 prohibited under subsection (17) of section 28-416; any violation of section 28-418; to unlawfully manufacture, distribute, deliver, or possess with intent to distribute or deliver an imitation controlled substance under section 28-445; possession of anhydrous ammonia with the intent to manufacture methamphetamine under

section 28-451; and possession of ephedrine, pseudoephedrine, or phenylpropanolamine with the intent to manufacture methamphetamine under section 28-452;

(c) Offenses against property which include: Arson in the first degree under section 28-502; arson in the second degree under section 28-503; arson in the third degree under section 28-504; burglary under section 28-507; theft by unlawful taking or disposition under section 28-511; theft by shoplifting under section 28-511.01; theft by deception under section 28-512; theft by extortion under section 28-513; theft of services under section 28-515; theft by receiving stolen property under section 28-517; criminal mischief under section 28-519; and unlawfully depriving or obtaining property or services using a computer under section 28-1344;

(d) Offenses involving fraud which include: Burning to defraud an insurer under section 28-505; forgery in the first degree under section 28-602; forgery in the second degree under section 28-603; criminal possession of a forged instrument under section 28-604; criminal possession of written instrument forgery devices under section 28-605; criminal impersonation under section 28-638; identity theft under section 28-639; identity fraud under section 28-640; false statement or book entry under section 28-612; tampering with a publicly exhibited contest under section 28-614; issuing a false financial statement for purposes of obtaining a financial transaction device under section 28-619; unauthorized use of a financial transaction device under section 28-620; criminal possession of a financial transaction device under section 28-621; unlawful circulation of a financial transaction device in the first degree under section 28-622; unlawful circulation of a financial transaction device in the second degree under section 28-623; criminal possession of a blank financial transaction device under section 28-624; criminal sale of a blank financial transaction device under section 28-625; criminal possession of a financial transaction forgery device under section 28-626; unlawful manufacture of a financial transaction device under section 28-627; laundering of sales forms under section 28-628; unlawful acquisition of sales form processing services under section 28-629; unlawful factoring of a financial transaction device under section 28-630; and fraudulent insurance acts under section 28-631;

(e) Offenses involving governmental operations which include: Abuse of public records under section 28-911; perjury or subornation of perjury under section 28-915; bribery under section 28-917; bribery of a witness under section 28-918; tampering with a witness or informant or jury tampering under section 28-919; bribery of a juror under section 28-920; assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the first degree under section 28-929; assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the second degree under section 28-930; assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the third degree under section 28-931; and assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional using a motor vehicle under section 28-931.01;

(f) Offenses involving gambling which include: Promoting gambling in the first degree under section 28-1102; possession of gambling records under

section 28-1105; gambling debt collection under section 28-1105.01; and possession of a gambling device under section 28-1107;

(g) Offenses relating to firearms, weapons, and explosives which include: Carrying a concealed weapon under section 28-1202; transportation or possession of machine guns, short rifles, or short shotguns under section 28-1203; unlawful possession of a handgun under section 28-1204; unlawful transfer of a firearm to a juvenile under section 28-1204.01; possession of a firearm by a prohibited juvenile offender under section 28-1204.05; using a deadly weapon to commit a felony or possession of a deadly weapon during the commission of a felony under section 28-1205; possession of a deadly weapon by a prohibited person under section 28-1206; possession of a defaced firearm under section 28-1207; defacing a firearm under section 28-1208; unlawful discharge of a firearm under section 28-1212.02; possession, receipt, retention, or disposition of a stolen firearm under section 28-1212.03; unlawful possession of explosive materials in the first degree under section 28-1215; unlawful possession of explosive materials in the second degree under section 28-1216; unlawful sale of explosives under section 28-1217; use of explosives without a permit under section 28-1218; obtaining an explosives permit through false representations under section 28-1219; possession of a destructive device under section 28-1220; threatening the use of explosives or placing a false bomb under section 28-1221; using explosives to commit a felony under section 28-1222; using explosives to damage or destroy property under section 28-1223; and using explosives to kill or injure any person under section 28-1224;

(h) Any violation of the Securities Act of Nebraska pursuant to section 8-1117;

(i) Any violation of the Nebraska Revenue Act of 1967 pursuant to section 77-2713;

(j) Offenses relating to public health and morals which include: Prostitution under section 28-801; pandering under section 28-802; keeping a place of prostitution under section 28-804; labor trafficking, sex trafficking, labor trafficking of a minor, or sex trafficking of a minor under section 28-831; a violation of section 28-1005; and any act relating to the visual depiction of sexually explicit conduct prohibited in the Child Pornography Prevention Act; and

(k) A violation of the Computer Crimes Act;

(6) State means the State of Nebraska or any political subdivision or any department, agency, or instrumentality thereof; and

(7) Unlawful debt means a debt of at least one thousand five hundred dollars:

(a) Incurred or contracted in gambling activity which was in violation of federal law or the law of the state or which is unenforceable under state or federal law in whole or in part as to principal or interest because of the laws relating to usury; or

(b) Which was incurred in connection with the business of gambling in violation of federal law or the law of the state or the business of lending money or a thing of value at a rate usurious under state law if the usurious rate is at least twice the enforceable rate.

Source: Laws 2009, LB155, § 4; Laws 2010, LB771, § 13; Laws 2013, LB255, § 8; Laws 2014, LB749, § 277; Laws 2014, LB811, § 24; Laws 2016, LB1094, § 10; Laws 2018, LB990, § 5.

Cross References

Child Pornography Prevention Act, see section 28-1463.01.
Computer Crimes Act, see section 28-1341.
Nebraska Revenue Act of 1967, see section 77-2701.
Securities Act of Nebraska, see section 8-1123.

28-1356 Violation; penalty.

(1) A person who violates section 28-1355 shall be guilty of a Class III felony; however, such person shall be guilty of a Class IB felony if the violation is based upon racketeering activity which is punishable as a Class I, IA, or IB felony.

(2) In lieu of the fine authorized by section 28-105, any person convicted of engaging in conduct in violation of section 28-1355, through which pecuniary value was derived, or by which personal injury or property damage or other loss was caused, may be sentenced to pay a fine that does not exceed three times the gross value gained or three times the gross loss caused, whichever is greater, plus court costs and the costs of investigation and prosecution reasonably incurred. Any fine collected under this subsection shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 2009, LB155, § 6; Laws 2015, LB268, § 10; Referendum 2016, No. 426.

Note: The changes made to section 28-1356 by Laws 2015, LB 268, section 10, have been omitted because of the vote on the referendum at the November 2016 general election.

ARTICLE 14

NONCODE PROVISIONS

(a) OFFENSES RELATING TO PROPERTY

Section
28-1402. Repealed. Laws 2021, LB169, § 1.
28-1403. Repealed. Laws 2021, LB169, § 1.
28-1404. Repealed. Laws 2021, LB169, § 1.
28-1405. Repealed. Laws 2021, LB169, § 1.

(c) TOBACCO, ELECTRONIC NICOTINE DELIVERY SYSTEMS, OR ALTERNATIVE NICOTINE PRODUCTS

28-1418. Tobacco; electronic nicotine delivery systems; alternative nicotine products; use by person under age of twenty-one years; penalty.
28-1418.01. Terms, defined.
28-1419. Tobacco; electronic nicotine delivery systems; alternative nicotine products; certain sales; penalty; compliance determination; assistance authorized; conditions.
28-1420. License requisite for sale; violation; penalty.
28-1421. License; where obtained; prohibited sales.
28-1423. License; term; fees; false swearing; penalty.
28-1424. License; rights of licensee.
28-1425. Licensees; sale of tobacco, electronic nicotine delivery systems, or alternative nicotine products to persons under the age of twenty-one years; penalty.
28-1427. Person misrepresenting age to obtain tobacco, electronic nicotine delivery systems, or alternative nicotine products; penalty.
28-1429.01. Vending machines; legislative findings.
28-1429.02. Vending machines; restrictions on use; violation; penalty; local ordinances; authorized.
28-1429.03. Self-service display; restrictions on use; violation; penalty.

Section

(k) CHILD PORNOGRAPHY PREVENTION ACT

(a) OFFENSES RELATING TO PROPERTY

28-1402 Repealed. Laws 2021, LB169, § 1.

28-1403 Repealed. Laws 2021, LB169, § 1.

28-1404 Repealed. Laws 2021, LB169, § 1.

28-1405 Repealed. Laws 2021, LB169, § 1.

(c) TOBACCO, ELECTRONIC NICOTINE DELIVERY SYSTEMS, OR ALTERNATIVE NICOTINE PRODUCTS

28-1418 Tobacco; electronic nicotine delivery systems; alternative nicotine products; use by person under age of twenty-one years; penalty.

Whoever, being a person under the age of twenty-one years, shall smoke cigarettes or cigars, use electronic nicotine delivery systems or alternative nicotine products, or use tobacco in any form whatever, in this state, shall be guilty of a Class V misdemeanor. Any person charged with a violation of this section may be free from prosecution if he or she furnishes evidence for the conviction of the person or persons selling or giving him or her the cigarettes, cigars, electronic nicotine delivery systems, alternative nicotine products, or tobacco.

Source: Laws 1911, c. 181, §§ 1, 2, 3, p. 561; R.S.1913, § 8846; C.S.1922, § 9847; C.S.1929, § 28-1021; R.S.1943, § 28-1020; Laws 1977, LB 40, § 103; R.R.S.1943, § 28-1020, (1975); Laws 2014, LB863, § 16; Laws 2019, LB149, § 1; Laws 2019, LB397, § 1; Laws 2020, LB1064, § 1.

28-1418.01 Terms, defined.

For purposes of sections 28-1418 to 28-1429.03:

(1) Alternative nicotine product means any noncombustible product containing nicotine that is intended for human consumption, whether chewed, absorbed, dissolved, or ingested by any other means. Alternative nicotine product does not include any electronic nicotine delivery system, cigarette, cigar, or other tobacco product, or any product regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the Federal Food, Drug, and Cosmetic Act;

(2) Cigarette means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains (a) any roll of tobacco wrapped in paper or in any substance not containing tobacco, (b) tobacco, in any form, that is functional in the product which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette, or (c) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler,

or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in subdivision (2)(a) of this section;

(3)(a) Electronic nicotine delivery system means any product or device containing nicotine, tobacco, or tobacco derivatives that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, to simulate smoking by delivering the nicotine, tobacco, or tobacco derivatives in vapor, fog, mist, gas, or aerosol form to a person inhaling from the product or device.

(b) Electronic nicotine delivery system includes, but is not limited to, the following:

(i) Any substance containing nicotine, tobacco, or tobacco derivatives, whether sold separately or sold in combination with a product or device that is intended to deliver to a person nicotine, tobacco, or tobacco derivatives in vapor, fog, mist, gas, or aerosol form;

(ii) Any product or device marketed, manufactured, distributed, or sold as an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, electronic hookah, or similar products, names, descriptors, or devices; and

(iii) Any component, part, or accessory of such a product or device that is used during operation of the product or device when sold in combination with any substance containing nicotine, tobacco, or tobacco derivatives.

(c) Electronic nicotine delivery system does not include the following:

(i) An alternative nicotine product, cigarette, cigar, or other tobacco product, or any product regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the Federal Food, Drug, and Cosmetic Act; or

(ii) Any component, part, or accessory of such a product or device that is used during operation of the product or device when not sold in combination with any substance containing nicotine, tobacco, or tobacco derivatives;

(4) Self-service display means a retail display that contains a tobacco product, a tobacco-derived product, an electronic nicotine delivery system, or an alternative nicotine product and is located in an area openly accessible to a retailer's customers and from which such customers can readily access the product without the assistance of a salesperson. Self-service display does not include a display case that holds tobacco products, tobacco-derived products, electronic nicotine delivery systems, or alternative nicotine products behind locked doors; and

(5) Tobacco specialty store means a retail store that (a) derives at least seventy-five percent of its revenue from tobacco products, tobacco-derived products, electronic nicotine delivery systems, or alternative nicotine products and (b) does not permit persons under the age of twenty-one years to enter the premises unless accompanied by a parent or legal guardian, except that until January 1, 2022, a tobacco specialty store may allow an employee who is nineteen or twenty years of age to work in the store.

Source: Laws 2014, LB863, § 17; Laws 2019, LB149, § 2; Laws 2019, LB397, § 2; Laws 2020, LB1064, § 2.

28-1419 Tobacco; electronic nicotine delivery systems; alternative nicotine products; certain sales; penalty; compliance determination; assistance authorized; conditions.

(1) Whoever shall sell, give, or furnish, in any way, any tobacco in any form whatever, or any cigars, cigarettes, cigarette paper, electronic nicotine delivery systems, or alternative nicotine products, to any person under twenty-one years of age, is guilty of a Class III misdemeanor for each offense.

(2)(a) In order to further the public policy of deterring licensees or other persons from violating subsection (1) of this section, a person who is at least fifteen years of age but under twenty-one years of age may assist a peace officer in determining compliance with such subsection if:

(i) The parent or legal guardian of the person has given written consent for the person to participate in such compliance check if such person is under nineteen years of age;

(ii) The person is an employee, a volunteer, or an intern with a state or local law enforcement agency;

(iii) The person is acting within the scope of his or her assigned duties as part of a law enforcement investigation;

(iv) The person does not use or consume a tobacco product as part of such duties; and

(v) The person is not actively assigned to a diversion program, is not a party to a pending criminal proceeding or a proceeding pending under the Nebraska Juvenile Code, and is not on probation.

(b) Any person under the age of twenty-one years acting in accordance with and under the authority of this subsection shall not be in violation of section 28-1427.

Source: Laws 1885, c. 105, §§ 1, 2, p. 394; Laws 1903, c. 138, § 1, p. 643; R.S.1913, § 8847; C.S.1922, § 9848; C.S.1929, § 28-1022; R.S.1943, § 28-1021; Laws 1977, LB 40, § 104; R.R.S.1943, § 28-1021, (1975); Laws 2014, LB863, § 18; Laws 2019, LB149, § 3; Laws 2019, LB397, § 3; Laws 2020, LB1064, § 3.

Cross References

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

28-1420 License requisite for sale; violation; penalty.

It shall be unlawful for any person, partnership, limited liability company, or corporation to sell, keep for sale, or give away in course of trade, any cigars, tobacco, electronic nicotine delivery systems, cigarettes, or cigarette material to anyone without first obtaining a license as provided in sections 28-1421 and 28-1422. It shall also be unlawful for any wholesaler to sell or deliver any cigars, tobacco, electronic nicotine delivery systems, cigarettes, or cigarette material to any person, partnership, limited liability company, or corporation who, at the time of such sale or delivery, is not the recipient of a valid tobacco license for the current year to retail the same as provided in such sections. It shall also be unlawful for any person, partnership, limited liability company, or corporation to purchase or receive, for purposes of resale, any cigars, tobacco, electronic nicotine delivery systems, cigarettes, or cigarette material if such person, partnership, limited liability company, or corporation is not the recipient of a valid tobacco license to retail such tobacco products at the time the

same are purchased or received. Whoever shall be found guilty of violating this section shall be guilty of a Class III misdemeanor for each offense.

Source: Laws 1919, c. 180, § 1, p. 401; C.S.1922, § 9849; C.S.1929, § 28-1023; Laws 1941, c. 50, § 1, p. 242; C.S.Supp.,1941, § 28-1023; R.S.1943, § 28-1022; Laws 1977, LB 40, § 105; R.R.S.1943, § 28-1022, (1975); Laws 1993, LB 121, § 187; Laws 2019, LB149, § 4; Laws 2019, LB397, § 4.

28-1421 License; where obtained; prohibited sales.

Licenses for the sale of cigars, tobacco, electronic nicotine delivery systems, cigarettes, and cigarette material to persons twenty-one years of age or over shall be issued to individuals, partnerships, limited liability companies, and corporations by the clerk or finance director of any city or village and by the county clerk of any county upon application duly made as provided in section 28-1422. The sale of cigarettes or cigarette materials that contain perfumes or drugs in any form is prohibited and is not licensed by the provisions of this section. Only cigarettes and cigarette material containing pure white paper and pure tobacco shall be licensed.

Source: Laws 1919, c. 180, § 2, p. 401; C.S.1922, § 9850; C.S.1929, § 28-1024; R.S.1943, § 28-1023; Laws 1961, c. 128, § 1, p. 379; R.R.S.1943, § 28-1023, (1975); Laws 1993, LB 121, § 188; Laws 2019, LB149, § 5; Laws 2019, LB397, § 5; Laws 2020, LB1064, § 4.

28-1423 License; term; fees; false swearing; penalty.

The term for which such license shall run shall be from the date of filing such application and paying such license fee to and including December 31 of the calendar year in which application for such license is made, and the license fee for any person, partnership, limited liability company, or corporation selling at retail shall be twenty-five dollars in cities of the metropolitan class, fifteen dollars in cities of the primary and first classes, and ten dollars in cities of all other classes and in towns and villages and in locations outside of the limits of cities, towns, and villages. Any person, partnership, limited liability company, or corporation selling annually in the aggregate more than one hundred fifty thousand cigars, packages of cigarettes, electronic nicotine delivery systems, and packages of tobacco in any form, at wholesale, shall pay a license fee of one hundred dollars, and if such combined annual sales amount to less than one hundred fifty thousand cigars, packages of cigarettes, electronic nicotine delivery systems, and packages of tobacco, the annual license fee shall be fifteen dollars. No wholesaler's license shall be issued in any year on a less basis than one hundred dollars per annum unless the applicant for the same shall file with such application a statement duly sworn to by himself or herself, or if applicant is a partnership, by a member of the firm, or if a limited liability company, by a member or manager of the company, or if a corporation, by an officer or manager thereof, that in the past such wholesaler's combined sales of cigars, packages of cigarettes, electronic nicotine delivery systems, and packages of tobacco in every form have not exceeded in the aggregate one hundred fifty thousand annually, and that such sales will not exceed such aggregate amount for the current year for which the license is to issue. Any person swearing falsely in such affidavit shall be guilty of perjury and upon conviction thereof

shall be punished as provided by section 28-915 and such wholesaler's license shall be revoked until the full license fee is paid. If application for license is made after July 1 of any calendar year, the fee shall be one-half of the fee provided in this section.

Source: Laws 1919, c. 180, § 4, p. 402; C.S.1922, § 9852; Laws 1923, c. 136, § 1, p. 335; Laws 1927, c. 198, § 1, p. 565; C.S.1929, § 28-1026; R.S.1943, § 28-1025; Laws 1978, LB 748, § 20; R.R.S. 1943, § 28-1025, (1975); Laws 1993, LB 121, § 190; Laws 2019, LB149, § 6; Laws 2019, LB397, § 6.

28-1424 License; rights of licensee.

The license provided for in sections 28-1421 and 28-1422 shall, when issued, authorize the sale of cigars, tobacco, electronic nicotine delivery systems, cigarettes, and cigarette material by the licensee and employees, to persons twenty-one years of age or over, at the place of business described in such license for the term therein authorized, unless the license is forfeited as provided in section 28-1425.

Source: Laws 1919, c. 180, § 5, p. 402; C.S.1922, § 9853; C.S.1929, § 28-1027; R.S.1943, § 28-1026; Laws 1957, c. 100, § 2, p. 359; R.R.S.1943, § 28-1026, (1975); Laws 2019, LB149, § 7; Laws 2019, LB397, § 7; Laws 2020, LB1064, § 5.

28-1425 Licensees; sale of tobacco, electronic nicotine delivery systems, or alternative nicotine products to persons under the age of twenty-one years; penalty.

Any licensee who shall sell, give, or furnish in any way to any person under the age of twenty-one years, or who shall willingly allow to be taken from his or her place of business by any person under the age of twenty-one years, any cigars, tobacco, cigarettes, cigarette material, electronic nicotine delivery systems, or alternative nicotine products is guilty of a Class III misdemeanor. Any officer, director, or manager having charge or control, either separately or jointly with others, of the business of any corporation which violates sections 28-1419, 28-1420 to 28-1429, and 28-1429.03, if he or she has knowledge of such violation, shall be subject to the penalties provided in this section. In addition to the penalties provided in this section, such licensee shall be subject to the additional penalty of a revocation and forfeiture of his, her, their, or its license, at the discretion of the court before whom the complaint for violation of such sections may be heard. If such license is revoked and forfeited, all rights under such license shall at once cease and terminate.

Source: Laws 1919, c. 180, § 6, p. 402; C.S.1922, § 9854; C.S.1929, § 28-1028; R.S.1943, § 28-1027; Laws 1957, c. 100, § 3, p. 360; Laws 1977, LB 40, § 106; R.R.S.1943, § 28-1027, (1975); Laws 2014, LB863, § 19; Laws 2019, LB149, § 8; Laws 2019, LB397, § 8; Laws 2020, LB1064, § 6.

28-1427 Person misrepresenting age to obtain tobacco, electronic nicotine delivery systems, or alternative nicotine products; penalty.

Except as provided in subsection (2) of section 28-1419, any person under the age of twenty-one years who obtains cigars, tobacco, cigarettes, cigarette material, electronic nicotine delivery systems, or alternative nicotine products

from a licensee by representing that he or she is of the age of twenty-one years or over is guilty of a Class V misdemeanor.

Source: Laws 1919, c. 180, § 8, p. 403; C.S.1922, § 9856; C.S.1929, § 28-1030; R.S.1943, § 28-1029; Laws 1947, c. 98, § 1, p. 281; Laws 1977, LB 40, § 107; R.R.S.1943, § 28-1029, (1975); Laws 2014, LB863, § 20; Laws 2019, LB149, § 9; Laws 2019, LB397, § 9; Laws 2020, LB1064, § 7.

28-1429.01 Vending machines; legislative findings.

The Legislature finds that the incumbent health risks associated with using tobacco products have been scientifically proven. The Legislature further finds that the growing number of young people who start using tobacco products is staggering, and even more abhorrent are the ages at which such use begins. The Legislature has established an age restriction on the use of tobacco products. To ensure that the use of tobacco products among young people is discouraged to the maximum extent possible, it is the intent of the Legislature to ban the use of vending machines and similar devices to dispense tobacco products in facilities, buildings, or areas which are open to the general public within Nebraska.

Source: Laws 1992, LB 130, § 1; Laws 2019, LB149, § 10.

28-1429.02 Vending machines; restrictions on use; violation; penalty; local ordinances; authorized.

(1) Except as provided in subsection (2) of this section, it shall be unlawful to dispense cigarettes, other tobacco products, electronic nicotine delivery systems, or alternative nicotine products from a vending machine or similar device. Any person violating this section is guilty of a Class III misdemeanor. In addition, upon conviction for a second offense, the court shall order a six-month suspension of the offender's license to sell tobacco and electronic nicotine delivery systems, if any, and, upon conviction for a third or subsequent offense, the court shall order the permanent revocation of the offender's license to sell tobacco and electronic nicotine delivery systems, if any.

(2) Cigarettes, other tobacco products, electronic nicotine delivery systems, or alternative nicotine products may be dispensed from a vending machine or similar device when such machine or device is located in an area, office, business, plant, or factory which is not open to the general public or on the licensed premises of any establishment having a license issued under the Nebraska Liquor Control Act for the sale of alcoholic liquor for consumption on the premises when such machine or device is located in the same room in which the alcoholic liquor is dispensed.

(3) Nothing in this section shall be construed to restrict or prohibit a governing body of a city or village from establishing and enforcing ordinances at least as stringent as or more stringent than the provisions of this section.

Source: Laws 1992, LB 130, § 2; Laws 2014, LB863, § 21; Laws 2019, LB149, § 11; Laws 2019, LB397, § 10.

Cross References

Nebraska Liquor Control Act, see section 53-101.

28-1429.03 Self-service display; restrictions on use; violation; penalty.

(1) Except as provided in subsection (2) of this section and section 28-1429.02, it shall be unlawful to sell or distribute cigarettes, cigars, electronic nicotine delivery systems, alternative nicotine products, or tobacco in any form whatever through a self-service display. Any person violating this section is guilty of a Class III misdemeanor. In addition, upon conviction for a second or subsequent offense within a twelve-month period, the court shall order a six-month suspension of the license issued under section 28-1421.

(2) Cigarettes, cigars, electronic nicotine delivery systems, alternative nicotine products, or tobacco in any form whatever may be sold or distributed in a self-service display that is located in a tobacco specialty store or cigar shop as defined in section 53-103.08.

Source: Laws 2014, LB863, § 22; Laws 2015, LB118, § 1; Laws 2019, LB149, § 12; Laws 2019, LB397, § 11.

(k) CHILD PORNOGRAPHY PREVENTION ACT

28-1463.03 Visual depiction of sexually explicit conduct; prohibited acts.

(1) It shall be unlawful for a person to knowingly make, publish, direct, create, provide, or in any manner generate any visual depiction of sexually explicit conduct which has a child other than the defendant as one of its participants or portrayed observers.

(2) It shall be unlawful for a person knowingly to purchase, rent, sell, deliver, distribute, display for sale, advertise, trade, or provide to any person any visual depiction of sexually explicit conduct which has a child other than the defendant as one of its participants or portrayed observers.

(3) It shall be unlawful for a person to knowingly employ, force, authorize, induce, or otherwise cause a child to engage in any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers.

(4) It shall be unlawful for a parent, stepparent, legal guardian, or any person with custody and control of a child, knowing the content thereof, to consent to such child engaging in any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers.

Source: Laws 1978, LB 829, § 1; R.S.1943, (1979), § 28-1463; Laws 1985, LB 668, § 3; Laws 2009, LB97, § 18; Laws 2019, LB630, § 5.

Cross References

Registration of sex offenders, see sections 29-4001 to 29-4014.

28-1463.05 Visual depiction of sexually explicit acts related to possession; violation; penalty.

(1) It shall be unlawful for a person to knowingly possess with intent to rent, sell, deliver, distribute, trade, or provide to any person any visual depiction of sexually explicit conduct which has a child other than the defendant as one of its participants or portrayed observers.

(2)(a) Any person who is under nineteen years of age at the time he or she violates this section shall be guilty of a Class IIIA felony for each offense.

(b) Any person who is nineteen years of age or older at the time he or she violates this section shall be guilty of a Class IIA felony for each offense.

(c) Any person who violates this section and has previously been convicted of a violation of this section or section 28-308, 28-309, 28-310, 28-311, 28-313, 28-314, 28-315, 28-319, 28-319.01, 28-320.01, 28-813, 28-833, or 28-1463.03 or subsection (1) or (2) of section 28-320 shall be guilty of a Class IC felony for each offense.

Source: Laws 1985, LB 668, § 4; Laws 1986, LB 788, § 2; Laws 2004, LB 943, § 7; Laws 2009, LB97, § 20; Laws 2015, LB605, § 58; Laws 2019, LB630, § 6.

Cross References

Registration of sex offenders, see sections 29-4001 to 29-4014.

ARTICLE 17
IMMUNITY IN CERTAIN CASES

Section
28-1701. Witness or victim of sexual assault; eligible alcohol or drug offense; immunity from arrest or prosecution; conditions.

28-1701 Witness or victim of sexual assault; eligible alcohol or drug offense; immunity from arrest or prosecution; conditions.

(1) A person shall not be arrested or prosecuted for an eligible alcohol or drug offense if such person witnessed or was the victim of a sexual assault and such person:

(a) Either:

(i) In good faith, reported such sexual assault to law enforcement; or

(ii) Requested emergency medical assistance for the victim of the sexual assault; and

(b) Evidence supporting the arrest or prosecution of the eligible alcohol or drug offense was obtained or discovered as a result of such person reporting such sexual assault to law enforcement or requesting emergency medical assistance.

(2) A person shall not be arrested or prosecuted for an eligible alcohol or drug offense if:

(a) Evidence supporting the arrest or prosecution of the person for the offense was obtained or discovered as a result of the investigation or prosecution of a sexual assault; and

(b) Such person cooperates with law enforcement in the investigation or prosecution of the sexual assault.

(3) For purposes of this section:

(a) Eligible alcohol or drug offense means:

(i) A violation of subsection (3) or (13) of section 28-416 or of section 28-441;

(ii) A violation of section 53-180.02 committed by a person older than eighteen years of age and under the age of twenty-one years, as described in subdivision (4)(a) of section 53-180.05;

(iii) A violation of a city or village ordinance similar to subdivision (3)(a)(i) or (ii) of this section; or

(iv) Attempt, conspiracy, solicitation, being an accessory to, aiding and abetting, aiding the consummation of, or compounding a felony with any of the offenses in subdivision (3)(a)(i), (ii), or (iii) of this section as the underlying offense; and

(b) Sexual assault means:

(i) A violation of section 28-316.01, 28-319, 28-319.01, 28-320, 28-320.01, 28-320.02, 28-322.01, 28-322.02, 28-322.03, 28-322.04, 28-322.05, 28-703, or 28-1463.03, sex trafficking or sex trafficking of a minor under section 28-831, or subdivision (1)(c) or (g) of section 28-386 or subdivision (1)(d), (e), or (f) of section 28-707; or

(ii) Attempt, conspiracy, solicitation, being an accessory to, aiding and abetting, aiding the consummation of, or compounding a felony with any of the offenses listed in subdivision (3)(b)(i) of this section as the underlying offense.

Source: Laws 2022, LB519, § 3.
Effective date July 21, 2022.

CHAPTER 29
CRIMINAL PROCEDURE

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ARTICLE 1
DEFINITIONS AND GENERAL RULES OF PROCEDURE

Section
29-110. Prosecutions; complaint, indictment, or information; filing; time limitations; exceptions.
29-119. Plea agreement; terms, defined.

29-110 Prosecutions; complaint, indictment, or information; filing; time limitations; exceptions.

(1) Except as otherwise provided by law, no person shall be prosecuted for any felony unless the indictment is found by a grand jury within three years next after the offense has been done or committed or unless a complaint for the same is filed before the magistrate within three years next after the offense has been done or committed and a warrant for the arrest of the defendant has been issued.

(2) Except as otherwise provided by law, no person shall be prosecuted, tried, or punished for any misdemeanor or other indictable offense below the grade of felony or for any fine or forfeiture under any penal statute unless the suit, information, or indictment for such offense is instituted or found within one year and six months from the time of committing the offense or incurring the fine or forfeiture or within one year for any offense the punishment of which is restricted by a fine not exceeding one hundred dollars and to imprisonment not exceeding three months.

(3) Except as otherwise provided by law, no person shall be prosecuted for kidnapping under section 28-313, false imprisonment under section 28-314 or 28-315, child abuse under section 28-707, pandering under section 28-802, debauching a minor under section 28-805, or an offense under section 28-813 when the victim is under sixteen years of age at the time of the offense (a) unless the indictment for such offense is found by a grand jury within seven years next after the offense has been committed or within seven years next after the victim's sixteenth birthday, whichever is later, or (b) unless a complaint for such offense is filed before the magistrate within seven years next after the offense has been committed or within seven years next after the victim's sixteenth birthday, whichever is later, and a warrant for the arrest of the defendant has been issued.

(4) Except as otherwise provided by law, no person shall be prosecuted for a violation of subsection (2) or (3) of section 28-831 (a) unless the indictment for such offense is found by a grand jury within seven years next after the offense has been committed or within seven years next after the victim's eighteenth birthday, whichever is later, or (b) unless a complaint for such offense is filed before the magistrate within seven years next after the offense has been committed or within seven years next after the victim's eighteenth birthday, whichever is later, and a warrant for the arrest of the defendant has been issued.

(5) Except as otherwise provided by law, no person shall be prosecuted for an offense under section 28-813.01 or 28-1463.05 (a) unless the indictment for such offense is found by a grand jury within seven years next after the offense has been committed or within seven years next after the victim's eighteenth birthday, whichever is later, or (b) unless a complaint for such offense is filed before the magistrate within seven years next after the offense has been committed or within seven years next after the victim's eighteenth birthday, whichever is later, and a warrant for the arrest of the defendant has been issued.

(6) No person shall be prosecuted for a violation of the Securities Act of Nebraska under section 8-1117 unless the indictment for such offense is found by a grand jury within five years next after the offense has been done or

committed or unless a complaint for such offense is filed before the magistrate within five years next after the offense has been done or committed and a warrant for the arrest of the defendant has been issued.

(7) No person shall be prosecuted for criminal impersonation under section 28-638, identity theft under section 28-639, or identity fraud under section 28-640 unless the indictment for such offense is found by a grand jury within five years next after the offense has been done or committed or unless a complaint for such offense is filed before the magistrate within five years next after the offense has been done or committed and a warrant for the arrest of the defendant has been issued.

(8) No person shall be prosecuted for a violation of section 68-1017 if the aggregate value of all funds and other benefits obtained or attempted to be obtained is five hundred dollars or more unless the indictment for such offense is found by a grand jury within five years next after the offense has been done or committed or unless a complaint for such offense is filed before the magistrate within five years next after the offense has been done or committed and a warrant for the arrest of the defendant has been issued.

(9) No person shall be prosecuted for knowing and intentional abuse, neglect, or exploitation of a vulnerable adult or senior adult under section 28-386 unless the indictment for such offense is found by a grand jury within six years next after the offense has been done or committed or unless a complaint for such offense is filed before the magistrate within six years next after the offense has been done or committed and a warrant for the arrest of the defendant has been issued.

(10) Except as otherwise provided by law, no person shall be prosecuted for an offense under section 28-717 (a) unless the indictment for such offense is found by a grand jury within one year and six months next after the offense has been committed or within one year and six months next after the child reaches the age of majority, whichever is later, or (b) unless a complaint for such offense is filed before the magistrate within one year and six months next after the offense has been committed or within one year and six months next after the child reaches the age of majority, whichever is later, and a warrant for the arrest of the defendant has been issued.

(11) There shall not be any time limitations for prosecution or punishment for treason, murder, arson, forgery, sexual assault in the first or second degree under section 28-319 or 28-320, sexual assault of a child in the second or third degree under section 28-320.01, incest under section 28-703, sexual assault of a child in the first degree under section 28-319.01, labor trafficking of a minor or sex trafficking of a minor under subsection (1) of section 28-831, or an offense under section 28-1463.03; nor shall there be any time limitations for prosecution or punishment for sexual assault in the third degree under section 28-320 when the victim is under sixteen years of age at the time of the offense.

(12) The time limitations prescribed in this section shall include all inchoate offenses pursuant to the Nebraska Criminal Code and compounding a felony pursuant to section 28-301.

(13) The time limitations prescribed in this section shall not extend to any person fleeing from justice.

(14) When any suit, information, or indictment for any crime or misdemeanor is limited by any statute to be brought or exhibited within any other time

than is limited by this section, then the suit, information, or indictment shall be brought or exhibited within the time limited by such statute.

(15) If any suit, information, or indictment is quashed or the proceedings set aside or reversed on writ of error, the time during the pendency of such suit, information, or indictment so quashed, set aside, or reversed shall not be reckoned within this statute so as to bar any new suit, information, or indictment for the same offense.

(16) The changes made to this section by Laws 2004, LB 943, shall apply to offenses committed prior to April 16, 2004, for which the statute of limitations has not expired as of such date and to offenses committed on or after such date.

(17) The changes made to this section by Laws 2005, LB 713, shall apply to offenses committed prior to September 4, 2005, for which the statute of limitations has not expired as of such date and to offenses committed on or after such date.

(18) The changes made to this section by Laws 2009, LB 97, and Laws 2006, LB 1199, shall apply to offenses committed prior to May 21, 2009, for which the statute of limitations has not expired as of such date and to offenses committed on or after such date.

(19) The changes made to this section by Laws 2010, LB809, shall apply to offenses committed prior to July 15, 2010, for which the statute of limitations has not expired as of such date and to offenses committed on or after such date.

(20) The changes made to this section by Laws 2016, LB934, shall apply to offenses committed prior to April 19, 2016, for which the statute of limitations has not expired as of such date and to offenses committed on or after such date.

(21) The changes made to this section by Laws 2019, LB519, shall apply to offenses committed prior to September 1, 2019, for which the statute of limitations has not expired as of such date and to offenses committed on or after such date.

Source: G.S.1873, c. 58, § 256, p. 783; R.S.1913, § 8910; C.S.1922, § 9931; C.S.1929, § 29-110; R.S.1943, § 29-110; Laws 1965, c. 147, § 1, p. 489; Laws 1989, LB 211, § 1; Laws 1990, LB 1246, § 10; Laws 1993, LB 216, § 10; Laws 2004, LB 943, § 8; Laws 2005, LB 713, § 2; Laws 2006, LB 1199, § 10; Laws 2009, LB97, § 21; Laws 2009, LB155, § 17; Laws 2010, LB809, § 1; Laws 2016, LB934, § 10; Laws 2019, LB519, § 13; Laws 2020, LB881, § 13.

Cross References

Nebraska Criminal Code, see section 28-101.
Securities Act of Nebraska, see section 8-1123.

29-119 Plea agreement; terms, defined.

For purposes of this section and sections 23-1201, 29-120, and 29-2261, unless the context otherwise requires:

(1) A plea agreement means that as a result of a discussion between the defense counsel and the prosecuting attorney:

(a) A charge is to be dismissed or reduced; or

(b) A defendant, if he or she pleads guilty to a charge, may receive less than the maximum penalty permitted by law; and

(2)(a) Victim means a person who has had a personal confrontation with an offender as a result of a homicide under sections 28-302 to 28-306, a first degree assault under section 28-308, a second degree assault under section 28-309, a third degree assault under section 28-310 when the victim is an intimate partner as defined in section 28-323, a first degree false imprisonment under section 28-314, a first degree sexual assault under section 28-319, a sexual assault of a child in the first degree under section 28-319.01, a second or third degree sexual assault under section 28-320, a sexual assault of a child in the second or third degree under section 28-320.01, domestic assault in the first, second, or third degree under section 28-323, or a robbery under section 28-324. Victim also includes a person who has suffered serious bodily injury as defined in section 28-109 as a result of a motor vehicle accident when the driver was charged with a violation of section 60-6,196 or 60-6,197 or with a violation of a city or village ordinance enacted in conformance with either section.

(b) In the case of a homicide, victim means the nearest surviving relative under the law as provided by section 30-2303 but does not include the alleged perpetrator of the homicide.

(c) In the case of a violation of section 28-813.01, 28-1463.03, 28-1463.04, or 28-1463.05, victim means a person who was a child as defined in section 28-1463.02 and a participant or portrayed observer in the visual depiction of sexually explicit conduct which is the subject of the violation and who has been identified and can be reasonably notified.

(d) In the case of a sexual assault of a child, a possession offense of a visual depiction of sexually explicit conduct, or a distribution offense of a visual depiction of sexually explicit conduct, victim means the child victim and the parents, guardians, or duly appointed legal representative of the child victim but does not include the alleged perpetrator of the crime.

(e) Victim also includes a person who was the victim of a theft under section 28-511, 28-512, 28-513, or 28-517 when (i) the value of the thing involved is five thousand dollars or more and (ii) the victim and perpetrator were intimate partners as defined in section 28-323.

(f) Victim also includes a sexual assault victim as defined in section 29-4309.

Source: Laws 1983, LB 78, § 1; Laws 1990, LB 87, § 2; Laws 1993, LB 370, § 10; Laws 1998, LB 309, § 2; Laws 2004, LB 270, § 3; Laws 2006, LB 1199, § 11; Laws 2010, LB728, § 8; Laws 2018, LB160, § 1; Laws 2019, LB125, § 1; Laws 2020, LB43, § 9.

ARTICLE 2

POWERS AND DUTIES OF CERTAIN OFFICERS

Section

29-215 Law enforcement officers; jurisdiction; powers; contracts authorized.

(1) A law enforcement officer has the power and authority to enforce the laws of this state and of the political subdivision which employs the law enforcement officer or otherwise perform the functions of that office anywhere within his or her primary jurisdiction.

(2) Any law enforcement officer who is within this state, but beyond his or her primary jurisdiction, has the power and authority to enforce the laws of this state or any legal ordinance of any city or incorporated village or otherwise perform the functions of his or her office, including the authority to arrest and detain suspects, as if enforcing the laws or performing the functions within his or her primary jurisdiction in the following cases:

(a) Any such law enforcement officer, if in a fresh attempt to apprehend a person suspected of committing a felony, may follow such person into any other jurisdiction in this state and there arrest and detain such person and return such person to the law enforcement officer's primary jurisdiction;

(b) Any such law enforcement officer, if in a fresh attempt to apprehend a person suspected of committing a misdemeanor or a traffic infraction, may follow such person anywhere in an area within twenty-five miles of the boundaries of the law enforcement officer's primary jurisdiction and there arrest and detain such person and return such person to the law enforcement officer's primary jurisdiction;

(c) Any such law enforcement officer shall have such enforcement and arrest and detention authority when responding to a call in which a local, state, or federal law enforcement officer is in need of assistance. A law enforcement officer in need of assistance shall mean (i) a law enforcement officer whose life is in danger or (ii) a law enforcement officer who needs assistance in making an arrest and the suspect (A) will not be apprehended unless immediately arrested, (B) may cause injury to himself or herself or others or damage to property unless immediately arrested, or (C) may destroy or conceal evidence of the commission of a crime; and

(d) Any municipality or county may, under the provisions of the Interlocal Cooperation Act or the Joint Public Agency Act, enter into a contract with any other municipality or county for law enforcement services or joint law enforcement services. Under such an agreement, law enforcement personnel may have such enforcement authority within the jurisdiction of each of the participating political subdivisions if provided for in the agreement. Unless otherwise provided in the agreement, each participating political subdivision shall provide liability insurance coverage for its own law enforcement personnel as provided in section 13-1802.

(3) When probable cause exists to believe that a person is operating or in the actual physical control of any motor vehicle, motorboat, personal watercraft, or aircraft while under the influence of alcoholic liquor or of any drug or otherwise in violation of section 28-1465, 28-1466, 28-1472, 37-1254.01, 37-1254.02, 60-4,163, 60-4,164, 60-6,196, 60-6,197, 60-6,211.01, or 60-6,211.02, the law enforcement officer has the power and authority to do any of the following or any combination thereof:

(a) Transport such person to a facility outside of the law enforcement officer's primary jurisdiction for appropriate chemical testing of the person;

(b) Administer outside of the law enforcement officer's primary jurisdiction any post-arrest test advisement to the person; or

(c) With respect to such person, perform other procedures or functions outside of the law enforcement officer's primary jurisdiction which are directly and solely related to enforcing the laws that concern a person operating or being in the actual physical control of any motor vehicle, motorboat, personal watercraft, or aircraft while under the influence of alcoholic liquor or of any

other drug or otherwise in violation of section 28-1465, 28-1466, 28-1472, 37-1254.01, 37-1254.02, 60-4,163, 60-4,164, 60-6,196, 60-6,197, 60-6,211.01, or 60-6,211.02.

(4) For purposes of this section:

(a) Class I railroad has the same meaning as in section 81-1401;

(b) Law enforcement officer has the same meaning as peace officer as defined in section 49-801 and also includes conservation officers of the Game and Parks Commission and Class I railroad police officers; and

(c) Primary jurisdiction means the geographic area within the territorial limits of the state or political subdivision which employs the law enforcement officer.

Source: Laws 1994, LB 254, § 1; Laws 1999, LB 87, § 68; Laws 2003, LB 17, § 9; Laws 2011, LB667, § 5; Laws 2021, LB51, § 2.

Cross References

Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.
Motor vehicle pursuit, see section 29-211.
Uniform Act on Fresh Pursuit, see section 29-421.

29-217 Victim of certain criminal activity; visa; request for assistance; certifying agency or official; powers and duties.

(1) For purposes of this section:

(a) Certifying agency means a state or local law enforcement agency, prosecutor, or other authority that has responsibility for the investigation or prosecution of qualifying criminal activity, as described in 8 C.F.R. 214.14(a)(2);

(b) Certifying official means the head of the certifying agency or any person in a supervisory role who has been specifically designated by the head of the certifying agency to issue U nonimmigrant status certifications on behalf of that agency, as described in 8 C.F.R. 214.14(a)(3);

(c) Form I-914B means Form I-914, Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons, of the Department of Homeland Security, United States Citizenship and Immigration Services;

(d) Form I-918B means Form I-918, Supplement B, U Nonimmigrant Status Certification, of the Department of Homeland Security, United States Citizenship and Immigration Services;

(e) Investigation or prosecution has the same meaning as in 8 C.F.R. 214.14;

(f) Law enforcement agency means a state or local law enforcement agency, prosecutor, or other authority that has responsibility for the investigation or prosecution of severe forms of trafficking in persons, as described in 8 C.F.R. 214.11(a);

(g) Qualifying criminal activity has the same meaning as in 8 C.F.R. 214.14;

(h) Victim of qualifying criminal activity has the same meaning as in 8 C.F.R. 214.14;

(i) Victim of a severe form of trafficking in persons has the same meaning as in 8 C.F.R. 214.11; and

(j) All references to federal statutes and regulations refer to such statutes and regulations as they existed on January 1, 2020.

(2)(a) On request from an individual whom a law enforcement agency reasonably believes to be a victim of a severe form of trafficking in persons, for purposes of a nonimmigrant T visa, pursuant to the criteria in 8 U.S.C. 1101(a)(15)(T)(i)(I) and (III), a law enforcement agency, no later than ninety business days after receiving the request:

(i) Shall complete, sign, and return to the individual the Form I-914B; and

(ii) May submit a written request to an appropriate federal law enforcement officer asking such officer to file an application for continued presence pursuant to 22 U.S.C. 7105(c)(3).

(b) If the law enforcement agency determines that an individual does not meet the requirements of the law enforcement agency for completion of a Form I-914B, the law enforcement agency shall, no later than ninety business days after receiving the request, inform the individual of the reason and that the individual may make another request with additional evidence or documentation to satisfy such requirements. The law enforcement agency shall permit the individual to make such additional request.

(3)(a) On request from an individual whom a certifying agency reasonably believes to be a victim of qualifying criminal activity, for purposes of a nonimmigrant U visa, pursuant to the certification criteria in 8 U.S.C. 1101(a)(15)(U)(i)(II) to (IV) and (iii), a certifying official in the certifying agency, no later than ninety business days after receiving the request, shall complete, sign, and return to the individual the Form I-918B.

(b) For purposes of determining helpfulness pursuant to 8 U.S.C. 1101(a)(15)(U)(i)(III), an individual shall be considered helpful if, since the initiation of cooperation, the individual has not unreasonably refused to cooperate or failed to provide information and assistance reasonably requested by law enforcement or the prosecutor.

(c) If the certifying official determines that an individual does not meet the requirements of the certifying agency for completion of a Form I-918B, the certifying official shall, no later than ninety business days after receiving the request, inform the individual of the reason and that the individual may make another request with additional evidence or documentation to satisfy such requirements. The certifying official shall permit the individual to make such additional request.

(4) An investigation, the filing of charges, a prosecution, or a conviction are not required for an individual to request and obtain the signed and completed Form I-914B or Form I-918B from a law enforcement agency or certifying official.

(5) It is the exclusive responsibility of the federal immigration authorities to determine whether a person is eligible for a T or U visa. Completion of a Form I-914B or Form I-918B by a law enforcement agency or certifying official only serves to verify information regarding certain criteria considered by the federal government in granting such visas.

(6) A law enforcement agency, certifying agency, or certifying official has the discretion to revoke, disavow, or withdraw a previous completion of a Form I-914B or Form I-918B at any time after initial completion, as provided in 8 C.F.R. 214.11(d)(3)(ii) and 8 C.F.R. 214.14(h)(2)(i)(A).

(7) A law enforcement agency or certifying agency that receives a request under this section shall maintain an internal record of such request, including

whether such request was granted or denied and, if denied, the reasons for such denial. Such record shall be maintained for at least three years from completion or denial of the request.

Source: Laws 2020, LB518, § 1.

ARTICLE 4

WARRANT AND ARREST OF ACCUSED

Section
29-404.02. Arrest without warrant; when.
29-422. Citation in lieu of arrest; legislative intent.

29-404.02 Arrest without warrant; when.

(1) Except as provided in sections 28-311.11 and 42-928, a peace officer may arrest a person without a warrant if the officer has reasonable cause to believe that such person has committed:

(a) A felony;

(b) A misdemeanor, and the officer has reasonable cause to believe that such person either (i) will not be apprehended unless immediately arrested, (ii) may cause injury to himself or herself or others or damage to property unless immediately arrested, (iii) may destroy or conceal evidence of the commission of such misdemeanor, or (iv) has committed a misdemeanor in the presence of the officer; or

(c) One or more of the following acts to one or more household members, whether or not committed in the presence of the peace officer:

(i) Attempting to cause or intentionally and knowingly causing bodily injury with or without a dangerous instrument;

(ii) Placing, by physical menace, another in fear of imminent bodily injury; or

(iii) Engaging in sexual contact or sexual penetration without consent as defined in section 28-318.

(2) For purposes of this section:

(a) Household members includes spouses or former spouses, children, persons who are presently residing together or who have resided together in the past, persons who have a child in common whether or not they have been married or have lived together at any time, other persons related by consanguinity or affinity, and persons who are presently involved in a dating relationship with each other or who have been involved in a dating relationship with each other; and

(b) Dating relationship means frequent, intimate associations primarily characterized by the expectation of affectional or sexual involvement, but does not include a casual relationship or an ordinary association between persons in a business or social context.

Source: Laws 1967, c. 172, § 2, p. 487; Laws 1989, LB 330, § 1; Laws 2004, LB 613, § 6; Laws 2017, LB289, § 11.

29-422 Citation in lieu of arrest; legislative intent.

It is hereby declared to be the policy of the State of Nebraska to issue citations in lieu of arrest or continued custody to the maximum extent consistent with the effective enforcement of the law and the protection of the public.

In furtherance of that policy, except as provided in sections 28-311.11, 42-928, and 42-929, any peace officer shall be authorized to issue a citation in lieu of arrest or continued custody for any offense which is a traffic infraction, any other infraction, or a misdemeanor and for any violation of a city or village ordinance. Such authorization shall be carried out in the manner specified in sections 29-422 to 29-429 and 60-684 to 60-686.

Source: Laws 1974, LB 829, § 1; Laws 1978, LB 808, § 6; Laws 1985, LB 19, § 2; Laws 1989, LB 330, § 2; Laws 1993, LB 370, § 12; Laws 2017, LB289, § 12.

ARTICLE 9

BAIL

Section
29-901. Bail; personal recognizance; appointment of counsel; conditions; pretrial release program; conditions.
29-901.01. Conditions of release; how determined.

29-901 Bail; personal recognizance; appointment of counsel; conditions; pretrial release program; conditions.

(1) Except as provided in subsection (2) of this section, any bailable defendant shall be ordered released from custody pending judgment on his or her personal recognizance unless the judge determines in the exercise of his or her discretion that such a release will not reasonably assure the appearance of the defendant as required or that such a release could jeopardize the safety and maintenance of evidence or the safety of victims, witnesses, or other persons in the community.

(2)(a) This subsection applies to any bailable defendant who is charged with one or more Class IIIA, IV, or V misdemeanors or violations of city or county ordinances, except when:

(i) The victim is an intimate partner as defined in section 28-323; or

(ii) The defendant is charged with one or more violations of section 60-6,196 or 60-6,197 or city or village ordinances enacted in conformance with section 60-6,196 or 60-6,197.

(b) Any bailable defendant described in this subsection shall be ordered released from custody pending judgment on his or her personal recognizance or under other conditions of release, other than payment of a bond, unless:

(i) The defendant has previously failed to appear in the instant case or any other case in the previous six months;

(ii) The judge determines in the exercise of his or her discretion that such a release will not reasonably assure the appearance of the defendant as required or that such a release could jeopardize the safety and maintenance of evidence or the safety of the defendant, victims, witnesses, or other persons; and

(iii) The defendant was arrested pursuant to a warrant.

(3) The court shall consider all methods of bond and conditions of release to avoid pretrial incarceration. If the judge determines that the defendant shall not be released on his or her personal recognizance, the judge shall consider the defendant's financial ability to pay a bond and shall impose the least onerous of the following conditions that will reasonably assure the defendant's

appearance or that will eliminate or minimize the risk of harm to others or the public at large:

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

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

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

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

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

(4) If the court requires the defendant to execute an appearance bond requiring the defendant to post money or requires the defendant to execute a bail bond, the court shall appoint counsel for the defendant if the court finds the defendant is financially unable to pay the amount required and is indigent.

(5) If the amount of bail is deemed insufficient by the court before which the offense is pending, the court may order an increase of such bail and the defendant shall provide the additional undertaking, written or cash, to secure his or her release. All recognizances in criminal cases shall be in writing and be continuous from term to term until final judgment of the court in such cases and shall also extend, when the court has suspended execution of sentence for a limited time, as provided in section 29-2202, or, when the court has suspended execution of sentence to enable the defendant to apply for a writ of error to the Supreme Court or Court of Appeals, as provided in section 29-2301, until the period of suspension has expired. When two or more indictments or informations are returned against the same person at the same term of court, the recognizance given may be made to include all offenses charged therein. Each surety on such recognizance shall be required to justify under oath in a sum twice the amount of such recognizance and give the description of real estate owned by him or her of a value above encumbrance equal to the amount of

such justification and shall name all other cases pending in which he or she is a surety. No one shall be accepted as surety on recognizance aggregating a sum in excess of his or her equity in the real estate, but such recognizance shall not constitute a lien on the real estate described therein until judgment is entered thereon against such surety.

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

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

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

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

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

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

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

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

(h) Participation in a 24/7 sobriety program under the 24/7 Sobriety Program Act; and

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

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

Source: G.S.1873, c. 58, §§ 346 to 348, p. 802; R.S.1913, § 9003; Laws 1921, c. 203, § 1, p. 733; C.S.1922, § 10027; C.S.1929, § 29-901; R.S.1943, § 29-901; Laws 1951, c. 87, § 1, p. 250; Laws 1953, c. 90, § 1, p. 261; Laws 1961, c. 132, § 1, p. 384; Laws 1972, LB 1032, § 174; Laws 1974, LB 828, § 1; Laws 1975, LB 284, § 2; Laws 1984, LB 773, § 1; Laws 1991, LB 732, § 74; Laws 1999, LB 51, § 1; Laws 2009, LB63, § 23; Laws 2010, LB771, § 15; Laws 2017, LB259, § 2; Laws 2020, LB881, § 14; Laws 2021, LB271, § 7.

Cross References

Appeals, suspension of sentence, see section 29-2301.
Forfeiture of recognizance, see sections 29-1105 to 29-1110.
Suspension of sentence, see section 29-2202.
24/7 Sobriety Program Act, see section 60-701.

29-901.01 Conditions of release; how determined.

In determining which condition or conditions of release shall reasonably assure appearance and deter possible threats to the safety and maintenance of evidence or the safety of victims, witnesses, or other persons in the community, the judge shall, on the basis of available information, consider the defendant's financial ability to pay in setting the amount of bond. The judge may also take into account the nature and circumstances of the offense charged, including any information to indicate that the defendant might engage in additional criminal activity or pose a threat to himself or herself, yet to be collected evidence, alleged victims, potential witnesses, or members of the general public, the defendant's family ties, employment, the length of the defendant's residence in the community, the defendant's record of criminal convictions, and the defendant's record of appearances at court proceedings or of flight to avoid prosecution or of failure to appear at court proceedings.

Source: Laws 1974, LB 828, § 2; Laws 2009, LB63, § 24; Laws 2010, LB771, § 16; Laws 2017, LB259, § 3.

ARTICLE 10

CUSTODY AND MAINTENANCE OF PRISONERS

Section
29-1007. Custody awaiting trial; deadline; release after hearing.

29-1007 Custody awaiting trial; deadline; release after hearing.

A defendant charged with any offense or offenses shall not be held in custody awaiting trial on such offense or offenses for a period of time longer than the maximum possible sentence of imprisonment authorized for such offense or offenses. On the next judicial day after expiration of such deadline, the defendant shall be released on such defendant's personal recognizance, subject to conditions of release the court may impose after a hearing.

Source: Laws 2020, LB881, § 22.

ARTICLE 12

DISCHARGE FROM CUSTODY OR RECOGNIZANCE

Section
29-1201. Prisoner held without indictment; discharge or recognizance; when.

29-1201 Prisoner held without indictment; discharge or recognizance; when.

Any person held in jail charged with an indictable offense shall be discharged if he or she is not indicted at the term of court at which he or she is held to answer, unless such person is committed to jail on such charge after the rising and final report of the grand jury for that term, in which case the court may discharge such person, or require such person to enter into recognizance with sufficient security for his or her appearance before such court to answer such charge at the next term. However, such person so held in jail without indictment shall not be discharged if it appears to the satisfaction of the court that the witnesses on the part of the state have been enticed or kept away or are detained and prevented from attending court by sickness or some inevitable accident.

Source: G.S.1873, c. 58, § 389, p. 812; R.S.1913, § 9020; C.S.1922, § 10044; C.S.1929, § 29-1201; R.S.1943, § 29-1201; Laws 2020, LB387, § 41.

Cross References

Prisoners, disposition of untried charges, see section 29-3801 et seq.

ARTICLE 13
VENUE

Section
29-1301. Venue; change; when allowed.
29-1301.04. Venue; crime committed using an electronic communication device.
29-1302. Change of venue; how effected; costs; payment.

29-1301 Venue; change; when allowed.

All criminal cases shall be tried in the county where the offense was committed, except as otherwise provided in section 25-412.03 or sections 29-1301.01 to 29-1301.04, or unless it shall appear to the court by affidavits that a fair and impartial trial cannot be had therein. In such case the court, upon motion of the defendant, shall transfer the proceeding to any other district or county in the state as determined by the court.

Source: G.S.1873, c. 58, § 455, p. 823; R.S.1913, § 9024; C.S.1922, § 10048; C.S.1929, § 29-1301; R.S.1943, § 29-1301; Laws 1957, c. 103, § 1, p. 363; Laws 1975, LB 97, § 7; Laws 1978, LB 562, § 1; Laws 2021, LB500, § 1.

Cross References

Change of venue, criminal case pending in county with population of four thousand or less without adequate facilities for jury trials, see section 25-412.01.
Trial, agreements under Interlocal Cooperation Act, see section 25-412.03.

29-1301.04 Venue; crime committed using an electronic communication device.

(1) If a person uses an electronic communication device to commit any element of an offense, such person may be tried in the county where the electronic communication was initiated or where the electronic communication was received.

(2) For purposes of this section:

(a) Electronic communication has the same meaning as in section 28-1310; and

(b) Electronic communication device has the same meaning as in section 28-833.

Source: Laws 2021, LB500, § 2.

29-1302 Change of venue; how effected; costs; payment.

When the venue is changed, the clerk of the court in which the indictment was found shall file a certification of the case file and costs, which together with the original indictment, shall be transmitted to the clerk of the court to which the venue is changed, and the trial shall be conducted in all respects as if the offender had been indicted in the county to which the venue has been changed. All costs, fees, charges, and expenses accruing from a change of venue, together with all costs, fees, charges, and expenses made or incurred in the trial of, or in keeping, guarding, and maintaining the accused shall be paid by the county in which the indictment was found. The clerk of the trial court

shall make a statement of such costs, fees, charges, and expenses and certify and transmit the same to the clerk of the district court where the indictment was found, to be entered upon the register of actions and collected and paid as if a change of venue had not been had.

Source: G.S.1873, c. 58, § 456, p. 824; Laws 1883, c. 84, § 1, p. 329; Laws 1887, c. 109, § 1, p. 667; R.S.1913, § 9025; C.S.1922, § 10049; C.S.1929, § 29-1302; R.S.1943, § 29-1302; Laws 1978, LB 562, § 2; Laws 2018, LB193, § 50.

ARTICLE 14

GRAND JURY

Section

29-1406 Judge; charge to jury; instruction as to powers and duties.

(1) The grand jury, after being sworn, shall be charged as to their duty by the judge, who shall call their attention particularly to the obligation of secrecy which their oaths impose, and to such offenses as he or she is by law required to specially charge.

(2) Upon impanelment of each grand jury, the court shall give to such grand jury adequate and reasonable written notice of and shall assure that the grand jury reasonably understands the nature of:

(a) Its duty to inquire into offenses against the criminal laws of the State of Nebraska alleged to have been committed or, in the case of a grand jury impaneled pursuant to subsection (4) of section 29-1401, its duty to inquire into offenses against the criminal laws of the State of Nebraska regarding the death of a person who has died while being apprehended or while in the custody of a law enforcement officer or detention personnel;

(b) Its right to call and interrogate witnesses;

(c) Its right to request the production of documents or other evidence;

(d) The subject matter of the investigation and the criminal statutes or other statutes involved, if these are known at the time the grand jury is impaneled;

(e) The duty of the grand jury by an affirmative vote of twelve or more members of the grand jury to determine, based on the evidence presented before it, whether or not there is probable cause for finding indictments and to determine the violations to be included in any such indictments;

(f) The requirement that the grand jury may not return an indictment in cases of perjury unless at least two witnesses to the same fact present evidence establishing probable cause to return such an indictment; and

(g) In the case of a grand jury impaneled pursuant to subsection (4) of section 29-1401, if the grand jury returns a no true bill:

(i) The grand jury shall create a grand jury report with the assistance of the prosecuting attorney. The grand jury report shall briefly provide an explanation of the grand jury's findings and any recommendations the grand jury deter-

mines to be appropriate based upon the grand jury's investigation and deliberations; and

(ii) The no true bill and the grand jury report shall be filed with the court, where they shall be available for public review, along with the grand jury transcript provided for in subsection (3) of section 29-1407.01.

Source: G.S.1873, c. 58, § 397, p. 814; R.S.1913, § 9036; C.S.1922, § 10060; C.S.1929, § 29-1406; R.S.1943, § 29-1406; Laws 1979, LB 524, § 1; Laws 2016, LB1000, § 7; Laws 2020, LB881, § 15.

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

(1) A certified or authorized reporter shall be present at all grand jury sessions. All grand jury proceedings and testimony from commencement to adjournment shall be reported. Except as otherwise provided in this section, no copies of transcripts of, or exhibits from, such proceedings shall be made available.

(2) Except as provided in subsection (3) of this section:

(a) The reporter's stenography notes and tape recordings shall be preserved and sealed and any transcripts which may be prepared shall be preserved, sealed, and filed with the court;

(b) No release or destruction of the notes or transcripts shall occur without prior court approval; and

(c) No copies of such transcript or exhibits shall be made available.

(3)(a) This subsection applies to a grand jury impaneled pursuant to subsection (4) of section 29-1401.

(b) A transcript, including any exhibits of the grand jury proceedings, and a copy of such transcript and copies of such exhibits shall be prepared at court expense and shall be filed with the court. Such transcript shall not include the names of grand jurors or their deliberations.

(c) If the grand jury returns a no true bill, a copy of the transcript, including a copy of any exhibits, shall be available for public review upon written request to the clerk of the district court. Such review shall be made at a reasonable time set by the clerk of the district court. Except as otherwise provided in this subdivision, no copies of such transcript or exhibits shall be made available.

(d)(i) If the grand jury returns a true bill, once a trial court is assigned and the criminal case docketed, any of the parties to the criminal case, within five days of the criminal case being docketed, may file a motion for a protective order requesting a hearing before the trial court to request a delay of the public review of the transcript, including any exhibits, of the grand jury proceedings. Except as otherwise provided in this subdivision, no copies of such transcript or exhibits shall be made available.

(ii) If after a hearing the trial court grants the request for a protective order, then any public review of the transcript, including any exhibits, of the grand jury proceedings shall not take place until the conclusion of the criminal prosecution. Conclusion of the criminal prosecution means an acquittal, a dismissal, or, if there is a conviction, when the direct appeal process has concluded. Once the criminal prosecution has concluded, a copy of the transcript, including a copy of any exhibits, shall be available for public review

upon written request to the clerk of the district court. Such review shall be made at a reasonable time set by the clerk of the district court. Except as otherwise provided in this subdivision, no copies of such transcript or exhibits shall be made available.

(iii) If after a hearing the trial court denies the request for a protective order, then a copy of the transcript, including a copy of any exhibits, shall be available for public review once the trial court's order is filed and upon written request to the clerk of the district court. Such review shall be made at a reasonable time set by the clerk of the district court. Except as otherwise provided in this subdivision, no copies of such transcript or exhibits shall be made available.

(iv) If no party to the criminal case files a motion for a protective order within the time provided in subdivision (3)(d)(i) of this section, then a copy of the transcript, including a copy of any exhibits, shall be available for public review upon written request to the clerk of the district court. Such review shall be made at a reasonable time set by the clerk of the district court. Except as otherwise provided in this subdivision, no copies of such transcript or exhibits shall be made available.

(4) Upon application by the prosecutor or by any witness after notice to the prosecutor, the court, for good cause, may enter an order to furnish to that witness a transcript of his or her own grand jury testimony or exhibits relating thereto.

(5) Any witness summoned to testify before a grand jury, or an attorney for such witness with the witness's written approval, shall be entitled, prior to testifying, to examine and copy at the witness's expense any statement in the possession of the prosecuting attorney or the grand jury which such witness has made that relates to the subject matter under inquiry by the grand jury. If a witness is proceeding in forma pauperis, he or she shall be furnished, upon request, a copy of such transcript and shall not pay a fee.

Source: Laws 1979, LB 524, § 3; Laws 2016, LB1000, § 8; Laws 2018, LB193, § 51; Laws 2020, LB881, § 16.

29-1414 Disclosure of indictment; when prohibited.

No grand juror or officer of the court shall disclose that an indictment has been found against any person not in custody or under bail, except by the issuing of process, until the indictment is filed.

Source: G.S.1873, c. 58, § 406, p. 815; R.S.1913, § 9044; C.S.1922, § 10068; C.S.1929, § 29-1414; R.S.1943, § 29-1414; Laws 2018, LB193, § 52.

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

(1) Indictments returned by a grand jury shall be presented by their foreman to the court and shall be filed with the clerk, who shall endorse thereon the day of their filing and shall enter each case upon the register of actions and the date when the parties indicted have been arrested.

(2) Any grand jury may indict a person for an offense when the evidence before such grand jury provides probable cause to believe that such person committed such offense.

(3) The district court before which the indicted defendant is to be tried shall dismiss any indictment of the grand jury if such district court finds, upon the filing of a motion by the indicted defendant based upon the grand jury record without argument or further evidence, that the grand jury finding of probable cause is not supported by the record.

(4) Any other motions testing the validity of the indictment may be heard by the court based only on the record and argument of counsel, unless there is cause shown for the need for additional evidence.

Source: G.S.1873, c. 58, § 410, p. 816; R.S.1913, § 9048; C.S.1922, § 10072; C.S.1929, § 29-1418; R.S.1943, § 29-1418; Laws 1979, LB 524, § 10; Laws 2018, LB193, § 53.

ARTICLE 16

PROSECUTION ON INFORMATION

Section
29-1602. Information; by whom filed and subscribed; names of witnesses; endorsement.
29-1603. Allegations; how made; joinder of offenses; rights of defendant.

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 17

ARREST AND ITS INCIDENTS AFTER INDICTMENT

Section
29-1705. Felonies; recognizance ordered by court; authority.

29-1705 Felonies; recognizance ordered by court; authority.

When any person has been indicted for a felony and the person so indicted has not been arrested or recognized to appear before the court, the court may make an entry of the cause upon the record and may order the amount in which the party indicted may be recognized for his or her appearance by any officer charged with the duty of arresting him or her.

Source: G.S.1873, c. 58, § 430, p. 820; R.S.1913, § 9074; C.S.1922, § 10098; C.S.1929, § 29-1705; R.S.1943, § 29-1705; Laws 2018, LB193, § 54.

ARTICLE 18

MOTIONS AND ISSUES ON INDICTMENT

Section
29-1802. Indictment; record; service of copy on defendant; arraignment, when had.
29-1816. Arraignment of accused; when considered waived; accused younger than eighteen years of age; move court to waive jurisdiction to juvenile court; findings for decision; transfer to juvenile court; effect; appeal.
29-1816.01. Arraignment of accused; record of proceedings; filing; evidence.
29-1822. Mental incompetency of accused after crime commission; effect; death penalty; stay of execution.
29-1823. Mental incompetency of defendant before or during trial; determination by judge; effect; costs; hearing; commitment proceeding; treatment; department; duties; motion to discharge; considerations; reimbursement to counties for lodging.
29-1824. Competency restoration treatment; network of contract facilities and providers; department; powers.

29-1802 Indictment; record; service of copy on defendant; arraignment, when had.

The clerk of the district court shall, upon the filing of any indictment with him or her and after the person indicted is in custody or let to bail, cause the

same to be entered on the record of the court, and in case of the loss of the original, such record or a certified copy thereof shall be used in place thereof upon the trial of the cause. Within twenty-four hours after the filing of an indictment for felony, and in every other case on request, the clerk shall make and deliver to the sheriff and the defendant or his or her counsel a copy of the indictment, and the sheriff on receiving such copy shall serve the same upon the defendant. No one shall be, without his or her assent, arraigned or called on to answer to any indictment until one day has elapsed after receiving in person or by counsel or having an opportunity to receive a copy of such indictment.

Source: G.S.1873, c. 58, § 436, p. 821; Laws 1877, § 1, p. 4; R.S.1913, § 9080; C.S.1922, § 10104; C.S.1929, § 29-1802; R.S.1943, § 29-1802; Laws 2018, LB193, § 55.

29-1816 Arraignment of accused; when considered waived; accused younger than eighteen years of age; move court to waive jurisdiction to juvenile court; findings for decision; transfer to juvenile court; effect; appeal.

(1)(a) The accused may be arraigned in county court or district court:

(i) If the accused was eighteen years of age or older when the alleged offense was committed;

(ii) If the accused was younger than eighteen years of age and was fourteen years of age or older when an alleged offense punishable as a Class I, IA, IB, IC, ID, II, or IIA felony was committed;

(iii) If the alleged offense is a traffic offense as defined in section 43-245; or

(iv) Until January 1, 2017, if the accused was seventeen years of age when an alleged offense described in subdivision (1) of section 43-247 was committed.

(b) Arraignment in county court or district court shall be by reading to the accused the complaint or information, unless the reading is waived by the accused when the nature of the charge is made known to him or her. The accused shall then be asked whether he or she is guilty or not guilty of the offense charged. If the accused appears in person and by counsel and goes to trial before a jury regularly impaneled and sworn, he or she shall be deemed to have waived arraignment and a plea of not guilty shall be deemed to have been made.

(2) At the time of the arraignment, the county court or district court shall advise the accused, if the accused was younger than eighteen years of age at the time the alleged offense was committed, that the accused may move the county court or district court at any time not later than thirty days after arraignment, unless otherwise permitted by the court for good cause shown, to waive jurisdiction in such case to the juvenile court for further proceedings under the Nebraska Juvenile Code. This subsection does not apply if the case was transferred to county court or district court from juvenile court.

(3) For motions to transfer a case from the county court or district court to juvenile court:

(a) The county court or district court shall schedule a hearing on such motion within fifteen days. The customary rules of evidence shall not be followed at such hearing. The accused shall be represented by an attorney. The criteria set forth in section 43-276 shall be considered at such hearing. After considering all the evidence and reasons presented by both parties, the case shall be

transferred to juvenile court unless a sound basis exists for retaining the case in county court or district court; and

(b) The county court or district court shall make a decision on such motion within thirty days after the hearing and shall set forth findings for the reason for its decision. If the county court or district court determines that the accused should be transferred to the juvenile court, the complete file in the county court or district court shall be transferred to the juvenile court and the complaint, indictment, or information may be used in place of a petition therein. The county court or district court making a transfer shall order the accused to be taken forthwith to the juvenile court and designate where the juvenile shall be kept pending determination by the juvenile court. The juvenile court shall then proceed as provided in the Nebraska Juvenile Code.

(c) An order granting or denying transfer of the case from county or district court to juvenile court shall be considered a final order for the purposes of appeal. Upon entry of an order, any party may appeal to the Court of Appeals within ten days. Such review shall be advanced on the court docket without an extension of time granted to any party except upon a showing of exceptional cause. Appeals shall be submitted, assigned, and scheduled for oral argument as soon as the appellee's brief is due to be filed. The Court of Appeals shall conduct its review in an expedited manner and shall render the judgment and opinion, if any, as speedily as possible. During the pendency of an appeal from an order transferring the case to juvenile court, the juvenile court may enter temporary orders in the best interests of the juvenile.

(4) When the accused was younger than eighteen years of age when an alleged offense was committed, the county attorney or city attorney shall proceed under section 43-274.

Source: G.S.1873, c. 58, § 448, p. 822; R.S.1913, § 9092; C.S.1922, § 10117; Laws 1925, c. 105, § 1, p. 294; C.S.1929, § 29-1815; R.S.1943, § 29-1816; Laws 1947, c. 103, § 1(1), p. 291; Laws 1974, LB 620, § 6; Laws 1975, LB 288, § 2; Laws 1987, LB 34, § 1; Laws 2008, LB1014, § 16; Laws 2010, LB800, § 5; Laws 2014, LB464, § 4; Laws 2015, LB265, § 1; Laws 2015, LB605, § 59; Laws 2017, LB11, § 1; Laws 2021, LB307, § 1.

Cross References

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

29-1816.01 Arraignment of accused; record of proceedings; filing; evidence.

On the arraignment in the district court of any person accused of a felony, the court may require the official reporter of the court to make a record of the proceedings in such court incident to such arraignment and the disposition of the charge made against the accused including sentence in the event of conviction. The court may further require the court reporter to prepare a transcript of the report of such proceedings, authenticate the transcript with an appropriate certificate to be attached thereto, and cause the same to be filed in the office of the clerk of the court. Such transcript shall be kept in a special file and not removed from the office of the clerk of the district court, except on an order of a judge of the court expressly authorizing removal. In the event that the transcript is so made, authenticated and filed, it, or a duly certified copy

thereof, shall become and be competent and lawful evidence and admissible as such in any of the courts of this state.

Source: Laws 1947, c. 103, § 1(2), p. 292; Laws 2018, LB193, § 56.

29-1822 Mental incompetency of accused after crime commission; effect; death penalty; stay of execution.

(1) A person who becomes mentally incompetent after the commission of an offense shall not be tried for the offense until such disability is removed as provided in section 29-1823.

(2) If, after a verdict of guilty, but before judgment is pronounced, a defendant becomes mentally incompetent, then no judgment shall be given until such disability is removed.

(3) If a defendant is sentenced to death and, after judgment, but before execution of the sentence, such person becomes mentally incompetent, execution of the sentence shall be stayed until such disability is removed.

Source: G.S.1873, c. 58, § 454, p. 823; R.S.1913, § 9098; C.S.1922, § 10123; C.S.1929, § 29-1821; R.S.1943, § 29-1822; Laws 1986, LB 1177, § 7; Laws 2015, LB268, § 13; Referendum 2016, No. 426; Laws 2020, LB881, § 17.

29-1823 Mental incompetency of defendant before or during trial; determination by judge; effect; costs; hearing; commitment proceeding; treatment; department; duties; motion to discharge; considerations; reimbursement to counties for lodging.

(1) If at any time prior to or during trial it appears that the defendant has become mentally incompetent to stand trial, such disability may be called to the attention of the district or county court by the county attorney or city attorney, by the defendant, or by any person for the defendant. The judge of the district or county court of the county where the defendant is to be tried shall have the authority to determine whether or not the defendant is competent to stand trial. The judge may also cause such medical, psychiatric, or psychological examination of the defendant to be made as he or she deems warranted and hold such hearing as he or she deems necessary. The cost of the examination, when ordered by the court, shall be the expense of the county in which the crime is charged. The judge may allow any physician, psychiatrist, or psychologist a reasonable fee for his or her services, which amount, when determined by the judge, shall be certified to the county board which shall cause payment to be made. Should the judge determine after a hearing that the defendant is mentally incompetent to stand trial and that there is a substantial probability that the defendant will become competent within the reasonably foreseeable future, the judge shall order the defendant to be committed to the Department of Health and Human Services to provide appropriate treatment to restore competency. This may include commitment to a state hospital for the mentally ill, another appropriate state-owned or state-operated facility, or a contract facility or provider pursuant to an alternative treatment plan proposed by the department and approved by the court under subsection (2) of this section until such time as the disability may be removed.

(2)(a) If the department determines that treatment by a contract facility or provider is appropriate, the department shall file a report outlining its determination and such alternative treatment plan with the court. Within twenty-one

days after the filing of such report, the court shall hold a hearing to determine whether such treatment is appropriate. The court may approve or deny such alternative treatment plan.

(b) A defendant shall not be eligible for treatment by a contract facility or provider under this subsection if the judge determines that the public's safety would be at risk.

(3) Within sixty days after entry of the order committing the defendant to the department, and every sixty days thereafter until either the disability is removed or other disposition of the defendant has been made, the court shall hold a hearing to determine (a) whether the defendant is competent to stand trial or (b) whether or not there is a substantial probability that the defendant will become competent within the reasonably foreseeable future.

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

(5) The defendant, by and through counsel, may move to be discharged from the offenses charged in the complaint or information for the reason that there is not a substantial probability that the defendant will become competent within the reasonably foreseeable future.

(6) In determining whether there is a substantial probability that a defendant will become competent in the reasonably foreseeable future, the court shall take into consideration the likely length of any sentence that would be imposed upon the defendant. If the court discharges the defendant, the court shall state whether such discharge is with or without prejudice.

(7)(a) If a judge orders a defendant to be committed to the Department of Health and Human Services to receive treatment to restore competency and such defendant remains lodged in the county jail, the department shall reimburse the county for lodging the defendant.

(b) Costs of lodging the defendant shall include the daily rate of lodging the defendant, food, medical services, transportation, and any other necessary costs incurred by the county to lodge the defendant.

(c) The daily rate of lodging the defendant shall be one hundred dollars per day for each day or portion thereof after the first thirty days that the defendant is lodged in the county jail after a determination by a judge that the defendant is required to be restored to competency. On July 1, 2023, and each July 1 thereafter, the department shall adjust the amount to be reimbursed to the county jails by an amount equal to the percentage increase, if any, in the Consumer Price Index for All Urban Consumers, as published by the United States Department of Labor, Bureau of Labor Statistics, for the twelve months ending on June 30 of such year.

(d) For purposes of this section, medical services has the same meaning as provided in subsection (2) of section 47-701.

Source: Laws 1967, c. 174, § 1, p. 489; Laws 1997, LB 485, § 1; Laws 2017, LB259, § 4; Laws 2019, LB686, § 5; Laws 2020, LB881, § 18; Laws 2022, LB921, § 1.
Effective date July 21, 2022.

Cross References

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

29-1824 Competency restoration treatment; network of contract facilities and providers; department; powers.

The Department of Health and Human Services may establish a network of contract facilities and providers to provide competency restoration treatment pursuant to alternative treatment plans under section 29-1823. The department may create criteria for participation in such network and establish training in competency restoration treatment for participating contract facilities and providers.

Source: Laws 2020, LB881, § 19.

ARTICLE 19
PREPARATION FOR TRIAL

(a) TESTIMONY IN GENERAL

Section

(c) DISCOVERY

(a) TESTIMONY IN GENERAL

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

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

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

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

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

(1) The amount of the witness fee and mileage in traffic, criminal, and juvenile cases is governed by section 33-139.

(2) A witness in a traffic, criminal, or juvenile case shall be entitled to a witness fee and mileage after appearing in court in response to a subpoena. The clerk of the court shall immediately submit a claim for payment of witness fees and mileage on behalf of all such witnesses to the county clerk in cases involving a violation of state law or to the city clerk in cases involving a violation of a city ordinance. All witness fees and mileage paid by a defendant as part of the court costs ordered by the court to be paid shall be reimbursed to the county or city treasurer as appropriate.

(3) Any person accused of crime amounting to a misdemeanor or felony shall have compulsory process to enforce the attendance of witnesses in his or her behalf.

Source: G.S.1873, c. 58, § 461, p. 825; Laws 1885, c. 106, § 1, p. 394; R.S.1913, § 9101; C.S.1922, § 10126; C.S.1929, § 29-1903; R.S.1943, § 29-1903; Laws 1981, LB 204, § 40; Laws 2017, LB509, § 6.

(c) DISCOVERY

29-1912 Request by defendant to inspect and make copies of evidence; granted; when; findings; possibility of harm; effect.

(1) When a defendant is charged with a felony or when a defendant is charged with a misdemeanor or a violation of a city or village ordinance for which imprisonment is a possible penalty, he or she may request the court where the case is to be tried, at any time after the filing of the indictment, information, or complaint, to order the prosecuting attorney to permit the defendant to inspect and copy or photograph:

(a) The defendant's statement, if any. For purposes of this subdivision, statement includes any of the following which relate to the investigation of the underlying charge or charges in the case and which were developed or received by law enforcement agencies:

(i) Written or recorded statements;

(ii) Written summaries of oral statements; and

(iii) The substance of oral statements;

(b) The defendant's prior criminal record, if any;

(c) The defendant's recorded testimony before a grand jury;

(d) The names and addresses of witnesses on whose evidence the charge is based;

(e) The results and reports, in any form, of physical or mental examinations, and of scientific tests, or experiments made in connection with the particular case, or copies thereof;

(f) Documents, papers, books, accounts, letters, photographs, objects, or other tangible things of whatsoever kind or nature which could be used as evidence by the prosecuting authority; and

(g) Reports developed or received by law enforcement agencies when such reports directly relate to the investigation of the underlying charge or charges in the case.

(2) The court may issue such an order pursuant to the provisions of this section. In the exercise of its judicial discretion, the court shall consider, among other things, whether:

(a) The request is material to the preparation of the defense;

(b) The request is not made primarily for the purpose of harassing the prosecution or its witnesses;

(c) The request, if granted, would not unreasonably delay the trial of the offense and an earlier request by the defendant could not have reasonably been made;

(d) There is no substantial likelihood that the request, if granted, would preclude a just determination of the issues at the trial of the offense; or

(e) The request, if granted, would not result in the possibility of bodily harm to, or coercion of, witnesses.

(3) Whenever the court refuses to grant an order pursuant to the provisions of this section, it shall render its findings in writing together with the facts upon which the findings are based.

(4) Whenever the prosecuting attorney believes that the granting of an order under the provisions of this section will result in the possibility of bodily harm to witnesses or that witnesses will be coerced, the court may permit him or her to make such a showing in the form of a written statement to be inspected by the court alone. The statement shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal by the defendant.

(5) This section does not apply to jailhouse informants as defined in section 29-4701. Sections 29-4701 to 29-4706 govern jailhouse informants.

Source: Laws 1969, c. 235, § 1, p. 867; Laws 1983, LB 110, § 1; Laws 2009, LB63, § 25; Laws 2010, LB771, § 17; Laws 2019, LB352, § 7; Laws 2019, LB496, § 4.

29-1914 Discovery order; limitation.

Whenever an order is issued pursuant to the provisions of section 29-1912 or 29-1913, it shall be limited to items or information that:

(1) Directly relate to the investigation of the underlying charge or charges in the case;

(2) Are within the possession, custody, or control of the state or local subdivisions of government; and

(3) Are known to exist by the prosecution or that, by the exercise of due diligence, may become known to the prosecution.

Source: Laws 1969, c. 235, § 3, p. 869; Laws 2019, LB496, § 5.

29-1916 Discovery order; reciprocity to prosecution; waiver of privilege of self-incrimination.

(1) Whenever the court issues an order pursuant to the provisions of sections 29-1912 and 29-1913, the court may condition its order by requiring the

defendant to grant the prosecution like access to comparable items or information included within the defendant's request which:

(a) Are in the possession, custody, or control of the defendant;

(b) The defendant intends to produce at the trial; and

(c) Are material to the preparation of the prosecution's case.

(2) Whenever a defendant is granted an order under sections 29-1912 to 29-1921, the defendant shall be deemed to have waived the privilege of self-incrimination for the purposes of the operation of this section.

Source: Laws 1969, c. 235, § 5, p. 869; Laws 2019, LB496, § 6.

29-1917 Deposition of witness or sexual assault victim; when; procedure; use at trial.

(1) Except as provided in section 29-1926, at any time after the filing of an indictment or information in a felony prosecution, the prosecuting attorney or the defendant may request the court to allow the taking of a deposition of any person other than the defendant who may be a witness in the trial of the offense. The court may order the taking of the deposition when it finds the testimony of the witness:

(a) May be material or relevant to the issue to be determined at the trial of the offense; or

(b) May be of assistance to the parties in the preparation of their respective cases.

(2) An order granting the taking of a deposition shall include the time and place for taking such deposition and such other conditions as the court determines to be just.

(3) Except as provided in subsection (4) of this section, the proceedings in taking the deposition of a witness pursuant to this section and returning it to the court shall be governed in all respects as the taking of depositions in civil cases, including section 25-1223.

(4)(a) A sexual assault victim may request to have an advocate of the victim's choosing present during a deposition under this section. The prosecuting attorney shall inform the victim that the victim may make such request as soon as reasonably practicable prior to the deposition. If the victim wishes to have an advocate present, the victim shall, if reasonably practicable, inform the prosecuting attorney if an advocate will be present, and, if known, the advocate's identity and contact information. If so informed by the victim, the prosecuting attorney shall notify the defendant as soon as reasonably practicable.

(b) An advocate present at a deposition under this section shall not interfere with the deposition or provide legal advice.

(c) For purposes of this subsection, the terms sexual assault victim, victim, and advocate have the same meanings as in section 29-4309.

(5) A deposition taken pursuant to this section may be used at the trial by any party solely for the purpose of contradicting or impeaching the testimony of the deponent as a witness.

Source: Laws 1969, c. 235, § 6, p. 870; Laws 1988, LB 90, § 2; Laws 1993, LB 178, § 1; Laws 2011, LB667, § 6; Laws 2019, LB496, § 7; Laws 2020, LB43, § 10.

Cross References

Child victim or child witness, use of videotape deposition, see section 29-1926.

29-1918 Discovery of additional evidence; notify other party and court.

If, subsequent to compliance with an order for discovery under the provisions of sections 29-1912 to 29-1921, and prior to or during trial, a party discovers additional material which the party would have been under a duty to disclose or produce at the time of such previous compliance, the party shall promptly notify the other party or the other party's attorney and the court of the existence of the additional material. Such notice shall be given at the time of the discovery of such additional material.

Source: Laws 1969, c. 235, § 7, p. 870; Laws 2019, LB496, § 8.

29-1919 Discovery; failure to comply; effect.

If, at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with sections 29-1912 to 29-1921 or an order issued pursuant to sections 29-1912 to 29-1921, the court may:

(1) Order such party to permit the discovery or inspection of materials not previously disclosed;

(2) Grant a continuance;

(3) Prohibit the party from calling a witness not disclosed or introducing in evidence the material not disclosed; or

(4) Enter such other order as it deems just under the circumstances.

Source: Laws 1969, c. 235, § 8, p. 870; Laws 2019, LB496, § 9.

29-1923 Additional statement of defendant or name of eyewitness; prosecutor; notification required; failure to comply; effect.

If, subsequent to compliance with an order issued pursuant to section 29-1922, and prior to or during trial, the prosecuting authority discovers any additional statement made by the defendant or the name of any eyewitness who has identified the defendant at a lineup or showup previously requested or ordered which is subject to discovery or inspection under section 29-1922, he or she shall promptly notify the defendant or his or her attorney or the court of the existence of this additional material. Such notice shall be given at the time of the discovery of such additional material. If at any time during the course of the proceedings it is brought to the attention of the court that the prosecuting authority has failed to comply with this section or with an order issued pursuant to section 29-1922, the court may order the prosecuting authority to permit the discovery or inspection of materials or witnesses not previously disclosed, grant a continuance, or prohibit the prosecuting authority from introducing in evidence the material or the testimony of the witness or witnesses not disclosed, or it may enter such other order as it deems just under the circumstances.

Source: Laws 1969, c. 230, § 2, p. 857; Laws 1983, LB 110, § 4; Laws 2019, LB496, § 10.

29-1924 Statement, defined.

For purposes of sections 29-1922 and 29-1923, statement made by the defendant includes any of the following statements made by the defendant which relate to the investigation of the underlying charge or charges in the case and which were developed or received by law enforcement agencies:

(1) Written or recorded statements;

(2) Written summaries of oral statements; and

(3) The substance of oral statements.

Source: Laws 1969, c. 230, § 3, p. 858; Laws 1983, LB 110, § 5; Laws 2019, LB496, § 11.

29-1926 Child victim or child witness; video deposition and in camera testimony; conditions; use; findings by court; release; procedure; violation; penalty.

(1)(a) Upon request of the prosecuting or defense attorney and upon a showing of compelling need, the court shall order the taking of a video deposition of a child victim of or child witness to any offense punishable as a felony. The deposition ordinarily shall be in lieu of courtroom or in camera testimony by the child. If the court orders a video deposition, the court shall:

(i) Designate the time and place for taking the deposition. The deposition may be conducted in the courtroom, the judge's chambers, or any other location suitable for video recording;

(ii) Assure adequate time for the defense attorney to complete discovery before taking the deposition; and

(iii) Preside over the taking of the video deposition in the same manner as if the child were called as a witness for the prosecution during the course of the trial.

(b) Unless otherwise required by the court, the deposition shall be conducted in the presence of the prosecuting attorney, the defense attorney, the defendant, and any other person deemed necessary by the court, including the parent or guardian of the child victim or child witness, an advocate as defined in section 29-4309, or a counselor or other person with whom the child is familiar. Such parent, guardian, advocate, counselor, or other person shall be allowed to sit with or near the child unless the court determines that such person would be disruptive to the child's testimony.

(c) At any time subsequent to the taking of the original video deposition and upon sufficient cause shown, the court shall order the taking of additional video depositions to be admitted at the time of the trial.

(d) If the child testifies at trial in person rather than by video deposition, the taking of the child's testimony may, upon request of the prosecuting attorney and upon a showing of compelling need, be conducted in camera.

(e) Unless otherwise required by the court, the child shall testify in the presence of the prosecuting attorney, the defense attorney, the defendant, and any other person deemed necessary by the court, including the parent or guardian of the child victim or child witness, an advocate as defined in section 29-4309, or a counselor or other person with whom the child is familiar. Such parent, guardian, advocate, counselor, or other person shall be allowed to sit with or near the child unless the court determines that such person would be

disruptive to the child's testimony. Unless waived by the defendant, all persons in the room shall be visible on camera except the camera operator.

(f) If deemed necessary to preserve the constitutionality of the child's testimony, the court may direct that during the testimony the child shall at all times be in a position to see the defendant live or on camera.

(g) For purposes of this section, child means a person eleven years of age or younger at the time the motion to take the deposition is made or at the time of the taking of in camera testimony at trial.

(h) Nothing in this section shall restrict the court from conducting the pretrial deposition or in camera proceedings in any manner deemed likely to facilitate and preserve a child's testimony to the fullest extent possible, consistent with the right to confrontation guaranteed in the Sixth Amendment of the Constitution of the United States and Article I, section 11, of the Nebraska Constitution. In deciding whether there is a compelling need that child testimony accommodation is required by pretrial video deposition, in camera live testimony, in camera video testimony, or any other accommodation, the court shall make particularized findings on the record of:

(i) The nature of the offense;

(ii) The significance of the child's testimony to the case;

(iii) The likelihood of obtaining the child's testimony without modification of trial procedure or with a different modification involving less substantial digression from trial procedure than the modification under consideration;

(iv) The child's age;

(v) The child's psychological maturity and understanding; and

(vi) The nature, degree, and duration of potential injury to the child from testifying.

(i) The court may order an independent examination by a psychologist or psychiatrist if the defense attorney requests the opportunity to rebut the showing of compelling need produced by the prosecuting attorney. Such examination shall be conducted in the child's county of residence.

(j) After a finding of compelling need by the court, neither party may call the child witness to testify as a live witness at the trial before the jury unless that party demonstrates that the compelling need no longer exists.

(k) Nothing in this section shall limit the right of access of the media or the public to open court.

(l) Nothing in this section shall preclude discovery by the defendant as set forth in section 29-1912.

(m) The Supreme Court may adopt and promulgate rules of procedure to administer this section, which rules shall not be in conflict with laws governing such matters.

(2)(a) No custodian of a video recording of a child victim or child witness alleging, explaining, denying, or describing an act of sexual assault pursuant to section 28-319, 28-319.01, or 28-320.01 or child abuse pursuant to section 28-707 as part of an investigation or evaluation of the abuse or assault shall release or use a video recording or copies of a video recording or consent, by commission or omission, to the release or use of a video recording or copies of a video recording to or by any other party without a court order, notwithstanding the fact that the child victim or child witness has consented to the release or

use of the video recording or that the release or use is authorized under law, except as provided in section 28-730 or pursuant to an investigation under the Office of Inspector General of Nebraska Child Welfare Act. Any custodian may release or consent to the release or use of a video recording or copies of a video recording to law enforcement agencies or agencies authorized to prosecute such abuse or assault cases on behalf of the state.

(b) The court order may govern the purposes for which the video recording may be used, the reproduction of the video recording, the release of the video recording to other persons, the retention and return of copies of the video recording, and any other requirements reasonably necessary for the protection of the privacy and best interests of the child victim or child witness.

(c)(i) Pursuant to section 29-1912, the defendant described in the video recording may petition the district court in the county where the alleged offense took place or where the custodian of the video recording resides for an order requiring the custodian of the video recording to provide a physical copy to the defendant or the defendant's attorney. Such order shall include a protective order prohibiting further distribution of the video recording without a court order.

(ii) Upon obtaining the copy of the video recording pursuant to subdivision (2)(c)(i) of this section, the defendant or the defendant's attorney may request that the recording be transcribed by filing a motion with the court identifying the court reporter or transcriber and the address or location where the transcription will occur. Upon receipt of such request, the court shall enter an order authorizing the distribution of a copy of the video recording to such reporter or transcriber and requiring the copy of the video recording be returned by the reporter or transcriber upon completion of the transcription. Such order may include a protective order related to the distribution of the video recording or information contained in the video recording, including an order that identifying information of the child victim or child witness be redacted from the transcript prepared pursuant to this subsection. Upon return of such copy, the defendant or the defendant's attorney shall certify to the court and the parties that such copy has been returned.

(iii) After obtaining the copy of the video recording pursuant to subdivision (2)(c)(i) of this section, the defendant or the defendant's attorney may file a motion with the court requesting permission to release such copy to an expert or investigator. If the defendant or the defendant's attorney believes that including the name or identifying information of such expert or investigator will prejudice the defendant, the court shall permit the defendant or the defendant's attorney to include such information in the form of a written statement to be inspected by the court alone. The statement shall be sealed and preserved in the records of the court. Upon granting such motion, the court shall enter an order authorizing the distribution of a copy of the video recording to such expert or investigator and requiring the copy of the video recording be returned by the expert or investigator upon the completion of services of the expert or investigator. The order shall not include the name or identifying information of the expert or investigator. Such order may include a protective order related to the distribution of the video recording or information contained in the video recording. Upon return of such copy, the defendant or the defendant's attorney shall certify to the court and the parties that such copy has been returned. Such certification shall not include the name or identifying information of the expert or the investigator.

(d) Any person who releases or uses a video recording except as provided in this section shall be guilty of a Class I misdemeanor.

Source: Laws 1988, LB 90, § 3; Laws 1997, LB 643, § 1; Laws 2006, LB 1199, § 12; Laws 2015, LB347, § 1; Laws 2020, LB43, § 11; Laws 2020, LB1148, § 8.

Cross References

Office of Inspector General of Nebraska Child Welfare Act, see section 43-4301.

ARTICLE 20
TRIAL

Section
29-2001. Trial; presence of accused required; exceptions.
29-2003. Joint indictment; special venire; when required; how drawn.
29-2004. Jury; how drawn and selected; alternate jurors.
29-2005. Peremptory challenges.
29-2006. Challenges for cause.
29-2011. Jurors; permitted to take notes; use; destruction.
29-2011.02. Witnesses; refusal to testify or provide information; court order for testimony or information; limitation on use.
29-2011.03. Order for testimony or information of witness; request; when.
29-2017. Jury; view place of occurrence of material fact; restrictions.
29-2020. Bill of exceptions by defendant; request; procedure; exception in capital cases.
29-2023. Jury; discharged before verdict; effect; record.
29-2027. Verdict in trials for murder; conviction by confession; sentencing procedure.

29-2001 Trial; presence of accused required; exceptions.

No person indicted for a felony shall be tried unless personally present during the trial. Persons indicted for a misdemeanor may, at their own request, by leave of the court be put on trial in their absence. The request shall be in writing and entered on the record of the court.

Source: G.S.1873, c. 58, § 464, p. 825; R.S.1913, § 9104; C.S.1922, § 10129; C.S.1929, § 29-2001; R.S.1943, § 29-2001; Laws 2018, LB193, § 57.

29-2003 Joint indictment; special venire; when required; how drawn.

When two or more persons have been charged together in the same indictment or information with a crime, and one or more have demanded a separate trial and had the same, and when the court is satisfied by reason of the same evidence being required in the further trial of parties to the same indictment or information, that the petit jurors from the jury panel and bystanders are incompetent, because of having heard the evidence, to sit in further causes in the same indictment or information, then the court may require the jury commissioner to draw in the same manner as described in section 25-1656 such number of names as the court may direct as a separate jury panel from which a jury may be selected, which panel shall be notified and summoned for the day and hour as ordered by the court. The jurors whose names are so drawn shall be summoned to forthwith appear before the court, and, after having been examined, such as are found qualified and have no lawful excuse for not serving as jurors shall constitute a special venire from which the court

shall proceed to have a jury impaneled for the trial of the cause. The court may repeat the exercise of this power until all the parties charged in the same indictment or information have been tried.

Source: Laws 1881, c. 34, § 1, p. 213; R.S.1913, § 9106; C.S.1922, § 10131; C.S.1929, § 29-2003; R.S.1943, § 29-2003; Laws 2020, LB387, § 42.

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

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

(2) In all cases, except as may be otherwise expressly provided, the accused shall be tried by a jury drawn, summoned, and impaneled according to provisions of the code of civil procedure, except that whenever in the opinion of the court the trial is likely to be a protracted one, the court may, immediately after the jury is impaneled and sworn, direct the calling of additional jurors, to be known as alternate jurors.

(3)(a) The court may impanel up to six alternate jurors to replace any jurors who are unable to perform or who are disqualified from performing their duties.

(b) Alternate jurors must have the same qualifications and shall be selected and sworn in the same manner as any other juror.

(c) Unless a party objects, alternate jurors shall replace jurors in the same sequence in which the alternates were selected. An alternate juror who replaces a juror has the same authority as the other jurors.

(4) The alternate jurors shall take the proper oath or affirmation and shall be seated near the regular jurors with equal facilities for seeing and hearing the proceedings in the cause, and shall attend at all times upon the trial of the cause in company with the regular jurors. They shall obey all orders and admonitions of the court, and if the regular jurors are ordered to be kept in the custody of an officer during the trial of the cause, the alternate jurors shall also be kept with the other jurors.

(5)(a) The court may retain alternate jurors after the jury retires to deliberate, except that if an information charging a violation of section 28-303 and in which the death penalty is sought contains a notice of aggravation, the alternate jurors shall be retained as provided in section 29-2520.

(b) The court shall ensure that a retained alternate does not discuss the case with anyone until that alternate replaces a juror or is discharged. If an alternate replaces a juror after deliberations have begun, the court shall instruct the jury to begin its deliberations anew.

(6)(a) Each party is entitled to the following number of additional peremptory challenges to prospective alternate jurors:

(i) One additional peremptory challenge is permitted when one or two alternates are impaneled;

(ii) Two additional peremptory challenges are permitted when three or four alternates are impaneled; and

(iii) Three additional peremptory challenges are permitted when five or six alternates are impaneled.

(b) The additional peremptory challenges provided in this subsection may only be used to remove alternate jurors.

(7) In construing and applying this section, courts shall consider Federal Rule of Criminal Procedure 24 and case law interpreting such rule.

Source: G.S.1873, c. 58, § 466, p. 825; R.S.1913, § 9107; C.S.1922, § 10132; C.S.1929, § 29-2004; Laws 1933, c. 38, § 1, p. 242; C.S.Supp.,1941, § 29-2004; R.S.1943, § 29-2004; Laws 1996, LB 1249, § 2; Laws 2002, Third Spec. Sess., LB 1, § 6; Laws 2015, LB268, § 14; Referendum 2016, No. 426; Laws 2020, LB881, § 20.

Cross References

Change of venue, criminal case pending in county with population of four thousand or less without adequate facilities for jury trials, see section 25-412.01.
For drawing and selecting of jurors, see Jury Selection Act, section 25-1644.

29-2005 Peremptory challenges.

Except as otherwise provided in section 29-2004 for peremptory challenges to alternate jurors:

(1) Every person arraigned for any crime punishable with death, or imprisonment for life, shall be admitted on his or her trial to a peremptory challenge of twelve jurors, and no more;

(2) Every person arraigned for any offense that may be punishable by imprisonment for a term exceeding eighteen months and less than life, shall be admitted to a peremptory challenge of six jurors;

(3) In all other criminal trials, the defendant shall be allowed a peremptory challenge of three jurors; and

(4) The attorney prosecuting on behalf of the state shall be admitted to a peremptory challenge of twelve jurors in all cases when the offense is punishable with death or imprisonment for life, six jurors when the offense is punishable by imprisonment for a term exceeding eighteen months and less than life, and three jurors in all other cases.

Source: G.S.1873, c. 58, § 467, p. 826; R.S.1913, § 9108; Laws 1915, c. 166, § 1, p. 337; C.S.1922, § 10133; C.S.1929, § 29-2005; Laws 1933, c. 38, § 2, p. 243; C.S.Supp.,1941, § 29-2005; R.S.1943, § 29-2005; Laws 1981, LB 213, § 1; Laws 2015, LB268, § 15; Referendum 2016, No. 426; Laws 2020, LB881, § 21.

29-2006 Challenges for cause.

The following shall be good causes for challenge to any person called as a juror or alternate juror, on the trial of any indictment: (1) That he was a member of the grand jury which found the indictment; (2) that he has formed or expressed an opinion as to the guilt or innocence of the accused; *Provided,* if a juror or alternate juror shall state that he has formed or expressed an opinion as to the guilt or innocence of the accused, the court shall thereupon proceed to examine, on oath, such juror or alternate juror as to the ground of such opinion; and if it shall appear to have been founded upon reading newspaper statements, communications, comments or reports, or upon rumor or hearsay, and not upon conversations with witnesses of the transactions or reading reports of their testimony or hearing them testify, and the juror or alternate

juror shall say on oath that he feels able, notwithstanding such opinion, to render an impartial verdict upon the law and the evidence, the court, if satisfied that such juror or alternate juror is impartial and will render such verdict, may, in its discretion, admit such juror or alternate juror as competent to serve in such case; (3) in indictments for an offense the punishment whereof is capital, that his opinions are such as to preclude him from finding the accused guilty of an offense punishable with death; (4) that he is a relation within the fifth degree to the person alleged to be injured or attempted to be injured, or to the person on whose complaint the prosecution was instituted, or to the defendant; (5) that he has served on the petit jury which was sworn in the same cause against the same defendant and which jury either rendered a verdict which was set aside or was discharged, after hearing the evidence; (6) that he has served as a juror in a civil case brought against the defendant for the same act; (7) that he has been in good faith subpoenaed as a witness in the case; (8) that he is a habitual drunkard; (9) the same challenges shall be allowed in criminal prosecutions that are allowed to parties in civil cases.

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

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

29-2011 Jurors; permitted to take notes; use; destruction.

Jurors shall be permitted, but not required, to take notes. The notes may be used during the jury's deliberations and shall be treated as confidential between the juror making them and the other jurors. The trial judge shall ensure the confidentiality of the notes during the course of the trial and the jury's deliberations and shall instruct the bailiff to immediately mutilate and destroy such notes upon return of the verdict.

Source: Laws 2008, LB1014, § 72; Laws 2020, LB387, § 43.

29-2011.02 Witnesses; refusal to testify or provide information; court order for testimony or information; limitation on use.

Whenever a witness refuses, on the basis of the privilege against self-incrimination, to testify or to provide other information in a criminal proceeding or investigation before a court, a grand jury, the Auditor of Public Accounts, the Legislative Council, or a standing committee or a special legislative investigative or oversight committee of the Legislature, the court, on motion of the county attorney, other prosecuting attorney, Auditor of Public Accounts, chairperson of the Executive Board of the Legislative Council, or chairperson of a standing or special committee of the Legislature, may order the witness to testify or to provide other information. The witness may not refuse to comply with such an order of the court on the basis of the privilege against self-incrimination, but no testimony or other information compelled under the court's order or any information directly or indirectly derived from such testimony or other information may be used against the witness in any criminal case except in a prosecution for perjury, giving a false statement, or failing to comply with the order of the court.

Source: Laws 1982, LB 525, § 1; Laws 1990, LB 1246, § 12; Laws 2015, LB539, § 1; Laws 2020, LB681, § 1.

Cross References

Legislative Council, committee investigations, see sections 50-404 to 50-409.

29-2011.03 Order for testimony or information of witness; request; when.

The county attorney, other prosecuting attorney, Auditor of Public Accounts, or chairperson of the Executive Board of the Legislative Council or chairperson of a standing committee or a special legislative investigative or oversight committee of the Legislature upon an affirmative vote of a majority of the board or committee, may request an order pursuant to section 29-2011.02 when in such person's judgment:

(1) The testimony or other information from such individual may be necessary to the public interest; and

(2) Such individual has refused or is likely to refuse to testify or provide other information on the basis of the privilege against self-incrimination.

Source: Laws 1982, LB 525, § 2; Laws 1990, LB 1246, § 13; Laws 2015, LB539, § 2; Laws 2020, LB681, § 2.

29-2017 Jury; view place of occurrence of material fact; restrictions.

Whenever in the opinion of the court it is proper for the jury to have a view of the place in which any material fact occurred, it may order them to be conducted in a body, under charge of the bailiff, to the place which shall be shown to them by the bailiff, an individual appointed by the court, or both. While the jury are thus absent, no person other than the bailiff or individual appointed by the court shall speak to them on any subject connected with the trial.

Source: G.S.1873, c. 58, § 479, p. 829; R.S.1913, § 9120; C.S.1922, § 10145; C.S.1929, § 29-2017; R.S.1943, § 29-2017; Laws 2020, LB387, § 44.

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

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

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

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

Cross References

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

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

In case a jury is discharged on account of sickness of a juror, or other accident or calamity requiring their discharge, or after they have been kept so long together that there is no probability of agreeing, the court shall, upon

directing the discharge, order that the reasons for such discharge be entered upon the record and such discharge shall be without prejudice to the prosecution.

Source: G.S.1873, c. 58, § 485, p. 830; R.S.1913, § 9126; C.S.1922, § 10151; C.S.1929, § 29-2023; R.S.1943, § 29-2023; Laws 2018, LB193, § 58; Laws 2020, LB387, § 45.

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

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

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

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

ARTICLE 22

JUDGMENT ON CONVICTION

(a) JUDGMENT ON CONVICTION

(c) PROBATION

(d) COMMUNITY SERVICE

Section

(h) DEFERRED JUDGMENT

(a) JUDGMENT ON CONVICTION

29-2202 Verdict of guilty; judgment; when pronounced; suspension of sentence; when; bail.

Except as provided in sections 29-2292 to 29-2294, if the defendant has nothing to say, or if he or she shows no good and sufficient cause why judgment should not be pronounced, the court shall proceed to pronounce judgment as provided by law. The court, in its discretion, may for any cause deemed by it good and sufficient, suspend execution of sentence for a period not to exceed ninety days from the date judgment is pronounced. If the defendant is not at liberty under bail, he or she may be admitted to bail during the period of suspension of sentence as provided in section 29-901.

Source: G.S.1873, c. 58, § 496, p. 832; R.S.1913, § 9137; C.S.1922, § 10162; C.S.1929, § 29-2202; R.S.1943, § 29-2202; Laws 1951, c. 87, § 2, p. 251; Laws 2019, LB686, § 6.

Cross References

Bail, conditions, see sections 29-901 to 29-910.

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

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

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

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

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

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

(b) A term of life imprisonment.

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

(a) A term of life imprisonment; or

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

(4) When the court is of the opinion that imprisonment may be appropriate but desires more detailed information as a basis for determining the sentence to

be imposed than has been provided by the presentence report required by section 29-2261, the court may commit an offender to the Department of Correctional Services. During that time, the department shall conduct a complete study of the offender as provided in section 29-2204.03.

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

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

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

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

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

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

Source: G.S.1873, c. 58, § 498, p. 832; R.S.1913, § 9140; C.S.1922, § 10165; C.S.1929, § 29-2205; R.S.1943, § 29-2204; Laws 1974, LB 620, § 7; Laws 1988, LB 790, § 3; Laws 1993, LB 31, § 9; Laws 1993, LB 529, § 1; Laws 1993, LB 627, § 1; Laws 1994, LB 988, § 8; Laws 1995, LB 371, § 12; Laws 1997, LB 364, § 14; Laws 1998, LB 1073, § 10; Laws 2002, Third Spec. Sess., LB 1, § 8; Laws 2011, LB12, § 2; Laws 2013, LB561, § 2; Laws 2015, LB268, § 19; Laws 2015, LB605, § 60; Referendum 2016, No. 426.

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

Cross References

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

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

(1)(a) In all cases in which courts or magistrates have now or may hereafter have the power to punish offenses, either in whole or in part, by requiring the offender to pay fines or costs, or both, such courts or magistrates may make it a part of the sentence that the party stand committed and be imprisoned in the jail of the proper county until the fines or costs are paid or secured to be paid or the offender is otherwise discharged according to law if the court or magistrate determines that the offender has the financial ability to pay such fines or costs. The court or magistrate may make such determination at the sentencing hearing or at a separate hearing prior to sentencing. A separate

hearing shall not be required. In making such determination, the court or magistrate may consider the information or evidence adduced in an earlier proceeding pursuant to section 29-3902, 29-3903, 29-3906, or 29-3916. At any such hearing, the offender shall have the opportunity to present information as to his or her income, assets, debts, or other matters affecting his or her financial ability to pay. Following such hearing and prior to imposing sentence, the court or magistrate shall determine the offender's financial ability to pay the fines or costs, including his or her financial ability to pay in installments under subsection (2) of this section.

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

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

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

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

(i) Shall either:

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

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

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

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

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

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

encumbered by a valid lien, levy, execution, or assignment to counsel of record or the person who posted the bond.

Source: G.S.1873, c. 58, § 500, p. 833; R.S.1913, § 9142; C.S.1922, § 10167; C.S.1929, § 29-2207; R.S.1943, § 29-2206; Laws 1971, LB 1010, § 2; Laws 1974, LB 966, § 1; Laws 1979, LB 111, § 1; Laws 1988, LB 370, § 6; Laws 2012, LB722, § 1; Laws 2017, LB259, § 5; Laws 2020, LB881, § 23.

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

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

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

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

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

(2) At the hearing, the person shall have the opportunity to present information as to his or her income, assets, debts, or other matters affecting his or her financial ability to pay. Following the hearing, the court or magistrate shall determine the person's financial ability to pay the fines or costs, including his or her financial ability to pay in installments as described in section 29-2206.

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

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

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

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

(a) Shall either:

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

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

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

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

Source: Laws 2017, LB259, § 12.

(c) PROBATION

29-2246 Terms, defined.

For purposes of the Nebraska Probation Administration Act and sections 43-2,123.01 and 83-1,102 to 83-1,104, unless the context otherwise requires:

(1) Association means the Nebraska District Court Judges Association;

(2) Court means a district court, county court, or juvenile court as defined in section 43-245;

(3) Office means the Office of Probation Administration;

(4) Probation means a sentence under which a person found guilty of a crime upon verdict or plea or adjudicated delinquent or in need of special supervision is released by a court subject to conditions imposed by the court and subject to supervision. Probation includes post-release supervision and supervision ordered by a court pursuant to a deferred judgment under section 29-2292;

(5) Probationer means a person sentenced to probation or post-release supervision;

(6) Probation officer means an employee of the system who supervises probationers and conducts presentence, predisposition, or other investigations as may be required by law or directed by a court in which he or she is serving or performs such other duties as authorized pursuant to section 29-2258, except unpaid volunteers from the community;

(7) Juvenile probation officer means any probation officer who supervises probationers of a separate juvenile court;

(8) Juvenile intake probation officer means an employee of the system who is called upon by a law enforcement officer in accordance with section 43-250 to make a decision regarding the furtherance of a juvenile's detention;

(9) Chief probation officer means the probation officer in charge of a probation district;

(10) System means the Nebraska Probation System;

(11) Administrator means the probation administrator;

(12) Non-probation-based program or service means a program or service established within the district, county, or juvenile courts and provided to individuals not sentenced to probation who have been charged with or convicted of a crime for the purpose of diverting the individual from incarceration or to provide treatment for issues related to the individual's criminogenic needs.

Non-probation-based programs or services include, but are not limited to, problem solving courts established pursuant to section 24-1302 and the treatment of problems relating to substance abuse, mental health, sex offenses, or domestic violence;

(13) Post-release supervision means the portion of a split sentence following a period of incarceration under which a person found guilty of a crime upon verdict or plea is released by a court subject to conditions imposed by the court and subject to supervision by the office; and

(14) Rules and regulations means policies and procedures written by the office and approved by the Supreme Court.

Source: Laws 1971, LB 680, § 1; Laws 1972, LB 1051, § 1; Laws 1984, LB 13, § 61; Laws 1986, LB 529, § 32; Laws 2001, LB 451, § 1; Laws 2005, LB 538, § 5; Laws 2008, LB1014, § 18; Laws 2015, LB605, § 63; Laws 2016, LB919, § 3; Laws 2019, LB686, § 7.

29-2252 Probation administrator; duties.

The administrator shall:

(1) Supervise and administer the office;

(2) Establish and maintain policies, standards, and procedures for the system, with the concurrence of the Supreme Court;

(3) Prescribe and furnish such forms for records and reports for the system as shall be deemed necessary for uniformity, efficiency, and statistical accuracy;

(4) Establish minimum qualifications for employment as a probation officer in this state and establish and maintain such additional qualifications as he or she deems appropriate for appointment to the system. Qualifications for probation officers shall be established in accordance with subsection (4) of section 29-2253. An ex-offender released from a penal complex or a county jail may be appointed to a position of deputy probation or parole officer. Such ex-offender shall maintain a record free of arrests, except for minor traffic violations, for one year immediately preceding his or her appointment;

(5) Establish and maintain advanced periodic inservice training requirements for the system;

(6) Cooperate with all agencies, public or private, which are concerned with treatment or welfare of persons on probation;

(7) Organize and conduct training programs for probation officers. Training shall include the proper use of a risk and needs assessment, risk-based supervision strategies, relationship skills, cognitive behavioral interventions, community-based resources, criminal risk factors, and targeting criminal risk factors to reduce recidivism and the proper use of a matrix of administrative sanctions, custodial sanctions, and rewards developed pursuant to subdivision (18) of this section. All probation officers employed on or after August 30, 2015, shall complete the training requirements set forth in this subdivision;

(8) Collect, develop, and maintain statistical information concerning probationers, probation practices, and the operation of the system and provide the Community Corrections Division of the Nebraska Commission on Law Enforcement and Criminal Justice with the information needed to compile the report required in section 47-624;

(9) Interpret the probation program to the public with a view toward developing a broad base of public support;

(10) Conduct research for the purpose of evaluating and improving the effectiveness of the system. Subject to the availability of funding, the administrator shall contract with an independent contractor or academic institution for evaluation of existing community corrections facilities and programs operated by the office;

(11) Adopt and promulgate such rules and regulations as may be necessary or proper for the operation of the office or system. The administrator shall adopt and promulgate rules and regulations for transitioning individuals on probation across levels of supervision and discharging them from supervision consistent with evidence-based practices. The rules and regulations shall ensure supervision resources are prioritized for individuals who are high risk to reoffend, require transitioning individuals down levels of supervision intensity based on assessed risk and months of supervision without a reported major violation, and establish incentives for earning discharge from supervision based on compliance;

(12) Transmit a report during each even-numbered year to the Supreme Court on the operation of the office for the preceding two calendar years which shall include a historical analysis of probation officer workload, including participation in non-probation-based programs and services. The report shall be transmitted by the Supreme Court to the Governor and the Clerk of the Legislature. The report submitted to the Clerk of the Legislature shall be submitted electronically;

(13) Administer the payment by the state of all salaries, travel, and expenses authorized under section 29-2259 incident to the conduct and maintenance of the office;

(14) Use the funds provided under section 29-2262.07 to augment operational or personnel costs associated with the development, implementation, and evaluation of enhanced probation-based programs and non-probation-based programs and services in which probation personnel or probation resources are utilized pursuant to an interlocal agreement authorized by subdivision (16) of this section and to purchase services to provide such programs aimed at enhancing adult probationer or non-probation-based program participant supervision in the community and treatment needs of probationers and non-probation-based program participants. Enhanced probation-based programs include, but are not limited to, specialized units of supervision, related equipment purchases and training, and programs that address a probationer's vocational, educational, mental health, behavioral, or substance abuse treatment needs;

(15) Ensure that any risk or needs assessment instrument utilized by the system be periodically validated;

(16) Have the authority to enter into interlocal agreements in which probation resources or probation personnel may be utilized in conjunction with or as part of non-probation-based programs and services. Any such interlocal agreement shall comply with section 29-2255;

(17) Collaborate with the Community Corrections Division of the Nebraska Commission on Law Enforcement and Criminal Justice and the Division of Parole Supervision to develop rules governing the participation of parolees in

community corrections programs operated by the Office of Probation Administration;

(18) Develop a matrix of rewards for compliance and positive behaviors and graduated administrative sanctions and custodial sanctions for use in responding to and deterring substance abuse violations and technical violations. As applicable under sections 29-2266.02 and 29-2266.03, custodial sanctions of up to thirty days in jail shall be designated as the most severe response to a violation in lieu of revocation and custodial sanctions of up to three days in jail shall be designated as the second most severe response;

(19) Adopt and promulgate rules and regulations for the creation of individualized post-release supervision plans, collaboratively with the Department of Correctional Services and county jails, for probationers sentenced to post-release supervision; and

(20) Exercise all powers and perform all duties necessary and proper to carry out his or her responsibilities.

Each member of the Legislature shall receive an electronic copy of the report required by subdivision (12) of this section by making a request for it to the administrator.

Source: Laws 1971, LB 680, § 7; Laws 1973, LB 126, § 2; Laws 1978, LB 625, § 9; Laws 1979, LB 322, § 9; Laws 1979, LB 536, § 6; Laws 1981, LB 545, § 6; Laws 1984, LB 13, § 65; Laws 1986, LB 529, § 37; Laws 1990, LB 663, § 16; Laws 1992, LB 447, § 5; Laws 2003, LB 46, § 5; Laws 2005, LB 538, § 7; Laws 2011, LB390, § 1; Laws 2012, LB782, § 32; Laws 2015, LB605, § 64; Laws 2016, LB1094, § 12; Laws 2018, LB841, § 2; Laws 2020, LB381, § 22.

29-2259 Probation administrator; office; salaries; expenses; office space; prepare budget; interpreter services.

(1) The salaries and expenses incident to the conduct and maintenance of the office shall be paid by the state. Other expenses shall be paid by the state as provided in sections 81-1174 to 81-1177.

(2) The salaries and travel expenses of the probation service shall be paid by the state. Travel expenses shall be paid as provided in sections 81-1174 to 81-1177.

(3) Except as provided in sections 29-2262 and 29-2262.04, the costs of drug testing and equipment incident to the electronic surveillance of individuals on probation shall be paid by the state.

(4) The expenses incident to the conduct and maintenance of the principal office within each probation district shall in the first instance be paid by the county in which it is located, but such county shall be reimbursed for such expenses by all other counties within the probation district to the extent and in the proportions determined by the Supreme Court based upon population, number of investigations, and probation cases handled or upon such other basis as the Supreme Court deems fair and equitable.

(5) Each county shall provide office space and necessary facilities for probation officers performing their official duties and shall bear the costs incident to maintenance of such offices other than salaries, travel expenses, and data

processing and word processing hardware and software that is provided on the state computer network.

(6) The cost of interpreter services for deaf and hard of hearing persons and for persons unable to communicate the English language shall be paid by the state with money appropriated to the Supreme Court for that purpose or from other funds, including grant money, made available to the Supreme Court for such purpose. Interpreter services shall include auxiliary aids for deaf and hard of hearing persons as defined in section 20-151 and interpreters to assist persons unable to communicate the English language as defined in section 25-2402. Interpreter services shall be provided under this section for the purposes of conducting a presentence investigation and for ongoing supervision by a probation officer of such persons placed on probation.

(7) The probation administrator shall prepare a budget and request for appropriations for the office and shall submit such request to the Supreme Court and with its approval to the appropriate authority in accordance with law.

Source: Laws 1971, LB 680, § 14; Laws 1979, LB 536, § 9; Laws 1981, LB 204, § 43; Laws 1986, LB 529, § 41; Laws 1989, LB 2, § 1; Laws 1990, LB 220, § 5; Laws 1992, LB 1059, § 24; Laws 1999, LB 54, § 4; Laws 2011, LB669, § 23; Laws 2020, LB381, § 23.

29-2261 Presentence investigation, when; contents; psychiatric examination; persons having access to records; reports authorized.

(1) Unless it is impractical to do so, when an offender has been convicted of a felony other than murder in the first degree, the court shall not impose sentence without first ordering a presentence investigation of the offender and according due consideration to a written report of such investigation. When an offender has been convicted of murder in the first degree and (a) a jury renders a verdict finding the existence of one or more aggravating circumstances as provided in section 29-2520 or (b)(i) the information contains a notice of aggravation as provided in section 29-1603 and (ii) the offender waives his or her right to a jury determination of the alleged aggravating circumstances, the court shall not commence the sentencing determination proceeding as provided in section 29-2521 without first ordering a presentence investigation of the offender and according due consideration to a written report of such investigation.

(2) A court may order a presentence investigation in any case, except in cases in which an offender has been convicted of a Class IIIA misdemeanor, a Class IV misdemeanor, a Class V misdemeanor, a traffic infraction, or any corresponding city or village ordinance.

(3) The presentence investigation and report shall include, when available, an analysis of the circumstances attending the commission of the crime, the offender's history of delinquency or criminality, physical and mental condition, family situation and background, economic status, education, occupation, and personal habits, and any other matters that the probation officer deems relevant or the court directs to be included. All local and state police agencies and Department of Correctional Services adult correctional facilities shall furnish to the probation officer copies of such criminal records, in any such case referred to the probation officer by the court of proper jurisdiction, as the probation officer shall require without cost to the court or the probation officer.

Such investigation shall also include:

(a) Any written statements submitted to the county attorney by a victim; and

(b) Any written statements submitted to the probation officer by a victim.

(4) If there are no written statements submitted to the probation officer, he or she shall certify to the court that:

(a) He or she has attempted to contact the victim; and

(b) If he or she has contacted the victim, such officer offered to accept the written statements of the victim or to reduce such victim's oral statements to writing.

For purposes of subsections (3) and (4) of this section, the term victim shall be as defined in section 29-119.

(5) Before imposing sentence, the court may order the offender to submit to psychiatric observation and examination for a period of not exceeding sixty days or such longer period as the court determines to be necessary for that purpose. The offender may be remanded for this purpose to any available clinic or mental hospital, or the court may appoint a qualified psychiatrist to make the examination. The report of the examination shall be submitted to the court.

(6)(a) Any presentence report, substance abuse evaluation, or psychiatric examination shall be privileged and shall not be disclosed directly or indirectly to anyone other than a judge; probation officers to whom an offender's file is duly transferred; the probation administrator or his or her designee; alcohol and drug counselors, mental health practitioners, psychiatrists, and psychologists licensed or certified under the Uniform Credentialing Act to conduct substance abuse evaluations and treatment; or others entitled by law to receive such information, including personnel and mental health professionals for the Nebraska State Patrol specifically assigned to sex offender registration and community notification for the sole purpose of using such report, evaluation, or examination for assessing risk and for community notification of registered sex offenders.

(b) For purposes of this subsection, mental health professional means (i) a practicing physician licensed to practice medicine in this state under the Medicine and Surgery Practice Act, (ii) a practicing psychologist licensed to engage in the practice of psychology in this state as provided in section 38-3111 or as provided under similar provisions of the Psychology Interjurisdictional Compact, (iii) a practicing mental health professional licensed or certified in this state as provided in the Mental Health Practice Act, or (iv) a practicing professional counselor holding a privilege to practice in Nebraska under the Licensed Professional Counselors Interstate Compact.

(7) The court shall permit inspection of the presentence report, substance abuse evaluation, or psychiatric examination or parts of the report, evaluation, or examination, as determined by the court, by the prosecuting attorney and defense counsel. Beginning July 1, 2016, such inspection shall be by electronic access only unless the court determines such access is not available to the prosecuting attorney or defense counsel. The State Court Administrator shall determine and develop the means of electronic access to such presentence reports, evaluations, and examinations. Upon application by the prosecuting attorney or defense counsel, the court may order that addresses, telephone numbers, and other contact information for victims or witnesses named in the report, evaluation, or examination be redacted upon a showing by a preponder-

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

(8) If an offender is sentenced to imprisonment, a copy of the report of any presentence investigation, substance abuse evaluation, or psychiatric examination shall be transmitted immediately to the Department of Correctional Services. Upon request, the Board of Parole or the Division of Parole Supervision may receive a copy of the report from the department.

(9) Notwithstanding subsections (6) and (7) of this section, the Supreme Court or an agent of the Supreme Court acting under the direction and supervision of the Chief Justice shall have access to psychiatric examinations, substance abuse evaluations, and presentence investigations and reports for research purposes. The Supreme Court and its agent shall treat such information as confidential, and nothing identifying any individual shall be released.

Source: Laws 1971, LB 680, § 16; Laws 1974, LB 723, § 1; Laws 1983, LB 78, § 4; Laws 2000, LB 1008, § 1; Laws 2002, LB 564, § 1; Laws 2002, Third Spec. Sess., LB 1, § 9; Laws 2003, LB 46, § 8; Laws 2004, LB 1207, § 17; Laws 2007, LB463, § 1129; Laws 2011, LB390, § 3; Laws 2015, LB268, § 20; Laws 2015, LB504, § 1; Referendum 2016, No. 426; Laws 2018, LB841, § 3; Laws 2018, LB1034, § 3; Laws 2022, LB752, § 4.
Effective date July 21, 2022.

Cross References

Licensed Professional Counselors Interstate Compact, see section 38-4201.
Medicine and Surgery Practice Act, see section 38-2001.
Mental Health Practice Act, see section 38-2101.
Uniform Credentialing Act, see section 38-101.

29-2262 Probation; conditions.

(1) When a court sentences an offender to probation, it shall attach such reasonable conditions as it deems necessary or likely to insure that the offender will lead a law-abiding life. No offender shall be sentenced to probation if he or she is deemed to be a habitual criminal pursuant to section 29-2221.

(2) The court may, as a condition of a sentence of probation, require the offender:

(a) To refrain from unlawful conduct;

(b) To be confined periodically in the county jail or to return to custody after specified hours but not to exceed the lesser of ninety days or the maximum jail term provided by law for the offense;

(c) To meet his or her family responsibilities;

(d) To devote himself or herself to a specific employment or occupation;

(e) To undergo medical or psychiatric treatment and to enter and remain in a specified institution for such purpose;

(f) To pursue a prescribed secular course of study or vocational training;

(g) To attend or reside in a facility established for the instruction, recreation, or residence of persons on probation;

(h) To refrain from frequenting unlawful or disreputable places or consorting with disreputable persons;

(i) To possess no firearm or other dangerous weapon if convicted of a felony, or if convicted of any other offense, to possess no firearm or other dangerous weapon unless granted written permission by the court;

(j) To remain within the jurisdiction of the court and to notify the court or the probation officer of any change in his or her address or his or her employment and to agree to waive extradition if found in another jurisdiction;

(k) To report as directed to the court or a probation officer and to permit the officer to visit his or her home;

(l) To pay a fine in one or more payments as ordered;

(m) To pay for tests to determine the presence of drugs or alcohol, psychological evaluations, offender assessment screens, and rehabilitative services required in the identification, evaluation, and treatment of offenders if such offender has the financial ability to pay for such services;

(n) To perform community service as outlined in sections 29-2277 to 29-2279 under the direction of his or her probation officer;

(o) To be monitored by an electronic surveillance device or system and to pay the cost of such device or system if the offender has the financial ability;

(p) To participate in a community correctional facility or program as provided in the Community Corrections Act;

(q) To satisfy any other conditions reasonably related to the rehabilitation of the offender;

(r) To make restitution as described in sections 29-2280 and 29-2281; or

(s) To pay for all costs imposed by the court, including court costs and the fees imposed pursuant to section 29-2262.06.

(3) When jail time is imposed as a condition of probation under subdivision (2)(b) of this section, the court shall advise the offender on the record the time the offender will serve in jail assuming no good time for which the offender will be eligible under section 47-502 is lost and assuming none of the jail time imposed as a condition of probation is waived by the court.

(4) Jail time may only be imposed as a condition of probation under subdivision (2)(b) of this section if:

(a) The court would otherwise sentence the defendant to a term of imprisonment instead of probation; and

(b) The court makes a finding on the record that, while probation is appropriate, periodic confinement in the county jail as a condition of probation is necessary because a sentence of probation without a period of confinement would depreciate the seriousness of the offender's crime or promote disrespect for law.

(5) In all cases in which the offender is guilty of violating section 28-416, a condition of probation shall be mandatory treatment and counseling as provided by such section.

(6) In all cases in which the offender is guilty of a crime covered by the DNA Identification Information Act, a condition of probation shall be the collecting

of a DNA sample pursuant to the act and the paying of all costs associated with the collection of the DNA sample prior to release from probation.

Source: Laws 1971, LB 680, § 17; Laws 1975, LB 289, § 1; Laws 1978, LB 623, § 29; Laws 1979, LB 292, § 1; Laws 1986, LB 504, § 2; Laws 1986, LB 528, § 4; Laws 1986, LB 956, § 14; Laws 1989, LB 592, § 3; Laws 1989, LB 669, § 1; Laws 1990, LB 220, § 8; Laws 1991, LB 742, § 2; Laws 1993, LB 627, § 2; Laws 1995, LB 371, § 15; Laws 1997, LB 882, § 1; Laws 1998, LB 218, § 16; Laws 2003, LB 46, § 9; Laws 2006, LB 385, § 1; Laws 2010, LB190, § 1; Laws 2015, LB605, § 67; Laws 2016, LB1094, § 17; Laws 2019, LB340, § 1.

Cross References

Community Corrections Act, see section 47-619.
DNA Identification Information Act, see section 29-4101.

29-2264 Probation; completion; conviction may be set aside; conditions; retroactive effect.

(1) Whenever any person is placed on probation by a court and satisfactorily completes the conditions of his or her probation for the entire period or is discharged from probation prior to the termination of the period of probation, the sentencing court shall issue an order releasing the offender from probation. Such order in all felony cases shall provide notice that the person's voting rights are restored two years after completion of probation. The order shall include information on restoring other civil rights through the pardon process, including application to and hearing by the Board of Pardons.

(2) Whenever any person is convicted of an offense and is placed on probation by the court, is sentenced to a fine only, or is sentenced to community service, he or she may, after satisfactory fulfillment of the conditions of probation for the entire period or after discharge from probation prior to the termination of the period of probation and after payment of any fine and completion of any community service, petition the sentencing court to set aside the conviction.

(3)(a) Except as provided in subdivision (3)(b) of this section, whenever any person is convicted of an offense and is sentenced other than as provided in subsection (2) of this section, but is not sentenced to a term of imprisonment of more than one year, such person may, after completion of his or her sentence, petition the sentencing court to set aside the conviction.

(b) A petition under subdivision (3)(a) of this section shall be denied if filed:

(i) By any person with a criminal charge pending in any court in the United States or in any other country;

(ii) During any period in which the person is required to register under the Sex Offender Registration Act;

(iii) For any misdemeanor or felony motor vehicle offense under section 28-306 or the Nebraska Rules of the Road; or

(iv) Within two years after a denial of a petition to set aside a conviction under this subsection.

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

(a) The behavior of the offender after sentencing;

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

(c) Any other information the court considers relevant.

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

(a) Nullify the conviction;

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

(c) Notify the offender that he or she should consult with an attorney regarding the effect of the order, if any, on the offender's ability to possess a firearm under state or federal law.

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

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

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

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

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

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

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

(g) Preclude use of the conviction as evidence of commission of the offense for purposes of determining whether an application filed or a license issued under sections 71-1901 to 71-1906.01, the Child Care Licensing Act, or the Children's Residential Facilities and Placing Licensure Act or a certificate issued under sections 79-806 to 79-815 should be denied, suspended, or revoked;

(h) Preclude use of the conviction as evidence of serious misconduct or final conviction of or pleading guilty or nolo contendere to a felony or misdemeanor for purposes of determining whether an application filed or a certificate issued under sections 81-1401 to 81-1414.19 should be denied, suspended, or revoked;

(i) Preclude proof of the conviction as evidence whenever the fact of the conviction is relevant to a determination of the registration period under section 29-4005;

(j) Relieve a person who is convicted of an offense for which registration is required under the Sex Offender Registration Act of the duty to register and to comply with the terms of the act;

(k) Preclude use of the conviction for purposes of section 28-1206;

(l) Affect the right of a victim of a crime to prosecute or defend a civil action;

(m) Affect the assessment or accumulation of points under section 60-4,182; or

(n) Affect eligibility for, or obligations relating to, a commercial driver's license.

(7) For purposes of this section, offense means any violation of the criminal laws of this state or any political subdivision of this state including, but not limited to, any felony, misdemeanor, infraction, traffic infraction, violation of a city or village ordinance, or violation of a county resolution.

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

(9) The changes made to this section by Laws 2018, LB146, and Laws 2020, LB881, shall apply to all persons otherwise eligible under this section, without regard to the date of the conviction sought to be set aside.

Source: Laws 1971, LB 680, § 19; Laws 1993, LB 564, § 1; Laws 1994, LB 677, § 1; Laws 1995, LB 401, § 1; Laws 1997, LB 310, § 1; Laws 1998, Spec. Sess., LB 1, § 3; Laws 2002, LB 1054, § 6; Laws 2003, LB 685, § 2; Laws 2004, LB 1005, § 3; Laws 2005, LB 53, § 3; Laws 2005, LB 713, § 3; Laws 2009, LB285, § 2; Laws 2012, LB817, § 2; Laws 2013, LB265, § 30; Laws 2018, LB146, § 1; Laws 2020, LB881, § 24; Laws 2021, LB51, § 3.

Cross References

Child Care Licensing Act, see section 71-1908.
Children's Residential Facilities and Placing Licensure Act, see section 71-1924.
Nebraska Rules of the Road, see section 60-601.
Sex Offender Registration Act, see section 29-4001.

29-2268 Probation; post-release supervision; violation; court; determination.

(1) If the court finds that the probationer, other than a probationer serving a term of post-release supervision, did violate a condition of his or her probation, it may revoke the probation and impose on the offender such new sentence as might have been imposed originally for the crime of which he or she was convicted.

(2) If the court finds that a probationer serving a term of post-release supervision did violate a condition of his or her post-release supervision, it may revoke the post-release supervision and impose on the offender a term of imprisonment up to the original period of post-release supervision. If a sentence of incarceration is imposed upon revocation of post-release supervision, the court shall grant jail credit for any days spent in custody as a result of the post-release supervision, including custodial sanctions. The term shall be served in an institution under the jurisdiction of the Department of Correctional Services or in county jail subject to subsection (2) of section 28-105.

(3) If the court finds that the probationer did violate a condition of his or her probation, but is of the opinion that revocation is not appropriate, the court may order that:

(a) The probationer receive a reprimand and warning;

(b) Probation supervision and reporting be intensified;

(c) The probationer be required to conform to one or more additional conditions of probation which may be imposed in accordance with the Nebraska Probation Administration Act;

(d) A custodial sanction be imposed on a probationer convicted of a felony, subject to the provisions of section 29-2266.03; and

(e) The probationer's term of probation be extended, subject to the provisions of section 29-2263.

Source: Laws 1971, LB 680, § 23; Laws 2015, LB605, § 70; Laws 2016, LB1094, § 24; Laws 2019, LB686, § 8.

(d) COMMUNITY SERVICE

29-2277 Terms, defined.

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

(1) Agency means any public or governmental unit, institution, division, or agency or any private nonprofit organization which provides services intended to enhance the social welfare or general well-being of the community, which agrees to accept community service from offenders and to supervise and report the progress of such community service to the court or its representative;

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

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

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

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

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

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

29-2279 Community service; length.

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

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

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

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

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

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

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

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

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

(h) DEFERRED JUDGMENT

29-2292 Deferral of entry of judgment of conviction; defendant placed on probation; conditions; factors; new sentence; when.

(1) Upon a finding of guilt for which a judgment of conviction may be rendered, a defendant may request the court defer the entry of judgment of conviction. Upon such request and after giving the prosecutor and defendant the opportunity to be heard, the court may defer the entry of a judgment of conviction and the imposition of a sentence and place the defendant on probation, upon conditions as the court may require under section 29-2262.

(2) The court shall not defer judgment under this section if:

(a) The offense is a violation of section 42-924;

(b) The victim of the offense is an intimate partner as defined in section 28-323;

(c) The offense is a violation of section 60-6,196 or 60-6,197 or a city or village ordinance enacted in conformance with section 60-6,196 or 60-6,197; or

(d) The defendant is not eligible for probation.

(3) Whenever a court considers a request to defer judgment, the court shall consider the factors set forth in section 29-2260 and any other information the court deems relevant.

(4) Except as otherwise provided in this section and sections 29-2293 and 29-2294, the supervision of a defendant on probation pursuant to a deferred judgment shall be governed by the Nebraska Probation Administration Act and sections 29-2270 to 29-2273.

(5) After a hearing providing the prosecutor and defendant an opportunity to be heard and upon a finding that a defendant has violated a condition of his or her probation, the court may enter any order authorized by section 29-2268 or pronounce judgment and impose such new sentence as might have been originally imposed for the offense for which the defendant was convicted.

(6) Upon satisfactory completion of the conditions of probation and the payment or waiver of all administrative and programming fees assessed under section 29-2293, the defendant or prosecutor may file a motion to withdraw any plea entered by the defendant and to dismiss the action without entry of judgment.

(7) The provisions of this section apply to offenses committed on or after July 1, 2020. For purposes of this section, an offense shall be deemed to have been committed prior to July 1, 2020, if any element of the offense occurred prior to such date.

Source: Laws 2019, LB686, § 9.

Cross References

Nebraska Probation Administration Act, see section 29-2269.

29-2293 Court order; fees.

Upon entry of a deferred judgment pursuant to section 29-2292, the court shall order the defendant to pay all administrative and programming fees authorized under section 29-2262.06, unless waived under such section. The defendant shall pay any such fees to the clerk of the court. The clerk of the court shall remit all fees so collected to the State Treasurer for credit to the Probation Program Cash Fund.

Source: Laws 2019, LB686, § 10.

29-2294 Final order.

An entry of deferred judgment pursuant to section 29-2292 is a final order as defined in section 25-1902.

Source: Laws 2019, LB686, § 11.

ARTICLE 23

REVIEW OF JUDGMENTS IN CRIMINAL CASES

Section
29-2315.01. Appeal by prosecuting attorney; application; procedure.

29-2315.01 Appeal by prosecuting attorney; application; procedure.

The prosecuting attorney may take exception to any ruling or decision of the court made during the prosecution of a cause by presenting to the trial court the application for leave to file an appeal with reference to the rulings or decisions of which complaint is made. Such application shall contain a copy of the ruling or decision complained of, the basis and reasons for objection thereto, and a statement by the prosecuting attorney as to the part of the record he or she proposes to present to the appellate court. Such application shall be filed with the trial court within twenty days after the final order is entered in the cause, and upon presentation, if the trial court finds it is in conformity with the truth, the judge of the trial court shall sign the same and shall further indicate thereon whether in his or her opinion the part of the record which the prosecuting attorney proposes to present to the appellate court is adequate for a proper consideration of the matter. The prosecuting attorney shall then file such application with the appellate court within thirty days from the date of the final order. If the application is granted, the prosecuting attorney shall within thirty days from such granting order a bill of exceptions in accordance with

section 29-2020 if such bill of exceptions is desired and otherwise proceed to obtain a review of the case as provided in section 25-1912.

Source: Laws 1959, c. 121, § 1, p. 453; Laws 1961, c. 135, § 4, p. 391; Laws 1982, LB 722, § 9; Laws 1987, LB 33, § 5; Laws 1991, LB 732, § 80; Laws 1992, LB 360, § 8; Laws 2003, LB 17, § 11; Laws 2018, LB193, § 59.

ARTICLE 24

EXECUTION OF SENTENCES

Section
29-2404. Misdemeanor cases; fines and costs; judgment; levy; commitment.
29-2407. Judgments for fines, costs, and forfeited recognizances; lien; exemptions; duration.
29-2412. Fine and costs; financial ability to pay; hearing; nonpayment; commutation upon confinement; credit; amount.
29-2413. Judgments for fines and costs; execution in another county or against real estate; filing of transcript in district court.

29-2404 Misdemeanor cases; fines and costs; judgment; levy; commitment.

In all cases of misdemeanor in which courts or magistrates shall have power to fine any offender, and shall render judgment for such fine, it shall be lawful to issue executions for the same, with the costs taxed against the offender, to be levied on the goods and chattels of any such offender, and, for want of the same, upon the body of the offender, who shall, following a determination that the offender has the financial ability to pay such fine pursuant to section 29-2412, be committed to the jail of the proper county until the fine and costs be paid, or secured to be paid, or the offender be otherwise discharged according to law.

Source: G.S.1873, c. 58, § 521, p. 837; R.S.1913, § 9191; C.S.1922, § 10198; C.S.1929, § 29-2404; R.S.1943, § 29-2404; Laws 2017, LB259, § 10.

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

Judgments for fines and costs in criminal cases shall be a lien upon all the property of the defendant within the county from the time of filing the case by the clerk of the proper court, and judgments upon forfeited recognizance shall be a like lien from the time of forfeiture. No property of any convict shall be exempt from execution issued upon any such judgment as set out in this section against such convict except in cases when the convict is sentenced to a Department of Correctional Services adult correctional facility for a period of more than two years or to suffer death, in which cases there shall be the same exemptions as at the time may be provided by law for civil cases. The lien on real estate of any such judgment for costs shall terminate as provided in section 25-1716.

Source: G.S.1873, c. 58, § 524, p. 837; R.S.1913, § 9194; C.S.1922, § 10201; C.S.1929, § 29-2407; R.S.1943, § 29-2407; Laws 1974, LB 666, § 2; Laws 1993, LB 31, § 11; Laws 2015, LB268, § 21; Referendum 2016, No. 426; Laws 2018, LB193, § 60.

Cross References

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

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

(1) Beginning July 1, 2019:

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

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

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

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

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

(i) Shall either:

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

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

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

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

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

motion of the person so confined, to discharge such person from further imprisonment for such fines or costs, which discharge shall operate as a complete release of such fines or costs.

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

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

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

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

29-2413 Judgments for fines and costs; execution in another county or against real estate; filing of transcript in district court.

In every case, whenever it is desirable to obtain execution to be issued to another county, or against the lands or real estate of any person against whom a judgment for fine or costs has been rendered by a magistrate, the magistrate may file with the clerk of the district court of the county wherein such magistrate holds office a transcript of the judgment, whereupon such clerk shall enter the cause upon the register of actions and shall file with the clerk of such court a praecipe and execution to be forthwith issued thereon by such clerk and served in all respects as though the judgment had been rendered in the district court of such county.

Source: G.S.1873, c. 58, § 529, p. 839; R.S.1913, § 9200; C.S.1922, § 10207; C.S.1929, § 29-2413; R.S.1943, § 29-2413; Laws 2018, LB193, § 61.

ARTICLE 25

SPECIAL PROCEDURE IN CASES OF HOMICIDE

Section

29-2501 Omitted.

Source: Laws 2015, LB268, § 22; Referendum 2016, No. 426.

Note: Section 29-2501, newly enacted by Laws 2015, LB 268, section 22, and assigned by the Revisor of Statutes to section 29-2501, has been omitted because of the vote on the referendum at the November 2016 general election.

29-2502 Omitted.

Source: Laws 2015, LB268, § 23; Referendum 2016, No. 426.

Note: Section 29-2502, newly enacted by Laws 2015, LB 268, section 23, and assigned by the Revisor of Statutes to section 29-2502, has been omitted because of the vote on the referendum at the November 2016 general election.

29-2519 Statement of intent.

(1) The Legislature hereby finds that it is reasonable and necessary to establish mandatory standards for the imposition of the sentence of death; that the imposition of the death penalty in every instance of the commission of the crimes specified in section 28-303 fails to allow for mitigating factors which may dictate against the penalty of death; and that the rational imposition of the death sentence requires the establishment of specific legislative guidelines to be applied in individual cases by the court. The Legislature therefor determines that the death penalty should be imposed only for the crimes set forth in section 28-303 and, in addition, that it shall only be imposed in those instances when the aggravating circumstances existing in connection with the crime outweigh the mitigating circumstances, as set forth in sections 29-2520 to 29-2524.

(2) The Legislature hereby finds and declares that:

(a) The decision of the United States Supreme Court in Ring v. Arizona (2002) requires that Nebraska revise its sentencing process in order to ensure that rights of persons accused of murder in the first degree, as required under the Sixth and Fourteenth Amendments of the United States Constitution, are protected;

(b) The changes made by Laws 2002, LB 1, Ninety-seventh Legislature, Third Special Session, are intended to be procedural only in nature and ameliorative of the state's prior procedures for determination of aggravating circumstances in the sentencing process for murder in the first degree;

(c) The changes made by Laws 2002, LB 1, Ninety-seventh Legislature, Third Special Session, are not intended to alter the substantive provisions of sections 28-303 and 29-2520 to 29-2524;

(d) The aggravating circumstances defined in section 29-2523 have been determined by the United States Supreme Court to be ''functional equivalents of elements of a greater offense'' for purposes of the defendant's Sixth Amendment right, as applied to the states under the Fourteenth Amendment, to a jury determination of such aggravating circumstances, but the aggravating circumstances are not intended to constitute elements of the crime generally unless subsequently so required by the state or federal constitution; and

(e) To the extent that such can be applied in accordance with state and federal constitutional requirements, it is the intent of the Legislature that the changes to the murder in the first degree sentencing process made by Laws 2002, LB 1, Ninety-seventh Legislature, Third Special Session, shall apply to any murder in the first degree sentencing proceeding commencing on or after November 23, 2002.

Source: Laws 1973, LB 268, § 1; Laws 1978, LB 748, § 21; Laws 2002, Third Spec. Sess., LB 1, § 10; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

Note: The repeal of section 29-2519 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

29-2520 Aggravation hearing; procedure.

(1) Whenever any person is found guilty of a violation of section 28-303 and the information contains a notice of aggravation as provided in section 29-1603, the district court shall, as soon as practicable, fix a date for an aggravation hearing to determine the alleged aggravating circumstances. If no notice of aggravation has been filed, the district court shall enter a sentence of life imprisonment.

(2) Unless the defendant waives his or her right to a jury determination of the alleged aggravating circumstances, such determination shall be made by:

(a) The jury which determined the defendant's guilt; or

(b) A jury impaneled for purposes of the determination of the alleged aggravating circumstances if:

(i) The defendant waived his or her right to a jury at the trial of guilt and either was convicted before a judge or was convicted on a plea of guilty or nolo contendere; or

(ii) The jury which determined the defendant's guilt has been discharged.

A jury required by subdivision (2)(b) of this section shall be impaneled in the manner provided in sections 29-2004 to 29-2010.

(3) The defendant may waive his or her right to a jury determination of the alleged aggravating circumstances. The court shall accept the waiver after determining that it is made freely, voluntarily, and knowingly. If the defendant waives his or her right to a jury determination of the alleged aggravating circumstances, such determination shall be made by a panel of judges as a part of the sentencing determination proceeding as provided in section 29-2521.

(4)(a) At an aggravation hearing before a jury for the determination of the alleged aggravating circumstances, the state may present evidence as to the

existence of the aggravating circumstances alleged in the information. The Nebraska Evidence Rules shall apply at the aggravation hearing.

(b) Alternate jurors who would otherwise be discharged upon final submission of the cause to the jury shall be retained during the deliberation of the defendant's guilt but shall not participate in such deliberations. Such alternate jurors shall serve during the aggravation hearing as provided in section 29-2004 but shall not participate in the jury's deliberations under this subsection.

(c) If the jury serving at the aggravation hearing is the jury which determined the defendant's guilt, the jury may consider evidence received at the trial of guilt for purposes of reaching its verdict as to the existence or nonexistence of aggravating circumstances in addition to the evidence received at the aggravation hearing.

(d) After the presentation and receipt of evidence at the aggravation hearing, the state and the defendant or his or her counsel may present arguments before the jury as to the existence or nonexistence of the alleged aggravating circumstances.

(e) The court shall instruct the members of the jury as to their duty as jurors, the definitions of the aggravating circumstances alleged in the information, and the state's burden to prove the existence of each aggravating circumstance alleged in the information beyond a reasonable doubt.

(f) The jury at the aggravation hearing shall deliberate and return a verdict as to the existence or nonexistence of each alleged aggravating circumstance. Each aggravating circumstance shall be proved beyond a reasonable doubt. Each verdict with respect to each alleged aggravating circumstance shall be unanimous. If the jury is unable to reach a unanimous verdict with respect to an aggravating circumstance, such aggravating circumstance shall not be weighed in the sentencing determination proceeding as provided in section 29-2521.

(g) Upon rendering its verdict as to the determination of the aggravating circumstances, the jury shall be discharged.

(h) If no aggravating circumstance is found to exist, the court shall enter a sentence of life imprisonment. If one or more aggravating circumstances are found to exist, the court shall convene a panel of three judges to hold a hearing to receive evidence of mitigation and sentence excessiveness or disproportionality as provided in subsection (3) of section 29-2521.

Source: Laws 1973, LB 268, § 5; Laws 1978, LB 748, § 22; Laws 2002, Third Spec. Sess., LB 1, § 11; Laws 2011, LB12, § 3; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

Note: The repeal of section 29-2520 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

Cross References

Nebraska Evidence Rules, see section 27-1103.

29-2521 Sentencing determination proceeding.

(1) When a person has been found guilty of murder in the first degree and (a) a jury renders a verdict finding the existence of one or more aggravating circumstances as provided in section 29-2520 or (b)(i) the information contains a notice of aggravation as provided in section 29-1603 and (ii) such person

waives his or her right to a jury determination of the alleged aggravating circumstances, the sentence of such person shall be determined by:

(a) A panel of three judges, including the judge who presided at the trial of guilt or who accepted the plea and two additional active district court judges named at random by the Chief Justice of the Supreme Court. The judge who presided at the trial of guilt or who accepted the plea shall act as the presiding judge for the sentencing determination proceeding under this section; or

(b) If the Chief Justice of the Supreme Court has determined that the judge who presided at the trial of guilt or who accepted the plea is disabled or disqualified after receiving a suggestion of such disability or disqualification from the clerk of the court in which the finding of guilty was entered, a panel of three active district court judges named at random by the Chief Justice of the Supreme Court. The Chief Justice of the Supreme Court shall name one member of the panel at random to act as the presiding judge for the sentencing determination proceeding under this section.

(2) In the sentencing determination proceeding before a panel of judges when the right to a jury determination of the alleged aggravating circumstances has been waived, the panel shall, as soon as practicable after receipt of the written report resulting from the presentence investigation ordered as provided in section 29-2261, hold a hearing. At such hearing, evidence may be presented as to any matter that the presiding judge deems relevant to sentence and shall include matters relating to the aggravating circumstances alleged in the information, to any of the mitigating circumstances set forth in section 29-2523, and to sentence excessiveness or disproportionality. The Nebraska Evidence Rules shall apply to evidence relating to aggravating circumstances. Each aggravating circumstance shall be proved beyond a reasonable doubt. Any evidence at the sentencing determination proceeding which the presiding judge deems to have probative value may be received. The state and the defendant or his or her counsel shall be permitted to present argument for or against sentence of death. The presiding judge shall set forth the general order of procedure at the outset of the sentencing determination proceeding. The panel shall make written findings of fact based upon the trial of guilt and the sentencing determination proceeding, identifying which, if any, of the alleged aggravating circumstances have been proven to exist beyond a reasonable doubt. Each finding of fact with respect to each alleged aggravating circumstance shall be unanimous. If the panel is unable to reach a unanimous finding of fact with respect to an aggravating circumstance, such aggravating circumstance shall not be weighed in the sentencing determination proceeding. After the presentation and receipt of evidence and argument, the panel shall determine an appropriate sentence as provided in section 29-2522.

(3) When a jury renders a verdict finding the existence of one or more aggravating circumstances as provided in section 29-2520, the panel of judges shall, as soon as practicable after receipt of the written report resulting from the presentence investigation ordered as provided in section 29-2261, hold a hearing to receive evidence of mitigation and sentence excessiveness or disproportionality. Evidence may be presented as to any matter that the presiding judge deems relevant to (a) mitigation, including, but not limited to, the mitigating circumstances set forth in section 29-2523, and (b) sentence excessiveness or disproportionality as provided in subdivision (3) of section 29-2522. Any such evidence which the presiding judge deems to have probative value may be received. The state and the defendant and his or her counsel shall be

permitted to present argument for or against sentence of death. The presiding judge shall set forth the general order of procedure at the outset of the sentencing determination proceeding. After the presentation and receipt of evidence and argument, the panel shall determine an appropriate sentence as provided in section 29-2522.

Source: Laws 1973, LB 268, § 6; Laws 2002, Third Spec. Sess., LB 1, § 12; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

Note: The repeal of section 29-2521 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

Cross References

Nebraska Evidence Rules, see section 27-1103.

29-2521.01 Legislative findings.

The Legislature hereby finds that:

(1) Life is the most valuable possession of a human being, and before taking it, the state should apply and follow the most scrupulous standards of fairness and uniformity;

(2) The death penalty, because of its enormity and finality, should never be imposed arbitrarily nor as a result of local prejudice or public hysteria;

(3) State law should be applied uniformly throughout the state and since the death penalty is a statewide law an offense which would not result in a death sentence in one portion of the state should not result in death in a different portion;

(4) Charges resulting from the same or similar circumstances have, in the past, not been uniform and have produced radically differing results; and

(5) In order to compensate for the lack of uniformity in charges which are filed as a result of similar circumstances it is necessary for the Supreme Court to review and analyze all criminal homicides committed under the existing law in order to insure that each case produces a result similar to that arrived at in other cases with the same or similar circumstances.

Source: Laws 1978, LB 711, § 1; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

Note: The repeal of section 29-2521.01 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

29-2521.02 Criminal homicide cases; review and analysis by Supreme Court; manner.

The Supreme Court shall within a reasonable time after July 22, 1978, review and analyze all cases involving criminal homicide committed on or after April 20, 1973. Such review and analysis shall examine (1) the facts including mitigating and aggravating circumstances, (2) the charges filed, (3) the crime for which defendant was convicted, and (4) the sentence imposed. Such review shall be updated as new criminal homicide cases occur.

Source: Laws 1978, LB 711, § 2; Laws 2000, LB 1008, § 2; Laws 2011, LB390, § 5; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

Note: The repeal of section 29-2521.02 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

29-2521.03 Criminal homicide cases; appeal; sentence; Supreme Court review.

The Supreme Court shall, upon appeal, determine the propriety of the sentence in each case involving a criminal homicide by comparing such case with previous cases involving the same or similar circumstances. No sentence imposed shall be greater than those imposed in other cases with the same or similar circumstances. The Supreme Court may reduce any sentence which it finds not to be consistent with sections 29-2521.01 to 29-2521.04, 29-2522, and 29-2524.

Source: Laws 1978, LB 711, § 3; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

Note: The repeal of section 29-2521.03 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

29-2521.04 Criminal homicide cases; Supreme Court review and analyze; district court; provide records.

Each district court shall provide all records required by the Supreme Court in order to conduct its review and analysis pursuant to sections 29-2521.01 to 29-2522 and 29-2524.

Source: Laws 1978, LB 711, § 4; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

Note: The repeal of section 29-2521.04 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

29-2521.05 Aggravating circumstances; interlocutory appeal prohibited.

The verdict of a jury as to the existence or nonexistence of the alleged aggravating circumstances or, when the right to a jury determination of the alleged aggravating circumstances has been waived, the determination of a panel of judges with respect thereto, shall not be an appealable order or judgment of the district court, and no appeal may be taken directly from such verdict or determination.

Source: Laws 2002, Third Spec. Sess., LB 1, § 13; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

Note: The repeal of section 29-2521.05 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

29-2522 Sentence; considerations; determination; contents.

The panel of judges for the sentencing determination proceeding shall either unanimously fix the sentence at death or, if the sentence of death was not unanimously agreed upon by the panel, fix the sentence at life imprisonment. Such sentence determination shall be based upon the following considerations:

(1) Whether the aggravating circumstances as determined to exist justify imposition of a sentence of death;

(2) Whether sufficient mitigating circumstances exist which approach or exceed the weight given to the aggravating circumstances; or

(3) Whether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant.

In each case, the determination of the panel of judges shall be in writing and refer to the aggravating and mitigating circumstances weighed in the determination of the panel.

If an order is entered sentencing the defendant to death, a date for execution shall not be fixed until after the conclusion of the appeal provided for by section 29-2525.

Source: Laws 1973, LB 268, § 7; Laws 1978, LB 711, § 5; Laws 1982, LB 722, § 10; Laws 2002, Third Spec. Sess., LB 1 § 14; Laws 2011, LB12, § 4; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

Note: The repeal of section 29-2522 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

29-2523 Aggravating and mitigating circumstances.

The aggravating and mitigating circumstances referred to in sections 29-2519 to 29-2524 shall be as follows:

(1) Aggravating Circumstances:

(a) The offender was previously convicted of another murder or a crime involving the use or threat of violence to the person, or has a substantial prior history of serious assaultive or terrorizing criminal activity;

(b) The murder was committed in an effort to conceal the commission of a crime, or to conceal the identity of the perpetrator of such crime;

(c) The murder was committed for hire, or for pecuniary gain, or the defendant hired another to commit the murder for the defendant;

(d) The murder was especially heinous, atrocious, cruel, or manifested exceptional depravity by ordinary standards of morality and intelligence;

(e) At the time the murder was committed, the offender also committed another murder;

(f) The offender knowingly created a great risk of death to at least several persons;

(g) The victim was a public servant having lawful custody of the offender or another in the lawful performance of his or her official duties and the offender knew or should have known that the victim was a public servant performing his or her official duties;

(h) The murder was committed knowingly to disrupt or hinder the lawful exercise of any governmental function or the enforcement of the laws; or

(i) The victim was a law enforcement officer engaged in the lawful performance of his or her official duties as a law enforcement officer and the offender knew or reasonably should have known that the victim was a law enforcement officer.

(2) Mitigating Circumstances:

(a) The offender has no significant history of prior criminal activity;

(b) The offender acted under unusual pressures or influences or under the domination of another person;

(c) The crime was committed while the offender was under the influence of extreme mental or emotional disturbance;

(d) The age of the defendant at the time of the crime;

(e) The offender was an accomplice in the crime committed by another person and his or her participation was relatively minor;

(f) The victim was a participant in the defendant's conduct or consented to the act; or

(g) At the time of the crime, the capacity of the defendant to appreciate the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of law was impaired as a result of mental illness, mental defect, or intoxication.

Source: Laws 1973, LB 268, § 8; Laws 1998, LB 422, § 1; Laws 2002, Third Spec. Sess., LB 1, § 15; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

Note: The repeal of section 29-2523 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

29-2524 Sections; how construed.

Nothing in sections 25-1140.09, 28-303, 28-313, and 29-2519 to 29-2546 shall be in any way deemed to repeal or limit existing procedures for automatic review of capital cases, nor shall they in any way limit the right of the Supreme Court to reduce a sentence of death to a sentence of life imprisonment in accordance with the provisions of section 29-2308, nor shall they limit the right of the Board of Pardons to commute any sentence of death to a sentence of life imprisonment.

Source: Laws 1973, LB 268, § 9; Laws 1978, LB 748, § 23; Laws 1978, LB 711, § 6; Laws 2002, Third Spec. Sess., LB 1 § 16; Laws 2011, LB12, § 5; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

Note: The repeal of section 29-2524 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

Cross References

Constitutional provisions:
Board of Pardons, see Article IV, section 13, Constitution of Nebraska.
Board of Pardons, see section 83-1,126.

29-2524.01 Criminal homicide; report filed by county attorney; contents; time of filing.

Each county attorney shall file a report with the State Court Administrator for each criminal homicide case filed by him. The report shall include (1) the initial charge filed, (2) any reduction in the initial charge and whether such reduction was the result of a plea bargain or some other reason, (3) dismissals prior to trial, (4) outcome of the trial including not guilty, guilty as charged, guilty of a lesser included offense, or dismissal, (5) the sentence imposed, (6) whether an appeal was taken, and (7) such other information as may be required by the State Court Administrator. Such report shall be filed not later than thirty days after ultimate disposition of the case by the court.

Source: Laws 1978, LB 749, § 1; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

Note: The repeal of section 29-2524.01 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

29-2524.02 State Court Administrator; criminal homicide report; provide forms.

The State Court Administrator shall provide all forms necessary to carry out sections 29-2524.01 and 29-2524.02.

Source: Laws 1978, LB 749, § 2; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

Note: The repeal of section 29-2524.02 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

29-2525 Capital punishment cases; appeal; procedure; expedited opinion.

In cases when the punishment is capital, no notice of appeal shall be required and within the time prescribed by section 25-1912 for the commencement of proceedings for the reversing, vacating, or modifying of judgments, the clerk of the district court in which the conviction was had shall notify the court reporter who shall prepare a bill of exceptions as in other cases and the clerk shall prepare and file with the Clerk of the Supreme Court a transcript of the record of the proceedings, for which no charge shall be made. The Clerk of the Supreme Court shall, upon receipt of the transcript, docket the appeal. No payment of a docket fee shall be required.

The Supreme Court shall expedite the rendering of its opinion on the appeal, giving the matter priority over civil and noncapital criminal matters.

Source: Laws 1973, LB 268, § 10; Laws 1982, LB 722, § 11; Laws 1995, LB 371, § 16; Laws 2000, LB 921, § 32; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

Note: The repeal of section 29-2525 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

Cross References

Bill of exceptions, see section 25-1140.09.

29-2527 Briefs; payment for printing by county.

The cost of printing briefs on behalf of any person convicted of an offense for which the punishment adjudged is capital shall be paid by the county.

Source: Laws 1973, LB 268, § 12; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

Note: The repeal of section 29-2527 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

29-2528 Death penalty cases; Supreme Court; orders.

In all cases when the death penalty has been imposed by the district court, the Supreme Court shall, after consideration of the appeal, order the prisoner to be discharged, a new trial to be had, or appoint a day certain for the execution of the sentence.

Source: Laws 1973, LB 268, § 13; Laws 1982, LB 722, § 12; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

Note: The repeal of section 29-2528 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

29-2537 Convicted person; appears to be incompetent; notice to judge; suspend sentence; commission appointed; findings; suspension of execution; when; annual review.

(1) If any convicted person under sentence of death shall appear to be incompetent, the Director of Correctional Services shall forthwith give notice thereof to a judge of the district court of the judicial district in which the convicted person was tried and sentenced and such judge shall at once make such investigation as shall satisfy him or her as to whether a commission ought to be named to examine such convicted person.

(2) If the court determines that there is not sufficient reason for the appointment of a commission, the court shall so find and refuse to suspend the execution of the convicted person. If the court determines that a commission ought to be appointed to examine such convicted person, the court shall make a finding to that effect and cause it to be entered upon the records of the district court in the county in which such convicted person was sentenced, and, if necessary, the court shall suspend the execution and appoint three licensed mental health professionals employed by the state as a commission to examine such convicted person. The commission shall examine the convicted person to determine whether he or she is competent or incompetent and shall report its findings in writing to the court within ten days after its appointment. If two members of the commission find the convicted person incompetent, the court shall suspend the convicted person's execution until further order. Thereafter, the court shall appoint a commission annually to review the convicted person's competency. The results of such review shall be provided to the court. If the convicted person is subsequently found to be competent by two members of the commission, the court shall certify that finding to the Supreme Court which shall then establish a date for the enforcement of the convicted person's sentence.

(3) The standard for the determination of competency under this section shall be the same as the standard for determining competency to stand trial.

Source: Laws 1973, LB 268, § 22; Laws 1986, LB 1177, § 8; Laws 2009, LB36, § 1; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

Note: The repeal of section 29-2537 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

29-2538 Suspension of execution pending investigation; convict found competent; Supreme Court; appoint a day of execution.

If a court has suspended the execution of the convicted person pending an investigation as to his or her competency, the date for the enforcement of the convicted person's sentence has passed, and the convicted person is found to be competent, the court shall certify that finding to the Supreme Court which shall appoint a day for the enforcement of the convicted person's sentence.

Source: Laws 1973, LB 268, § 23; Laws 2009, LB36, § 2; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

Note: The repeal of section 29-2538 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

29-2539 Commission members; mileage; payment.

The members of the commission appointed pursuant to section 29-2537 shall each receive mileage at the rate authorized in section 81-1176 for state employees for each mile actually and necessarily traveled in reaching and returning from the place where the convicted person is confined and examined, and it is hereby made the duty of the commission to act in this capacity without compensation other than that already provided for them by law. All of the findings and orders aforesaid shall be entered in the district court records of the county wherein the convicted person was originally tried and sentenced, and the costs therefor, including those providing for the mileage of the

members of the commission, shall be allowed and paid in the usual manner by the county in which the convicted person was tried and sentenced to death.

Source: Laws 1973, LB 268, § 24; Laws 1981, LB 204, § 44; Laws 2009, LB36, § 3; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

Note: The repeal of section 29-2539 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

29-2540 Female convicted person; pregnant; notice to judge; procedures.

If a female convicted person under sentence of death shall appear to be pregnant, the Director of Correctional Services shall in like manner notify the judge of the district court of the county in which she was sentenced, who shall in all things proceed as in the case of an incompetent convicted person.

Source: Laws 1973, LB 268, § 25; Laws 1986, LB 1177, § 9; Laws 2009, LB36, § 4; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

Note: The repeal of section 29-2540 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

Cross References

Mentally incompetent convicts, see sections 29-2537 to 29-2539.

29-2541 Female convicted person; finding convicted person is pregnant; judge; duties; costs.

If the commission appointed pursuant to section 29-2537 finds that the female convicted person is pregnant, the court shall suspend the execution of her sentence. At such time as it shall be determined that such woman is no longer pregnant, the judge shall appoint a date for her execution and issue a warrant directing the enforcement of the sentence of death which shall be delivered to the Director of Correctional Services. The costs and expenses thereof shall be the same as those provided for in the case of an incompetent convicted person and shall be paid in the same manner.

Source: Laws 1973, LB 268, § 26; Laws 1986, LB 1177, § 10; Laws 2009, LB36, § 5; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

Note: The repeal of section 29-2541 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

29-2542 Escaped convict; return; notify Supreme Court; fix date of execution.

If any person who has been convicted of a crime punishable by death, and sentenced to death, shall escape, and shall not be retaken before the time fixed for his or her execution, it shall be lawful for the Director of Correctional Services, or any sheriff or other officer or person, to rearrest such person and return him or her to the custody of the director, who shall thereupon notify the Supreme Court that such person has been returned to custody. Upon receipt of that notice, the Supreme Court shall then issue a warrant, fixing a date for the enforcement of the sentence which shall be delivered to the director. The date of execution shall be set no later than sixty days following the issuance of the warrant.

Source: Laws 1973, LB 268, § 27; Laws 2009, LB36, § 6; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

Note: The repeal of section 29-2542 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

29-2543 Person convicted of crime sentenced to death; Supreme Court; warrant.

(1) Whenever any person has been tried and convicted before any district court in this state, has been sentenced to death, and has had his or her sentence of death affirmed by the Supreme Court on mandatory direct review, it shall be the duty of the Supreme Court to issue a warrant, under the seal of the court, reciting therein the conviction and sentence and establishing a date for the enforcement of the sentence directed to the Director of Correctional Services, commanding him or her to proceed at the time named in the warrant. The date of execution shall be set no later than sixty days following the issuance of the warrant.

(2) Thereafter, if the initial execution date has been stayed and the original execution date has expired, the Supreme Court shall establish a new date for enforcement of the sentence upon receipt of notice from the Attorney General that the stay of execution is no longer in effect and issue its warrant to the director. The date of execution shall be set no later than sixty days following the issuance of the warrant.

Source: Laws 1973, LB 268, § 28; Laws 1993, LB 31, § 12; Laws 2009, LB36, § 7; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

Note: The repeal of section 29-2543 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

29-2546 Reversal of judgment of conviction; delivery of convicted person to custody of sheriff; await further judgment and order of court.

Whenever the Supreme Court reverses the judgment of conviction in accordance with which any convicted person has been sentenced to death and is confined in a Department of Correctional Services adult correctional facility as herein provided, it shall be the duty of the Director of Correctional Services, upon receipt of a copy of such judgment of reversal, duly certified by the clerk of the court and under the seal thereof, to forthwith deliver such convicted person into the custody of the sheriff of the county in which the conviction was had to be held in the jail of the county awaiting the further judgment and order of the court in the case.

Source: Laws 1973, LB 268, § 31; Laws 1993, LB 31, § 13; Laws 2009, LB36, § 8; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

Note: The repeal of section 29-2546 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

ARTICLE 27

RECEIPTS AND DISBURSEMENTS OF MONEY IN CRIMINAL CAUSES

Section
29-2702. Money received; disposition.

29-2702 Money received; disposition.

Every judge or clerk of court, upon receiving any money on account of forfeited recognizances, fines, or costs accruing or due to the county or state, shall pay the same to the treasurer of the proper county, except as may be otherwise expressly provided, within thirty days from the time of receiving the same. When any money is paid to a judge or clerk of court on account of costs

due to individual persons, the same shall be paid to the persons to whom the same are due upon demand.

Source: G.S.1873, c. 58, § 534, p. 840; R.S.1913, § 9238; C.S.1922, § 10267; Laws 1927, c. 62, § 1, p. 223; C.S.1929, § 29-2702; R.S.1943, § 29-2702; Laws 1973, LB 226, § 19; Laws 1988, LB 370, § 8; Laws 2020, LB1028, § 6.

ARTICLE 28

HABEAS CORPUS

Section
29-2801. Habeas corpus; writ; when allowed.
29-2811. Accessories before the fact in capital cases; not bailable.

29-2801 Habeas corpus; writ; when allowed.

If any person, except persons convicted of some crime or offense for which they stand committed, or persons committed for treason or felony, the punishment whereof is capital, plainly and specially expressed in the warrant of commitment, now is or shall be confined in any jail of this state, or shall be unlawfully deprived of his or her liberty, and shall make application, either by him or herself or by any person on his or her behalf, to any one of the judges of the district court, or to any county judge, and does at the same time produce to such judge a copy of the commitment or cause of detention of such person, or if the person so imprisoned or detained is imprisoned or detained without any legal authority, upon making the same appear to such judge, by oath or affirmation, it shall be his duty forthwith to allow a writ of habeas corpus, which writ shall be issued forthwith by the clerk of the district court, or by the county judge, as the case may require, under the seal of the court whereof the person allowing such writ is a judge, directed to the proper officer, person or persons who detains such prisoner.

Source: G.S.1873, c. 58, § 353, p. 804; R.S.1913, § 9247; C.S.1922, § 10276; C.S.1929, § 29-2801; R.S.1943, § 29-2801; Laws 2015, LB268, § 24; Referendum 2016, No. 426.

Note: The changes made to section 29-2801 by Laws 2015, LB 268, section 24, have been omitted because of the vote on the referendum at the November 2016 general election.

29-2811 Accessories before the fact in capital cases; not bailable.

When any person shall appear to be committed by any judge or magistrate, and charged as accessory before the fact to any felony, the punishment whereof is capital, which felony shall be plainly and especially charged in the warrant of commitment, such person shall not be removed or bailed by virtue of sections 29-2801 to 29-2824, or in any other manner than as if said sections had not been enacted.

Source: G.S.1873, c. 58, § 363, p. 806; R.S.1913, § 9257; C.S.1922, § 10286; C.S.1929, § 29-2811; R.S.1943, § 29-2811; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

Note: The repeal of section 29-2811 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

ARTICLE 29
CONVICTED SEX OFFENDER

29-2935 Department of Health and Human Services; access to data and information for evaluation; authorized.

For purposes of evaluating the treatment process, the Division of Parole Supervision, the Department of Correctional Services, the Board of Parole, and the designated aftercare treatment programs shall allow appropriate access to data and information as requested by the Department of Health and Human Services.

Source: Laws 1992, LB 523, § 14; Laws 1996, LB 645, § 19; Laws 1996, LB 1044, § 88; Laws 2018, LB841, § 4.

ARTICLE 30
POSTCONVICTION PROCEEDINGS

29-3005 Victim of sex trafficking; motion to set aside conviction or adjudication; procedure; court; findings; considerations; hearing; order; effect.

(1) For purposes of this section:

(a) Prostitution-related offense includes:

(i) Prostitution under section 28-801, solicitation of prostitution under section 28-801.01, keeping a place of prostitution under section 28-804, public indecency under section 28-806, or loitering for the purpose of engaging in prostitution or related or similar offenses under local ordinances; and

(ii) Attempt, conspiracy, solicitation, being an accessory to, aiding and abetting, aiding the consummation of, or compounding a felony with any of the offenses in subdivision (1)(a) of this section as the underlying offense;

(b) Trafficker means a person who engages in sex trafficking or sex trafficking of a minor as defined in section 28-830; and

(c) Victim of sex trafficking means a person subjected to sex trafficking or sex trafficking of a minor, as those terms are defined in section 28-830.

(2) At any time following the completion of sentence or disposition, a victim of sex trafficking convicted in county or district court of, or adjudicated in a juvenile court for, (a) a prostitution-related offense committed while the movant was a victim of sex trafficking or proximately caused by the movant's status as a victim of sex trafficking or (b) any other offense committed as a direct result of, or proximately caused by, the movant's status as a victim of sex trafficking, may file a motion to set aside such conviction or adjudication. The motion shall be filed in the county, district, or separate juvenile court of the county in which the movant was convicted or adjudicated.

(3)(a) If the court finds that the movant was a victim of sex trafficking at the time of the prostitution-related offense or finds that the movant's participation

in the prostitution-related offense was proximately caused by the movant's status as a victim of sex trafficking, the court shall grant the motion to set aside a conviction or an adjudication for such prostitution-related offense.

(b) If the court finds that the movant's participation in an offense other than a prostitution-related offense was a direct result of or proximately caused by the movant's status as a victim of sex trafficking, the court shall grant the motion to set aside a conviction or an adjudication for such offense.

(4) Official documentation of a movant's status as a victim of sex trafficking at the time of the prostitution-related offense or other offense shall create a rebuttable presumption that the movant was a victim of sex trafficking at the time of the prostitution-related offense or other offense. Such official documentation shall not be required to obtain relief under this section. Such official documentation includes:

(a) A copy of an official record, certification, or eligibility letter from a federal, state, tribal, or local proceeding, including an approval notice or an enforcement certification generated from a federal immigration proceeding, that shows that the movant is a victim of sex trafficking; or

(b) An affidavit or sworn testimony from an attorney, a member of the clergy, a medical professional, a trained professional staff member of a victim services organization, or other professional from whom the movant has sought legal counsel or other assistance in addressing the trauma associated with being a victim of sex trafficking.

(5) In considering whether the movant is a victim of sex trafficking, the court may consider any other evidence the court determines is of sufficient credibility and probative value, including an affidavit or sworn testimony. Examples of such evidence include, but are not limited to:

(a) Branding or other tattoos on the movant that identified him or her as having a trafficker;

(b) Testimony or affidavits from those with firsthand knowledge of the movant's involvement in the commercial sex trade such as solicitors of commercial sex, family members, hotel workers, and other individuals trafficked by the same individual or group of individuals who trafficked the movant;

(c) Financial records showing profits from the commercial sex trade, such as records of hotel stays, employment at indoor venues such as massage parlors, bottle clubs, or strip clubs, or employment at an escort service;

(d) Internet listings, print advertisements, or business cards used to promote the movant for commercial sex; or

(e) Email, text, or voicemail records between the movant, the trafficker, or solicitors of sex that reveal aspects of the sex trade such as behavior patterns, meeting times, or payments or examples of the trafficker exerting force, fraud, or coercion over the movant.

(6) Upon request of a movant, any hearing relating to the motion shall be conducted in camera. The rules of evidence shall not apply at any hearing relating to the motion.

(7) An order setting aside a conviction or an adjudication under this section shall have the same effect as an order setting aside a conviction as provided in subsections (5) and (6) of section 29-2264.

Source: Laws 2018, LB1132, § 2; Laws 2020, LB881, § 25.

ARTICLE 32
RENDITION OF PRISONERS AS WITNESSES

Section
29-3205. Sections; exceptions.

29-3205 Sections; exceptions.

Sections 29-3201 to 29-3210 do not apply to any person in this state confined as mentally ill or under sentence of death.

Source: Laws 1969, c. 229, § 5, p. 855; Laws 1986, LB 1177, § 11; Laws 2015, LB268, § 25; Referendum 2016, No. 426.

Note: The changes made to section 29-3205 by Laws 2015, LB 268, section 25, have been omitted because of the vote on the referendum at the November 2016 general election.

ARTICLE 35
CRIMINAL HISTORY INFORMATION

Section
29-3523. Criminal history record information; dissemination; limitations; removal; certain information not part of public record; court; duties; sealed record; effect; expungement.

29-3523 Criminal history record information; dissemination; limitations; removal; certain information not part of public record; court; duties; sealed record; effect; expungement.

(1) After the expiration of the periods described in subsection (3) of this section or after the granting of a motion under subsection (4), (5), or (6) of this section, a criminal justice agency shall respond to a public inquiry in the same manner as if there were no criminal history record information and criminal history record information shall not be disseminated to any person other than a criminal justice agency, except as provided in subsection (2) of this section or when the subject of the record:

(a) Is currently the subject of prosecution or correctional control as the result of a separate arrest;

(b) Is currently an announced candidate for or holder of public office;

(c) Has made a notarized request for the release of such record to a specific person; or

(d) Is kept unidentified, and the record is used for purposes of surveying or summarizing individual or collective law enforcement agency activity or practices, or the dissemination is requested consisting only of release of criminal history record information showing (i) dates of arrests, (ii) reasons for arrests, and (iii) the nature of the dispositions including, but not limited to, reasons for not prosecuting the case or cases.

(2) That part of criminal history record information described in subsection (7) of this section may be disseminated to individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency that specifically authorizes access to the information, limits the use of the information to research, evaluative, or statistical activities, and ensures the confidentiality and security of the information.

(3) Except as provided in subsections (1) and (2) of this section, in the case of an arrest, citation in lieu of arrest, or referral for prosecution without citation, all criminal history record information relating to the case shall be removed from the public record as follows:

(a) When no charges are filed as a result of the determination of the prosecuting attorney, the criminal history record information shall not be part of the public record after one year from the date of arrest, citation in lieu of arrest, or referral for prosecution without citation;

(b) When charges are not filed as a result of a completed diversion, the criminal history record information shall not be part of the public record after two years from the date of arrest, citation in lieu of arrest, or referral for prosecution without citation; and

(c) When charges are filed, but the case is dismissed by the court (i) on motion of the prosecuting attorney, (ii) as a result of a hearing not the subject of a pending appeal, (iii) after acquittal, (iv) after a deferred judgment, or (v) after completion of a program prescribed by a drug court or any other problem solving court approved by the Supreme Court, the criminal history record information shall not be part of the public record immediately upon notification of a criminal justice agency after acquittal pursuant to subdivision (3)(c)(iii) of this section or after the entry of an order dismissing the case.

(4) Upon the granting of a motion to set aside a conviction or an adjudication pursuant to section 29-3005, a person who is a victim of sex trafficking, as defined in section 29-3005, may file a motion with the sentencing court for an order to seal the criminal history record information related to such conviction or adjudication. Upon a finding that a court issued an order setting aside such conviction or adjudication pursuant to section 29-3005, the sentencing court shall grant the motion and:

(a) For a conviction, issue an order as provided in subsection (7) of this section; or

(b) For an adjudication, issue an order as provided in section 43-2,108.05.

(5) Any person who has received a pardon may file a motion with the sentencing court for an order to seal the criminal history record information and any cases related to such charges or conviction. Upon a finding that the person received a pardon, the court shall grant the motion and issue an order as provided in subsection (7) of this section.

(6) Any person who is subject to a record which resulted in a case being dismissed prior to January 1, 2017, as described in subdivision (3)(c) of this section, may file a motion with the court in which the case was filed to enter an order pursuant to subsection (7) of this section. Upon a finding that the case was dismissed for any reason described in subdivision (3)(c) of this section, the court shall grant the motion and enter an order as provided in subsection (7) of this section.

(7) Upon acquittal or entry of an order dismissing a case described in subdivision (3)(c) of this section, or after granting a motion under subsection (4), (5), or (6) of this section, the court shall:

(a) Order that all records, including any information or other data concerning any proceedings relating to the case, including the arrest, taking into custody, petition, complaint, indictment, information, trial, hearing, adjudication, correctional supervision, dismissal, or other disposition or sentence, are

not part of the public record and shall not be disseminated to persons other than criminal justice agencies, except as provided in subsection (1) or (2) of this section;

(b) Send notice of the order (i) to the Nebraska Commission on Law Enforcement and Criminal Justice, (ii) to the Nebraska State Patrol, and (iii) to law enforcement agencies, county attorneys, and city attorneys referenced in the court record;

(c) Order all parties notified under subdivision (7)(b) of this section to seal all records pertaining to the case; and

(d) If the case was transferred from one court to another, send notice of the order to seal the record to the transferring court.

(8) In any application for employment, bonding, license, education, or other right or privilege, any appearance as a witness, or any other public inquiry, a person cannot be questioned with respect to any offense for which the record is sealed. If an inquiry is made in violation of this subsection, the person may respond as if the offense never occurred.

(9) Any person arrested due to the error of a law enforcement agency may file a petition with the district court for an order to expunge the criminal history record information related to such error. The petition shall be filed in the district court of the county in which the petitioner was arrested. The county attorney shall be named as the respondent and shall be served with a copy of the petition. The court may grant the petition and issue an order to expunge such information if the petitioner shows by clear and convincing evidence that the arrest was due to error by the arresting law enforcement agency.

(10) The changes made by Laws 2018, LB1132, to the relief set forth in this section shall apply to all persons otherwise eligible in accordance with the provisions of this section, whether arrested, cited in lieu of arrest, referred for prosecution without citation, charged, convicted, or adjudicated prior to, on, or subsequent to July 19, 2018.

Source: Laws 1978, LB 713, § 25; Laws 1980, LB 782, § 1; Laws 1997, LB 856, § 1; Laws 2007, LB470, § 1; Laws 2015, LB605, § 73; Laws 2016, LB505, § 1; Laws 2018, LB1132, § 3; Laws 2019, LB686, § 12.

ARTICLE 39

PUBLIC DEFENDERS AND APPOINTED COUNSEL

(a) INDIGENT DEFENDANTS

Section
29-3903. Indigent defendant; right to counsel; appointment.

(c) COUNTY REVENUE ASSISTANCE ACT

29-3920. Legislative findings.
29-3922. Terms, defined.
29-3925. Commission; chairperson; expenses.
29-3928. Chief counsel; qualifications; salary.
29-3929. Chief counsel; duties.
29-3930. Commission; divisions established.

(a) INDIGENT DEFENDANTS

29-3903 Indigent defendant; right to counsel; appointment.

At a felony defendant's first appearance before a judge, the judge shall advise him or her of the right to court-appointed counsel if such person is indigent. If he or she asserts indigency, the court shall make a reasonable inquiry to determine such person's financial condition and shall require him or her to execute an affidavit of indigency for filing with the clerk of the court.

If the court determines the defendant to be indigent, it shall formally appoint the public defender or, in counties not having a public defender, an attorney or attorneys licensed to practice law in this state, not exceeding two, to represent the indigent felony defendant at all future critical stages of the criminal proceedings against such defendant, consistent with the provisions of section 23-3402, but appointed counsel other than the public defender must obtain leave of court before being authorized to proceed beyond an initial direct appeal to either the Court of Appeals or the Supreme Court of Nebraska to any further direct, collateral, or postconviction appeals to state or federal courts.

A felony defendant who is not indigent at the time of his or her first appearance before a judge may nevertheless assert his or her indigency at any subsequent stage of felony proceedings, at which time the judge shall consider appointing counsel as otherwise provided in this section.

The judge, upon filing such order for appointment, shall note all appearances of appointed counsel upon the record. If at the time of appointment of counsel the indigent felony defendant and appointed counsel have not had a reasonable opportunity to consult concerning the prosecution, the judge shall continue the arraignment, trial, or other next stage of the felony proceedings for a reasonable period of time to allow for such consultation.

Source: Laws 1972, LB 1463, § 6; Laws 1979, LB 241, § 3; Laws 1984, LB 189, § 4; R.S.1943, (1989), § 29-1804.07; Laws 1990, LB 822, § 21; Laws 1991, LB 732, § 89; Laws 2018, LB193, § 62.

(c) COUNTY REVENUE ASSISTANCE ACT

29-3920 Legislative findings.

The Legislature finds that:

(1) County property owners should be given some relief from the obligation of providing mandated indigent defense services which in most instances are required because of state laws establishing crimes and penalties;

(2) Property tax relief can be accomplished if the state begins to assist the counties with the obligation of providing indigent defense services required by state laws establishing crimes and penalties;

(3) Property tax relief in the form of state assistance to the counties of Nebraska in providing for indigent defense services will also increase accountability because the state, which is the governmental entity responsible for passing criminal statutes, will likewise be responsible for paying some of the costs;

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

(5) Property tax relief in the form of state assistance to the counties of Nebraska in providing for indigent defense services will also lessen the impact

on county property taxpayers of the cost of a high profile death penalty case which can significantly affect the finances of the counties; and

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

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

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

29-3922 Terms, defined.

For purposes of the County Revenue Assistance Act:

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

(2) Commission means the Commission on Public Advocacy;

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

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

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

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

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

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

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

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

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

29-3925 Commission; chairperson; expenses.

The Governor shall designate one of the members of the commission as the chairperson. The members of the commission shall be reimbursed for expenses

incurred in the performance of their duties as provided in sections 81-1174 to 81-1177.

Source: Laws 1995, LB 646, § 7; Laws 2020, LB381, § 24.

29-3928 Chief counsel; qualifications; salary.

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

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

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

29-3929 Chief counsel; duties.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29-3930 Commission; divisions established.

The following divisions are established within the commission:

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

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

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

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

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

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

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

Cross References

DNA Testing Act, see section 29-4116.

ARTICLE 40

SEX OFFENDERS

(a) SEX OFFENDER REGISTRATION ACT

(a) SEX OFFENDER REGISTRATION ACT

29-4003 Applicability of act.

(1)(a) The Sex Offender Registration Act applies to any person who on or after January 1, 1997:

(i) Has ever pled guilty to, pled nolo contendere to, or been found guilty of any of the following:

(A) Kidnapping of a minor pursuant to section 28-313, except when the person is the parent of the minor and was not convicted of any other offense in this section;

(B) False imprisonment of a minor pursuant to section 28-314 or 28-315;

(C) Sexual assault pursuant to section 28-319 or 28-320;

(D) Sexual abuse by a school employee pursuant to section 28-316.01;

(E) Sexual assault of a child in the second or third degree pursuant to section 28-320.01;

(F) Sexual assault of a child in the first degree pursuant to section 28-319.01;

(G) Sexual abuse of a vulnerable adult or senior adult pursuant to subdivision (1)(c) of section 28-386;

(H) Incest of a minor pursuant to section 28-703;

(I) Pandering of a minor pursuant to section 28-802;

(J) Visual depiction of sexually explicit conduct of a child pursuant to section 28-1463.03 or subdivision (2)(b) or (c) of section 28-1463.05;

(K) Knowingly possessing any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers pursuant to subsection (1) or (4) of section 28-813.01;

(L) Criminal child enticement pursuant to section 28-311;

(M) Child enticement by means of an electronic communication device pursuant to section 28-320.02;

(N) Debauching a minor pursuant to section 28-805; or

(O) Attempt, solicitation, aiding or abetting, being an accessory, or conspiracy to commit an offense listed in subdivisions (1)(a)(i)(A) through (1)(a)(i)(N) of this section;

(ii) Has ever pled guilty to, pled nolo contendere to, or been found guilty of any offense that is substantially equivalent to a registrable offense under subdivision (1)(a)(i) of this section by any village, town, city, state, territory, commonwealth, or other jurisdiction of the United States, by the United States Government, by court-martial or other military tribunal, or by a foreign jurisdiction, notwithstanding a procedure comparable in effect to that described under section 29-2264 or any other procedure to nullify a conviction other than by pardon;

(iii) Is incarcerated in a jail, a penal or correctional facility, or any other public or private institution or is under probation or parole as a result of pleading guilty to or being found guilty of a registrable offense under subdivision (1)(a)(i) or (ii) of this section prior to January 1, 1997; or

(iv) Enters the state and is required to register as a sex offender under the laws of another village, town, city, state, territory, commonwealth, or other jurisdiction of the United States.

(b) In addition to the registrable offenses under subdivision (1)(a) of this section, the Sex Offender Registration Act applies to any person who on or after January 1, 2010:

(i)(A) Except as provided in subdivision (1)(b)(i)(B) of this section, has ever pled guilty to, pled nolo contendere to, or been found guilty of any of the following:

(I) Murder in the first degree pursuant to section 28-303;

(II) Murder in the second degree pursuant to section 28-304;

(III) Manslaughter pursuant to section 28-305;

(IV) Assault in the first degree pursuant to section 28-308;

(V) Assault in the second degree pursuant to section 28-309;

(VI) Assault in the third degree pursuant to section 28-310;

(VII) Stalking pursuant to section 28-311.03;

(VIII) Violation of section 28-311.08 requiring registration under the act pursuant to subsection (6) of section 28-311.08;

(IX) Kidnapping pursuant to section 28-313;

(X) False imprisonment pursuant to section 28-314 or 28-315;

(XI) Sexual abuse of an inmate or parolee in the first degree pursuant to section 28-322.02;

(XII) Sexual abuse of an inmate or parolee in the second degree pursuant to section 28-322.03;

(XIII) Sexual abuse of a protected individual pursuant to section 28-322.04;

(XIV) Incest pursuant to section 28-703;

(XV) Child abuse pursuant to subdivision (1)(d) or (e) of section 28-707;

(XVI) Enticement by electronic communication device pursuant to section 28-833; or

(XVII) Attempt, solicitation, aiding or abetting, being an accessory, or conspiracy to commit an offense listed in subdivisions (1)(b)(i)(A)(I) through (1)(b)(i)(A)(XVI) of this section.

(B) In order for the Sex Offender Registration Act to apply to the offenses listed in subdivisions (1)(b)(i)(A)(I), (II), (III), (IV), (V), (VI), (VII), (IX), and (X) of this section, a court shall have found that evidence of sexual penetration or sexual contact, as those terms are defined in section 28-318, was present in the record, which shall include consideration of the factual basis for a plea-based conviction and information contained in the presentence report;

(ii) Has ever pled guilty to, pled nolo contendere to, or been found guilty of any offense that is substantially equivalent to a registrable offense under subdivision (1)(b)(i) of this section by any village, town, city, state, territory, commonwealth, or other jurisdiction of the United States, by the United States Government, by court-martial or other military tribunal, or by a foreign jurisdiction, notwithstanding a procedure comparable in effect to that described under section 29-2264 or any other procedure to nullify a conviction other than by pardon; or

(iii) Enters the state and is required to register as a sex offender under the laws of another village, town, city, state, territory, commonwealth, or other jurisdiction of the United States.

(c) In addition to the registrable offenses under subdivisions (1)(a) and (b) of this section, the Sex Offender Registration Act applies to any person who on or after January 1, 2020:

(i) Has ever pled guilty to, pled nolo contendere to, or been found guilty of sexual abuse of a detainee under section 28-322.05; or

(ii) Has ever pled guilty to, pled nolo contendere to, or been found guilty of any offense that is substantially equivalent to a registrable offense under

subdivision (1)(c)(i) of this section by any village, town, city, state, territory, commonwealth, or other jurisdiction of the United States, by the United States Government, by court-martial or other military tribunal, or by a foreign jurisdiction, notwithstanding a procedure comparable in effect to that described under section 29-2264 or any other procedure to nullify a conviction other than by pardon.

(d) In addition to the registrable offenses under subdivisions (1)(a), (b), and (c) of this section, the Sex Offender Registration Act applies to any person who on or after January 1, 2023:

(i) Has ever pled guilty to, pled nolo contendere to, or been found guilty of human trafficking under subsection (1) or (2) of section 28-831, and the court determines either by notification of sex offender registration responsibilities or notation in the sentencing order that the human trafficking was sex trafficking or sex trafficking of a minor and not solely labor trafficking or labor trafficking of a minor; or

(ii) Has ever pled guilty to, pled nolo contendere to, or been found guilty of any offense that is substantially equivalent to a registrable offense under subdivision (1)(d)(i) of this section by any village, town, city, state, territory, commonwealth, or other jurisdiction of the United States, by the United States Government, by court-martial or other military tribunal, or by a foreign jurisdiction, notwithstanding a procedure comparable in effect to that described under section 29-2264 or any other procedure to nullify a conviction other than by pardon.

(2) A person appealing a conviction of a registrable offense under this section shall be required to comply with the act during the appeals process.

Source: Laws 1996, LB 645, § 3; Laws 2002, LB 564, § 3; Laws 2004, LB 943, § 9; Laws 2005, LB 713, § 4; Laws 2006, LB 1199, § 18; Laws 2009, LB97, § 25; Laws 2009, LB285, § 4; Laws 2011, LB61, § 2; Laws 2014, LB998, § 6; Laws 2016, LB934, § 11; Laws 2019, LB519, § 14; Laws 2019, LB630, § 7; Laws 2020, LB881, § 26; Laws 2022, LB1246, § 2.
Effective date July 21, 2022.

29-4007 Sentencing court; duties; Department of Correctional Services or local facility; Department of Motor Vehicles; notification requirements; Attorney General; approve form.

(1) When sentencing a person convicted of a registrable offense under section 29-4003, the court shall:

(a) Provide written notification of the duty to register under the Sex Offender Registration Act at the time of sentencing to any defendant who has pled guilty or has been found guilty of a registrable offense under section 29-4003. The written notification shall:

(i) Inform the defendant of whether or not he or she is subject to the act, the duration of time he or she will be subject to the act, and that he or she shall report to a location designated by the Nebraska State Patrol for purposes of accepting such registration within three working days after the date of the written notification to register;

(ii) Inform the defendant that if he or she moves to another address within the same county, he or she must report to the county sheriff of the county in which he or she is residing within three working days before his or her move;

(iii) Inform the defendant that if he or she no longer has a residence, temporary domicile, or habitual living location, he or she shall report such change in person to the sheriff of the county in which he or she is located within three working days after such change in residence, temporary domicile, or habitual living location;

(iv) Inform the defendant that if he or she moves to another county in the State of Nebraska, he or she must notify, in person, the county sheriff of the county in which he or she had been last residing, had a temporary domicile, or had a habitual living location and the county sheriff of the county in which he or she is residing, has a temporary domicile, or is habitually living of his or her current address. The notice must be given within three working days before his or her move;

(v) Inform the defendant that if he or she moves to another state, he or she must report, in person, the change of address to the county sheriff of the county in which he or she has been residing, has had a temporary domicile, or has had a habitual living location and must comply with the registration requirements of the state to which he or she is moving. The notice must be given within three working days before his or her move;

(vi) Inform the defendant that he or she shall (A) inform the sheriff of the county in which he or she resides, has a temporary domicile, or is habitually living, in person, of each educational institution at which he or she is employed, carries on a vocation, or attends school, within three working days after such employment or attendance, and (B) notify the sheriff of any change in such employment or attendance status of such person at such educational institution, within three working days;

(vii) Inform the defendant that he or she shall (A) inform the sheriff of the county in which the employment site is located, in person, of the name and address of any place where he or she is or will be an employee, within three working days after such employment, and (B) inform the sheriff of the county in which the employment site is located, in person, of any change in his or her employment;

(viii) Inform the defendant that if he or she goes to another state to work or goes to another state as a student and still resides, has a temporary domicile, or has a habitual living location in this state, he or she must comply with the registration requirements of both states;

(ix) Inform the defendant that fingerprints, palm prints, a DNA sample if not previously collected, and a photograph will be obtained by any registering entity in order to comply with the registration requirements;

(x) Inform the defendant of registry and verification locations; and

(xi) Inform the defendant of the reduction request requirements, if eligible, under section 29-4005;

(b) Require the defendant to read and sign the registration form stating that the duty of the defendant to register under the Sex Offender Registration Act has been explained;

(c) Retain the original notification signed by the defendant; and

(d) Provide a copy of the filed notification, the information or amended information, and the sentencing order of the court to the county attorney, the defendant, the sex offender registration and community notification division of the Nebraska State Patrol, and the county sheriff of the county in which the defendant resides, has a temporary domicile, or has a habitual living location.

(2) When a person is convicted of a registrable offense under section 29-4003 and is not subject to immediate incarceration upon sentencing, prior to being released by the court, the sentencing court shall ensure that the defendant is registered by a Nebraska State Patrol office or other location designated by the patrol for purposes of accepting registrations.

(3)(a) The Department of Correctional Services or a city or county correctional or jail facility shall provide written notification of the duty to register pursuant to the Sex Offender Registration Act to any person committed to its custody for a registrable offense under section 29-4003 prior to the person's release from incarceration. The written notification shall:

(i) Inform the person of whether or not he or she is subject to the act, the duration of time he or she will be subject to the act, and that he or she shall report to a location designated by the Nebraska State Patrol for purposes of accepting such registration within three working days after the date of the written notification to register;

(ii) Inform the person that if he or she moves to another address within the same county, he or she must report all address changes, in person, to the county sheriff of the county in which he or she has been residing within three working days before his or her move;

(iii) Inform the defendant that if he or she no longer has a residence, temporary domicile, or habitual living location, he or she shall report such change in person to the sheriff of the county in which he or she is located within three working days after such change in residence, temporary domicile, or habitual living location;

(iv) Inform the person that if he or she moves to another county in the State of Nebraska, he or she must notify, in person, the county sheriff of the county in which he or she had been last residing, had a temporary domicile, or had a habitual living location and the county sheriff of the county in which he or she is residing, has a temporary domicile, or is habitually living of his or her current address. The notice must be given within three working days before his or her move;

(v) Inform the person that if he or she moves to another state, he or she must report, in person, the change of address to the county sheriff of the county in which he or she has been residing, has had a temporary domicile, or has been habitually living and must comply with the registration requirements of the state to which he or she is moving. The report must be given within three working days before his or her move;

(vi) Inform the person that he or she shall (A) inform the sheriff of the county in which he or she resides, has a temporary domicile, or is habitually living, in person, of each educational institution at which he or she is employed, carries on a vocation, or attends school, within three working days after such employment or attendance, and (B) notify the sheriff of any change in such employment or attendance status of such person at such educational institution, within three working days after such change;

(vii) Inform the person that he or she shall (A) inform the sheriff of the county in which the employment site is located, in person, of the name and address of any place where he or she is or will be an employee, within three working days after such employment, and (B) inform the sheriff of the county in which the employment site is located, in person, of any change in his or her employment;

(viii) Inform the person that if he or she goes to another state to work or goes to another state as a student and still resides, has a temporary domicile, or has a habitual living location in this state, he or she must comply with the registration requirements of both states;

(ix) Inform the defendant that fingerprints, palm prints, a DNA sample if not previously collected, and a photograph will be obtained by any registering entity in order to comply with the registration requirements;

(x) Inform the defendant of registry and verification locations; and

(xi) Inform the defendant of the reduction request requirements, if eligible, under section 29-4005.

(b) The Department of Correctional Services or a city or county correctional or jail facility shall:

(i) Require the person to read and sign the notification form stating that the duty to register under the Sex Offender Registration Act has been explained;

(ii) Retain a signed copy of the written notification to register; and

(iii) Provide a copy of the signed, written notification to register to the person and to the sex offender registration and community notification division of the Nebraska State Patrol.

(4) If a person is convicted of a registrable offense under section 29-4003 and is immediately incarcerated, he or she shall be registered as required under the act prior to discharge, parole, or work release.

(5) The Department of Motor Vehicles shall cause written notification of the duty to register to be provided on the applications for a motor vehicle operator's license and for a commercial driver's license.

(6) All written notification as provided in this section shall be on a form approved by the Attorney General.

Source: Laws 1996, LB 645, § 7; Laws 1998, LB 204, § 1; Laws 2002, LB 564, § 7; Laws 2006, LB 1199, § 22; Laws 2009, LB97, § 27; Laws 2009, LB285, § 8; Laws 2015, LB292, § 7; Laws 2018, LB193, § 63.

(c) DANGEROUS SEX OFFENDERS

29-4019 Offense requiring lifetime community supervision; sentencing court; duties.

(1) When sentencing a person convicted of an offense which requires lifetime community supervision upon release pursuant to section 83-174.03, the sentencing court shall:

(a) Provide written notice to the defendant that he or she shall be subject to lifetime community supervision by the Division of Parole Supervision upon release from incarceration or civil commitment. The written notice shall inform the defendant (i) that he or she shall be subject to lifetime community supervision by the division upon release and that the division shall conduct a risk

assessment and evaluation to determine the conditions of community supervision which will minimize, in the least restrictive manner that is compatible with public safety, the risk of the defendant committing additional offenses, (ii) that a violation of any of the conditions of community supervision imposed by the division may result in the revision of existing conditions, the addition of new conditions, a recommendation that civil commitment proceedings should be instituted, or criminal prosecution, and (iii) of his or her right to challenge the determination of the conditions of community supervision by the division and the right to a periodic review of the conditions of community supervision pursuant to section 83-174.03 to determine if the conditions are still necessary to protect the public;

(b) Require the defendant to read and sign a form stating that the duty of the defendant to comply with the conditions of community supervision and his or her rights to challenge the conditions of community supervision imposed by the division has been explained; and

(c) Retain a copy of the written notification signed by the defendant.

(2) Prior to the release of a person serving a sentence for an offense requiring lifetime community supervision by the Division of Parole Supervision pursuant to section 83-174.03, the Department of Correctional Services, the Department of Health and Human Services, or a city or county correctional or jail facility shall:

(a) Provide written notice to the person that he or she shall be subject to lifetime community supervision by the division upon release from incarceration. The written notice shall inform the person (i) that he or she shall be subject to lifetime community supervision by the division upon release and that the division shall conduct a risk assessment and evaluation of the defendant to determine the conditions of community supervision which will minimize, in the least restrictive manner that is compatible with public safety, the risk of the person committing additional offenses, (ii) that a violation of any of the conditions of community supervision imposed by the division may result in the revision of existing conditions, the addition of new conditions, a recommendation that civil commitment proceedings should be instituted, or criminal prosecution, and (iii) of his or her right to challenge the determination of the conditions of community supervision by the division and the right to a periodic review of the conditions of community supervision pursuant to section 83-174.03 to determine if the conditions are still necessary to protect the public;

(b) Require the defendant to read and sign a form stating that the duty of the defendant to comply with the conditions of community supervision and his or her right to challenge the conditions of community supervision imposed by the division has been explained; and

(c) Retain a copy of the written notification signed by the person.

Source: Laws 2006, LB 1199, § 106; Laws 2018, LB841, § 5.

ARTICLE 41

DNA TESTING

(a) DNA IDENTIFICATION INFORMATION ACT

Section
29-4108. DNA samples and DNA records; confidentiality.
29-4115.01. State DNA Sample and Database Fund; created; use; investment.

(a) DNA IDENTIFICATION INFORMATION ACT

29-4108 DNA samples and DNA records; confidentiality.

(1) All DNA samples and DNA records submitted to the State DNA Sample Bank or the State DNA Database are confidential except as otherwise provided in the DNA Identification Information Act. The Nebraska State Patrol shall make DNA records in the State DNA Database available:

(a) To law enforcement agencies and forensic DNA laboratories which serve such agencies and which participate in the Combined DNA Index System; and

(b) Upon written or electronic request and in furtherance of an official investigation of a criminal offense or offender or suspected offender.

(2) The Nebraska State Patrol shall adopt and promulgate rules and regulations governing the methods of obtaining information from the State DNA Database and the Combined DNA Index System and procedures for verification of the identity and authority of the requester.

(3) The Nebraska State Patrol may, for good cause shown, revoke or suspend the right of a forensic DNA laboratory in this state to have access to or submit records to the State DNA Database.

(4) For purposes of this subsection, person means a law enforcement agency, the Federal Bureau of Investigation, any forensic DNA laboratory, or person. No records or DNA samples shall be provided to any person unless such person enters into a written agreement with the Nebraska State Patrol to comply with the provisions of section 29-4109 relative to expungement, when notified by the Nebraska State Patrol that expungement has been granted. Every person shall comply with the provisions of section 29-4109 within ten calendar days of receipt of such notice and certify in writing to the Nebraska State Patrol that such compliance has been effectuated. The Nebraska State Patrol shall provide notice of such certification to the person who was granted expungement.

Source: Laws 1997, LB 278, § 8; Laws 2006, LB 385, § 9; Laws 2020, LB106, § 1.

29-4115.01 State DNA Sample and Database Fund; created; use; investment.

The State DNA Sample and Database Fund is created. The fund shall be maintained by the Nebraska State Patrol and administered by the Superintendent of Law Enforcement and Public Safety. The fund shall consist of any funds transferred to the fund by the Legislature or made available by any department or agency of the United States Government if so directed by such department or agency. The fund shall be used to pay the expenses of the Department of Correctional Services and the Nebraska State Patrol as needed to collect DNA samples as provided in section 29-4106. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2010, LB190, § 6; Laws 2017, LB331, § 21.

Cross References

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

ARTICLE 42

AUDIOVISUAL COURT APPEARANCES

Section
29-4205. Audiovisual court appearance; procedures.

29-4205 Audiovisual court appearance; procedures.

In a proceeding in which an audiovisual court appearance is made:

(1) Facsimile signatures or electronically reproduced signatures are acceptable for purposes of releasing the detainee or prisoner from custody; however, actual signed copies of the release documents must be promptly filed with the court and the detainee or prisoner must promptly be provided with a copy of all documents which the detainee or prisoner signs;

(2) The record of the court reporting personnel shall be the official record of the proceeding; and

(3) On motion of the detainee or prisoner or the prosecuting attorney or in the court's discretion, the court may terminate an audiovisual appearance and require an appearance by the detainee or prisoner.

Source: Laws 1999, LB 623, § 5; Laws 2006, LB 1115, § 24; Laws 2018, LB983, § 1.

ARTICLE 43

SEXUAL ASSAULT, DOMESTIC VIOLENCE, AND SEX TRAFFICKING

(c) SEXUAL ASSAULT EVIDENCE COLLECTION

Section
29-4307. City of the primary or metropolitan class; annual report.

(d) SEXUAL ASSAULT VICTIMS' BILL OF RIGHTS ACT

29-4308. Act, how cited.
29-4309. Terms, defined.
29-4310. Privileged communication; presence of others; effect; prosecutor; duty.
29-4311. Medical evidentiary or physical examinations; rights of victim.
29-4312. Interview or deposition; rights of victim.
29-4313. Sexual assault forensic evidence; rights of victim.
29-4314. Sexual assault forensic evidence; uses prohibited.
29-4315. Explanation of rights; required, when; contents.

(e) VICTIM CONFIDENTIALITY

29-4316. Criminal justice agencies and attorneys; maintain confidentiality of victim of sexual assault or sex trafficking.

(c) SEXUAL ASSAULT EVIDENCE COLLECTION

29-4307 City of the primary or metropolitan class; annual report.

On or before December 1, 2020, and annually thereafter, each city of the primary class and city of the metropolitan class shall make a report listing the number of untested sexual assault evidence collection kits for such city. The report shall contain aggregate data only and shall not contain any personal identifying information. The report shall be made publicly available on the city's website and shall be electronically submitted to the Attorney General and to the Legislature.

Source: Laws 2020, LB881, § 1.

(d) SEXUAL ASSAULT VICTIMS' BILL OF RIGHTS ACT

29-4308 Act, how cited.

Sections 29-4308 to 29-4315 shall be known and may be cited as the Sexual Assault Victims' Bill of Rights Act.

Source: Laws 2020, LB43, § 1.

29-4309 Terms, defined.

For the purposes of the Sexual Assault Victims' Bill of Rights Act:

(1)(a) Advocate means:

(i) Any employee or supervised volunteer of a domestic violence and sexual assault victim assistance program or of any other agency, business, or organization that is not affiliated with a law enforcement or prosecutor's office, whose primary purpose is assisting domestic violence and sexual assault victims. This includes employees or supervised volunteers of an Indian tribe or a postsecondary educational institution;

(ii) A representative from a victim and witness assistance center as established in sections 81-1845 to 81-1847 or a similar entity affiliated with a law enforcement agency or prosecutor's office; or

(iii) An advocate who is employed by a child advocacy center that meets the requirements of subsection (2) of section 28-728.

(b) If reasonably possible, an advocate shall speak the victim's preferred language or use the services of a qualified interpreter;

(2) Health care provider means any individual who is licensed, certified, or registered to perform specified health services consistent with state law;

(3) Sexual assault means a violation of section 28-319, 28-319.01, 28-320, 28-320.01, 28-320.02, 28-322.01, 28-322.02, 28-322.03, 28-322.04, 28-322.05, 28-703, or 28-1463.03, sex trafficking or sex trafficking of a minor under section 28-831, or subdivision (1)(c) or (g) of section 28-386 or subdivision (1)(d), (e), or (f) of section 28-707;

(4) Sexual assault forensic evidence means evidence collected by a health care provider contained within any sexual assault forensic evidence collection kit, including a toxicology kit, or any forensic evidence collected by law enforcement through the course of an investigation; and

(5)(a) Sexual assault victim or victim means any person who is a victim of sexual assault who reports such sexual assault:

(i) To a health care provider, law enforcement, or an advocate, including anonymous reporting as provided in section 28-902; and

(ii) In the case of a victim who is under eighteen years of age, to the Department of Health and Human Services.

(b) Sexual assault victim or victim also includes, if the victim described in subdivision (5)(a) of this section is incompetent, deceased, or a minor who is unable to consent to counseling services, such victim's parent, guardian, or spouse, unless such person is the reported assailant.

Source: Laws 2020, LB43, § 2.

29-4310 Privileged communication; presence of others; effect; prosecutor; duty.

Notwithstanding any provision of Chapter 27, article 5, any communication with a victim which is privileged, whether by statute, court order, or common law, shall retain such privilege regardless of who is present during the communication so long as the victim has a privilege with respect to each individual present. Nothing in this section shall relieve the prosecutor of the prosecutor's duty to disclose and make known to the defendant or the defendant's attorney any and all exculpatory material or information suitable for impeachment which is known to the prosecutor.

Source: Laws 2020, LB43, § 3.

29-4311 Medical evidentiary or physical examinations; rights of victim.

(1) A victim has the right to have an advocate of the victim's choosing present during a medical evidentiary or physical examination. The health care provider shall contact the advocate before beginning the medical evidentiary or physical examination, unless declined by the victim. If an advocate cannot appear in a timely manner, the health care provider shall inform the victim of the potential impact of delaying the examination.

(2) A victim retains such right to have an advocate present at any time during any medical evidentiary or physical examination, regardless of whether the victim has previously waived such right.

(3) A victim has the right to a free forensic medical examination as provided in section 81-1429.03 without regard to whether a victim participates in the criminal justice system or cooperates with law enforcement.

(4) A victim has the right to be provided health care in accordance with best practices and established protocols for age-appropriate sexual assault forensic medical examinations as set forth in publications of the Office on Violence Against Women of the United States Department of Justice.

(5) A victim has the protection of confidential communications as provided in sections 29-4301 to 29-4304.

(6) A victim has the right to shower at no cost after the medical evidentiary or physical examination, unless showering facilities are not available.

(7) A victim has the right to anonymous reporting as provided in section 28-902.

Source: Laws 2020, LB43, § 4.

29-4312 Interview or deposition; rights of victim.

(1)(a) A victim has the right to have an advocate present during an interview by a peace officer, prosecutor, or defense attorney, unless no advocate can appear in a reasonably timely manner. In an interview involving a prosecutor, the prosecutor shall inform the victim of the victim's rights under this subsection. The peace officer, prosecutor, or defense attorney shall contact the advocate before beginning the interview, unless declined by the victim.

(b) A victim has the right to have an advocate present during a deposition as provided in sections 29-1917 and 29-1926.

(c) An advocate present at an interview or deposition under this subsection shall not interfere in the interview or deposition or provide legal advice.

(d) Nothing in this subsection shall preclude law enforcement officers or prosecutors from contacting a victim directly to make limited inquiries regarding the sexual assault.

(2) A victim has the right to be interviewed by a peace officer of the gender of the victim's choosing, if such request can be reasonably accommodated by a peace officer that is properly trained to conduct such interviews.

(3) A victim has the right to be interviewed by a peace officer that speaks the victim's preferred language or to have a qualified interpreter available, if such request can be reasonably accommodated.

(4) A peace officer, prosecutor, or defense attorney shall not, for any reason, discourage a victim from receiving a medical evidentiary or physical examination.

(5) A victim has the right to counsel. This subsection does not create a new obligation by the state or a political subdivision to appoint or pay for counsel. Treatment of the victim shall not be affected or altered in any way as a result of the victim's decision to exercise such right to counsel.

(6) A victim who is a child three to eighteen years of age has the right to a forensic interview at a child advocacy center by a professional with specialized training as provided in section 28-728. The right to have an advocate, representative, or attorney present shall not apply during such a forensic interview.

Source: Laws 2020, LB43, § 5.

29-4313 Sexual assault forensic evidence; rights of victim.

(1) A victim has the right to timely analysis of sexual assault forensic evidence.

(2) Subject to section 28-902, a health care provider shall notify the appropriate law enforcement agency of a victim's reported sexual assault and submit to law enforcement the sexual assault forensic evidence, if evidence has been obtained.

(3) A law enforcement agency shall collect the sexual assault forensic evidence upon notification by the health care provider and shall retain the sexual assault forensic evidence for the longer of the statute of limitations applicable to the sexual assault or the retention period set forth in subsection (4) of section 28-902.

(4) A victim has a right to contact the investigating law enforcement agency and be provided with information on the status of the processing and analysis of the victim's sexual assault forensic evidence, if the victim did not report anonymously.

(5) A victim has the right to have the results of the analysis of the victim's sexual assault forensic evidence uploaded to the appropriate local, state, and federal DNA databases, as allowed by law.

(6) A victim has the right to be informed by the investigating law enforcement agency, upon the victim's request, of the results of analysis of the victim's sexual assault forensic evidence, whether the analysis yielded a DNA profile, and whether the analysis yielded a DNA match, either to the named perpetrator or to a suspect already in the Federal Bureau of Investigation's Combined DNA Index System, so long as the provision of such information would not hinder or

interfere with investigation or prosecution of the case associated with such information.

(7) A victim has the right to inspect or request copies of law enforcement reports concerning the sexual assault at the conclusion of the case.

Source: Laws 2020, LB43, § 6.

29-4314 Sexual assault forensic evidence; uses prohibited.

Sexual assault forensic evidence from a victim shall not be used:

(1) To prosecute such victim for any misdemeanor crime or any crime under the Uniform Controlled Substances Act; or

(2) As a basis to search for further evidence of any misdemeanor crime or any crime under the Uniform Controlled Substances Act that may have been committed by the victim.

Source: Laws 2020, LB43, § 7.

Cross References

Uniform Controlled Substances Act, see section 28-401.01.

29-4315 Explanation of rights; required, when; contents.

(1) Upon an initial interaction with a victim relating to or arising from a sexual assault of such victim, a health care provider or peace officer, and in the case of a victim under eighteen years of age, the Department of Health and Human Services, shall provide the victim with information that explains the rights of victims under the Sexual Assault Victims' Bill of Rights Act and other relevant law. The information shall be presented in clear language that is comprehensible to a person proficient in English at the fifth grade level, accessible to persons with visual disabilities, and available in all major languages spoken in this state. This information shall include, but not be limited to:

(a) A clear statement that a victim is not required to participate in the criminal justice system or to undergo a medical evidentiary or physical examination in order to retain the rights provided by the act and other relevant law;

(b) Contact information for appropriate services provided by professionals in the fields of domestic violence and sexual assault, including advocates;

(c) State and federal relief available to victims of crime;

(d) Law enforcement protection available to the victim, including domestic violence protection orders, harassment protection orders, and sexual assault protection orders and the process to obtain such protection;

(e) Instructions for requesting information regarding the victim's sexual assault forensic evidence as provided in section 29-4313; and

(f) State and federal compensation funds for medical and other costs associated with the sexual assault and information on any municipal, state, or federal right to restitution for a victim in the event of a conviction.

(2) The information to be provided under subsection (1) of this section shall be developed by the Attorney General and the Nebraska Commission on Law Enforcement and Criminal Justice with input from prosecutors, sexual assault victims, and organizations with a statewide presence with expertise on domestic violence, sexual assault, and child sexual assault.

(3) The information to be provided under subsection (1) of this section shall be made available for viewing and download on the websites of the Department of Health and Human Services and the Nebraska Commission on Law Enforcement and Criminal Justice. Other relevant state agencies are also encouraged to make such information available on their websites.

Source: Laws 2020, LB43, § 8.

(e) VICTIM CONFIDENTIALITY

29-4316 Criminal justice agencies and attorneys; maintain confidentiality of victim of sexual assault or sex trafficking.

(1) For purposes of this section:

(a) Criminal justice agency has the same meaning as in section 29-3509;

(b) Sex trafficking means sex trafficking or sex trafficking of a minor in violation of section 28-831; and

(c) Sexual assault means a violation of section 28-319, 28-319.01, 28-320, 28-320.01, 28-320.02, 28-322.01, 28-322.02, 28-322.03, 28-322.04, 28-322.05, 28-703, or 28-1463.03 or subdivision (1)(c) or (g) of section 28-386 or subdivision (1)(d), (e), or (f) of section 28-707.

(2) Except as provided in subsection (3) of this section, and unless otherwise required by statute, a criminal justice agency and any attorney involved in the investigation or prosecution of an alleged sexual assault or sex trafficking violation shall maintain the confidentiality of the identity and personal identifying information of the alleged victim. Such information may be shared by such criminal justice agencies and between such criminal justice agencies and attorneys as necessary to carry out their duties.

(3) The confidentiality required by subsection (2) of this section does not apply:

(a) To the extent waived by the alleged victim;

(b) If criminal charges involving the alleged sexual assault or sex trafficking are filed;

(c) If the victim has died as a result of, or in connection with, the alleged sexual assault or sex trafficking;

(d) In cases where personal identifying information or the identity of the victim are released as part of a child abduction alert system used by law enforcement agencies, such as the AMBER Alert system;

(e) To a person making a report of suspected child abuse or neglect as required in section 28-711;

(f) To the sharing of reports and information regarding child abuse and neglect with a child abuse and neglect investigation team or child abuse and neglect treatment team provided for in section 28-728;

(g) To the Department of Health and Human Services and other assisting agencies as necessary to carry out their duties in investigations of child abuse or neglect;

(h) To communication with an individual that an educational entity, as defined in section 79-1201.01, has designated:

(i) As a Title IX coordinator; or

(ii) To receive reports related to sexual assault or sex trafficking or to provide supportive measures related to such reports; or

(i) To communication with advocates and health care providers as defined in section 29-4309.

Source: Laws 2022, LB1246, § 1.
Effective date July 21, 2022.

ARTICLE 47
JAILHOUSE INFORMANTS

Section
29-4701. Terms, defined.
29-4702. Applicability.
29-4703. Prosecutor's office; duties.
29-4704. Disclosures required; deadline; redaction of information; prosecutor; duties.
29-4705. Jailhouse informant receiving leniency; notice to victim.
29-4706. Court orders authorized.

29-4701 Terms, defined.

For purposes of sections 29-4701 to 29-4706:

(1) Benefit means any plea bargain, bail consideration, reduction or modification of sentence, or any other leniency, immunity, financial payment, reward, or amelioration of current or future conditions of incarceration that has been requested by the jailhouse informant or that has been offered or may be offered in the future to the jailhouse informant in connection with his or her testimony in the criminal proceeding in which the prosecutor intends to call him or her as a witness; and

(2) Jailhouse informant means a person who offers testimony about statements made by a suspect or defendant while the suspect or defendant and jailhouse informant were in the custody of any jail or correctional institution and who has requested or received or may in the future receive a benefit in connection with such testimony.

Source: Laws 2019, LB352, § 1.

29-4702 Applicability.

Sections 29-4701 to 29-4706 apply to any case in which a suspect or defendant is charged with a felony.

Source: Laws 2019, LB352, § 2.

29-4703 Prosecutor's office; duties.

Each prosecutor's office shall undertake measures to maintain a searchable record of:

(1) Each case in which:

(a) Trial testimony is offered or provided by a jailhouse informant against a suspect's or defendant's interest; or

(b) A statement from a jailhouse informant against a suspect's or defendant's interest is used and a criminal conviction is obtained; and

(2) Any benefit requested by or offered or provided to a jailhouse informant in connection with such statement or trial testimony.

Source: Laws 2019, LB352, § 3.

29-4704 Disclosures required; deadline; redaction of information; prosecutor; duties.

(1) Except as provided in subsection (3) of this section, if a prosecutor intends to use the testimony or statement of a jailhouse informant at a defendant's trial, the prosecutor shall disclose to the defense:

(a) The known criminal history of the jailhouse informant;

(b) Any benefit requested by or offered or provided to a jailhouse informant or that may be offered or provided to the jailhouse informant in the future in connection with such testimony;

(c) The specific statements allegedly made by the defendant against whom the jailhouse informant will testify or provide a statement and the time, place, and manner of the defendant's disclosures;

(d) The case name and jurisdiction of any criminal case known to the prosecutor in which the jailhouse informant testified or a prosecutor intended to have the jailhouse informant testify about statements made by another suspect or criminal defendant that were disclosed to the jailhouse informant and whether the jailhouse informant requested, was offered, or received any benefit in exchange for or subsequent to such testimony; and

(e) Any occasion known to the prosecutor in which the jailhouse informant recanted testimony about statements made by another suspect or defendant that were disclosed to the jailhouse informant and any transcript or copy of such recantation.

(2) The prosecutor shall disclose the information described in subsection (1) of this section to the defense as soon as practicable after discovery, but no later than thirty days before trial. If the prosecutor seeks to introduce the testimony of a jailhouse informant that was not known until after such deadline, or if the information described in subsection (1) of this section could not have been discovered or obtained by the prosecutor with the exercise of due diligence at least thirty days before the trial or other criminal proceeding, the court may permit the prosecutor to disclose the information as soon as is practicable after the thirty-day period.

(3) If the court finds by clear and convincing evidence that disclosing information listed in subsection (1) of this section will result in the possibility of bodily harm to a jailhouse informant or that a jailhouse informant will be coerced, the court may permit the prosecutor to redact some or all of such information.

(4) If, at any time subsequent to the deadline in subsection (2) of this section, the prosecutor discovers additional material required to be disclosed under subsection (1) of this section, the prosecutor shall promptly:

(a) Notify the court of the existence of the additional material; and

(b) Disclose such material to the defense, except as provided in subsection (3) of this section.

Source: Laws 2019, LB352, § 4.

29-4705 Jailhouse informant receiving leniency; notice to victim.

If a jailhouse informant receives leniency related to a pending charge, a conviction, or a sentence for a crime against a victim as defined in section 29-119, in connection with offering or providing testimony against a suspect or defendant, the prosecutor shall notify such victim. Prior to reaching a plea agreement, the prosecutor shall proceed as provided in subsection (1) of section 23-1201. For purposes of this section, leniency means any plea bargain, reduced or dismissed charges, bail consideration, or reduction or modification of sentence.

Source: Laws 2019, LB352, § 5.

29-4706 Court orders authorized.

If, at any time during the course of the proceedings, it is brought to the attention of the court that the prosecutor has failed to comply with section 29-4704, or an order issued pursuant to this section, the court may:

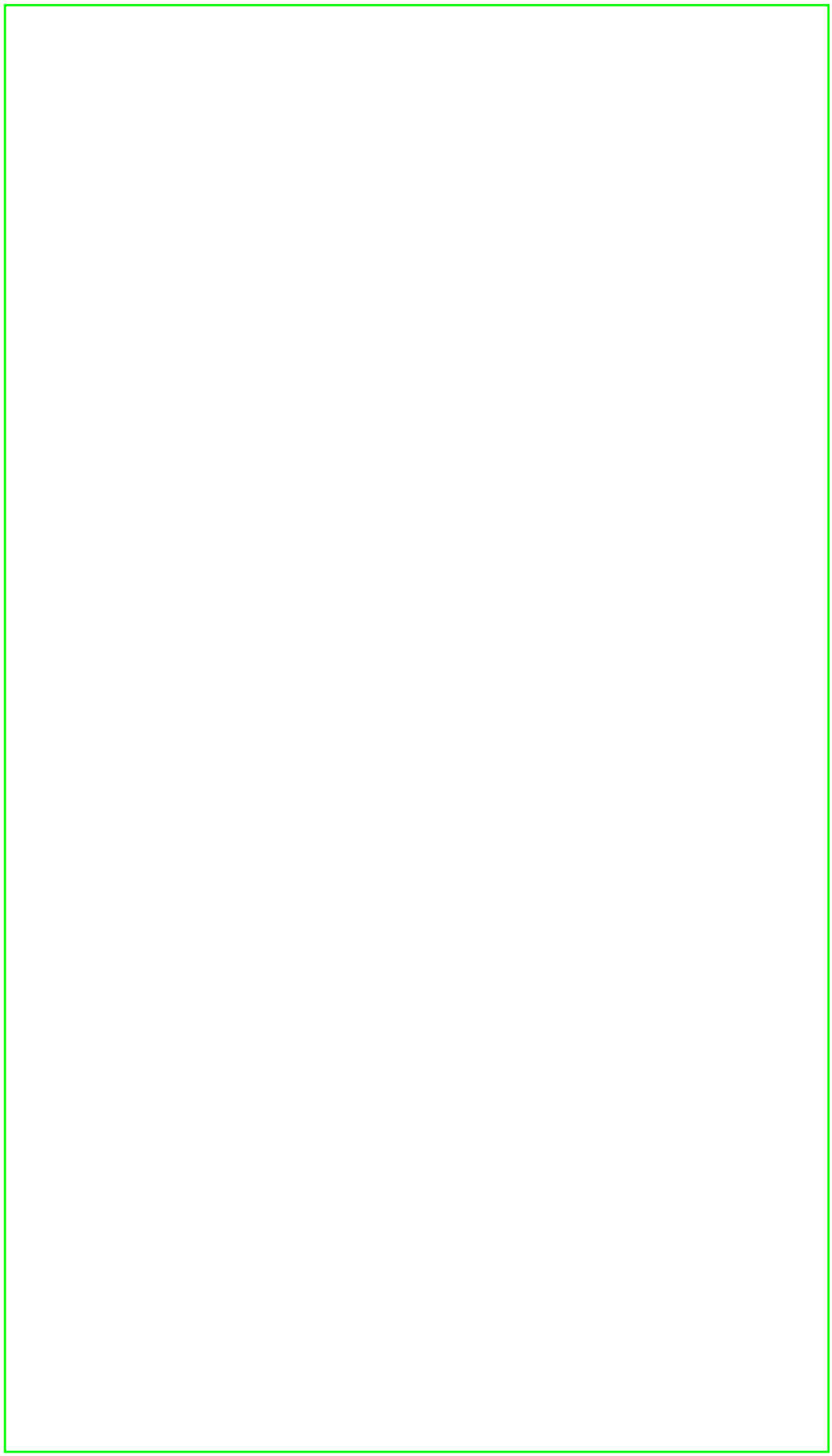
(1) Order the prosecutor to disclose materials not previously disclosed;

(2) Grant a continuance;

(3) Prohibit the prosecutor from calling a witness not disclosed or introducing in evidence the material not disclosed; or

(4) Enter such other order as it deems just under the circumstances.

Source: Laws 2019, LB352, § 6.



CHAPTER 30
DECEDENTS' ESTATES; PROTECTION OF PERSONS AND PROPERTY

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ARTICLE 2
WILLS

30-201 Act, how cited; terms, defined.

Sections 30-201 to 30-209 shall be known and may be cited as the Uniform Wills Recognition Act (1977).

In the Uniform Wills Recognition Act (1977):

(1) International will means a will executed in conformity with sections 30-202 to 30-205; and

(2) Authorized person and person authorized to act in connection with international wills mean a person who by section 30-209, or by the laws of the United States including members of the diplomatic and consular service of the United States designated by Foreign Service Regulations, is empowered to supervise the execution of international wills.

Source: Laws 2020, LB966, § 1.

30-202 International will; validity.

(a) A will is valid as regards form, irrespective particularly of the place where it is made, of the location of the assets, and of the nationality, domicile, or residence of the testator, if it is made in the form of an international will complying with the requirements of the Uniform Wills Recognition Act (1977).

(b) The invalidity of the will as an international will shall not affect its formal validity as a will of another kind.

(c) The Uniform Wills Recognition Act (1977) shall not apply to the form of testamentary dispositions made by two or more persons in one instrument.

Source: Laws 2020, LB966, § 2.

30-203 International will; requirements.

(a) The will shall be made in writing. It need not be written by the testator personally. It may be written in any language, by hand or by any other means.

(b) The testator shall declare in the presence of two witnesses and of a person authorized to act in connection with international wills that the document is the

testator's will and that the testator knows the contents thereof. The testator need not inform the witnesses, or the authorized person, of the contents of the will.

(c) In the presence of the witnesses, and of the authorized person, the testator shall sign the will or, if the testator has previously signed it, shall acknowledge the testator's signature.

(d) When the testator is unable to sign, the absence of the testator's signature does not affect the validity of the international will if the testator indicates the reason for the testator's inability to sign and the authorized person makes note thereof on the will. In these cases, it is permissible for any other person present, including the authorized person or one of the witnesses, at the direction of the testator, to sign the testator's name for the testator, if the authorized person makes note of this also on the will, but it is not required that any person sign the testator's name for the testator.

(e) The witnesses and the authorized person shall there and then attest the will by signing in the presence of the testator.

Source: Laws 2020, LB966, § 3.

30-204 International will; other points of form.

(a) The signatures shall be placed at the end of the will. If the will consists of several sheets, each sheet will be signed by the testator or, if the testator is unable to sign, by the person signing on the testator's behalf or, if there is no such person, by the authorized person. In addition, each sheet shall be numbered.

(b) The date of the will shall be the date of its signature by the authorized person. That date shall be noted at the end of the will by the authorized person.

(c) The authorized person shall ask the testator whether the testator wishes to make a declaration concerning the safekeeping of the testator's will. If so and at the express request of the testator, the place where the testator intends to have the testator's will kept shall be mentioned in the certificate provided for in section 30-205.

(d) A will executed in compliance with section 30-203 is not invalid merely because it does not comply with this section.

Source: Laws 2020, LB966, § 4.

30-205 International will; certificate.

The authorized person shall attach to the will a certificate to be signed by the authorized person establishing that the requirements of the Uniform Wills Recognition Act (1977) for valid execution of an international will have been complied with. The authorized person shall keep a copy of the certificate and deliver another to the testator. The certificate shall be substantially in the following form:

CERTIFICATE

(Convention of October 26, 1973)

1. I, ... (name, address, and capacity), a person authorized to act in connection with international wills

2. Certify that on . . . . . (date) at . . . . . (place)

3. (testator) . . . . . (name, address, date, and place of birth) in my presence and that of the witnesses

4. (a) . . . . . (name, address, date, and place of birth)

(b) . . . . . (name, address, date, and place of birth)

has declared that the attached document is the testator's will and that the testator knows the contents thereof.

5. I furthermore certify that:

6. (a) in my presence and in that of the witnesses

(1) the testator has signed the will or has acknowledged the testator's signature previously affixed.

*(2) following a declaration of the testator stating that the testator was unable to sign the testator's will for the following reason . . . . . ., and I have mentioned this declaration on the will

*and the signature has been affixed by . . . . . (name, address)

7. (b) the witnesses and I have signed the will;

8. *(c) each page of the will has been signed by . . . . . and numbered;

9. (d) I have satisfied myself as to the identity of the testator and of the witnesses as designated above;

10. (e) the witnesses met the conditions requisite to act as such according to the law under which I am acting;

11. *(f) the testator has requested me to include the following statement concerning the safekeeping of the testator's will:

. . . . . .

12. PLACE . . . . . .

13. DATE . . . . . .

14. SIGNATURE . . . . . .

and, if necessary, SEAL

*to be completed if appropriate

Source: Laws 2020, LB966, § 5.

30-206 International will; effect of certificate.

In the absence of evidence to the contrary, the certificate of the authorized person shall be conclusive of the formal validity of the instrument as a will under the Uniform Wills Recognition Act (1977). The absence or irregularity of a certificate shall not affect the formal validity of a will under the act.

Source: Laws 2020, LB966, § 6.

30-207 International will; revocation.

The international will shall be subject to the ordinary rules of revocation of wills.

Source: Laws 2020, LB966, § 7.

30-208 Source and construction.

Sections 30-201 to 30-207 derive from Annex to Convention of October 26, 1973, Providing a Uniform Law on the Form of an International Will. In interpreting and applying the Uniform Wills Recognition Act (1977), regard shall be had to its international origin and to the need for uniformity in its interpretation.

Source: Laws 2020, LB966, § 8.

30-209 Persons authorized to act in relation to international will; eligibility; recognition by authorizing agency.

Individuals who have been admitted to practice law before the courts of this state and who are in good standing as active law practitioners in this state, are hereby declared to be authorized persons in relation to international wills.

Source: Laws 2020, LB966, § 9.

ARTICLE 6

HEALTH CARE SURROGACY ACT

Section

30-601 Act, how cited.

Sections 30-601 to 30-619 shall be known and may be cited as the Health Care Surrogacy Act.

Source: Laws 2018, LB104, § 1.

30-602 Legislative intent; act, how construed.

(1) It is the intent of the Legislature to establish a process for the designation of a person to make a health care decision for an adult or an emancipated minor who becomes incapable of making such a decision in the absence of a guardian or an advance health care directive.

(2) The Legislature does not intend to encourage or discourage any particular health care decision or to create any new right or alter any existing right of competent adults or emancipated minors to make such decisions, but the Legislature does intend through the Health Care Surrogacy Act to allow an

adult or an emancipated minor to exercise rights he or she already possesses by means of health care decisions made on his or her behalf by a qualified surrogate.

(3) The Health Care Surrogacy Act shall not confer any new rights regarding the provision or rejection of any specific medical treatment and shall not alter any existing law concerning homicide, suicide, or assisted suicide. Nothing in the Health Care Surrogacy Act shall be construed to condone, authorize, or approve purposefully causing, or assisting in causing, the death of any individual, such as by homicide, suicide, or assisted suicide.

Source: Laws 2018, LB104, § 2.

30-603 Terms, defined.

For purposes of the Health Care Surrogacy Act:

(1) Adult means an individual who is nineteen years of age or older;

(2) Advance health care directive means an individual instruction under the Health Care Surrogacy Act, a declaration executed in accordance with the Rights of the Terminally Ill Act, or a power of attorney for health care;

(3) Agent means a natural person designated in a power of attorney for health care to make a health care decision on behalf of the natural person granting the power;

(4) Capable means (a) able to understand and appreciate the nature and consequences of a proposed health care decision, including the benefits of, risks of, and alternatives to any proposed health care, and (b) able to communicate in any manner such health care decision;

(5) Emancipated minor means a minor who is emancipated pursuant to the law of this state or another state, including section 43-2101;

(6) Guardian means a judicially appointed guardian or conservator having authority to make a health care decision for a natural person;

(7) Health care means any care, treatment, service, procedure, or intervention to maintain, diagnose, cure, care for, treat, or otherwise affect an individual's physical or mental condition;

(8)(a) Health care decision means a decision made by an individual or the individual's agent, guardian, or surrogate regarding the individual's health care, including consent, refusal of consent, or withdrawal of consent to health care; and

(b) Health care decision includes:

(i) Selection and discharge of health care providers, health care facilities, and health care services;

(ii) Approval or disapproval of diagnostic tests, surgical procedures, programs of medication, and orders not to resuscitate; and

(iii) Directions to provide nutrition, hydration, and all other forms of health care;

(9) Health care facility means a facility licensed under the Health Care Facility Licensure Act or permitted by law to provide health care in the ordinary course of business;

(10) Health care provider means a natural person credentialed under the Uniform Credentialing Act or permitted by law to provide health care in the ordinary course of business or practice of a profession;

(11) Health care service means an adult day service, a home health agency, a hospice or hospice service, a respite care service, or a children's day health service licensed under the Health Care Facility Licensure Act or permitted by law to provide health care in the ordinary course of business. Health care service does not include an in-home personal services agency as defined in section 71-6501;

(12) Incapable means lacking the ability to understand and appreciate the nature and consequences of a proposed health care decision, including the benefits of, risks of, and alternatives to any proposed health care, or lacking the ability to communicate in any manner such health care decision;

(13) Individual means an adult or an emancipated minor for whom a health care decision is to be made;

(14) Individual instruction means an individual's direction concerning a health care decision for the individual;

(15) Life-sustaining procedure means any medical procedure, treatment, or intervention that (a) uses mechanical or other artificial means to sustain, restore, or supplant a spontaneous vital function and (b) when applied to a person who is in a terminal condition or who is in a persistent vegetative state, serves only to prolong the dying process. Life-sustaining procedure does not include routine care necessary to maintain patient comfort or the usual and typical provision of nutrition and hydration;

(16) Persistent vegetative state means a medical condition that, to a reasonable degree of medical certainty as determined in accordance with then current accepted medical standards, is characterized by a total and irreversible loss of consciousness and capacity for cognitive interaction with the environment and no reasonable hope of improvement;

(17) Physician means a natural person licensed to practice medicine and surgery or osteopathic medicine under the Uniform Credentialing Act;

(18) Power of attorney for health care means the designation of an agent under sections 30-3401 to 30-3432 or a similar law of another state to make health care decisions for the principal;

(19) Primary health care provider means (a) a physician designated by an individual or the individual's agent, guardian, or surrogate to have primary responsibility for the individual's health care or, in the absence of a designation or if the designated physician is not reasonably available, a physician who undertakes the responsibility or (b) if there is no such primary physician or such primary physician is not reasonably available, the health care provider who has undertaken primary responsibility for an individual's health care;

(20) Principal means a natural person who, when competent, confers upon another natural person a power of attorney for health care;

(21) Reasonably available means readily able to be contacted without undue effort and willing and able to act in a timely manner considering the urgency of an individual's health care needs;

(22) State means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States;

(23) Surrogate means a natural person who is authorized under section 30-604 to make a health care decision on behalf of an individual when a guardian or an agent under a power of attorney for health care has not been appointed or otherwise designated for such individual;

(24) Terminal condition means a medical condition caused by injury, disease, or physical illness which, to a reasonable degree of medical certainty, will result in death within six months regardless of the continued application of medical treatment, including life-sustaining procedures; and

(25) Usual and typical provision of nutrition and hydration means delivery of food and fluids orally, including by cup, eating utensil, bottle, or drinking straw.

Source: Laws 2018, LB104, § 3.

Cross References

Health Care Facility Licensure Act, see section 71-401.
Rights of the Terminally Ill Act, see section 20-401.
Uniform Credentialing Act, see section 38-101.

30-604 Surrogate; powers; designation of surrogate; priorities; consensus; meeting; continuation of authority; disqualification of surrogate.

(1) A surrogate may make a health care decision for an individual if the individual has been determined to be incapable by the primary health care provider and no agent or guardian has been appointed for the individual. A determination that an individual is incapable of making a health care decision shall not be construed as a finding that the individual is incapable for any other purpose.

(2)(a) An individual may designate a natural person to act as surrogate for the individual by personally informing the primary health care provider.

(b) If an individual has not designated a surrogate and there is no power of attorney for health care or court-appointed guardian for the individual, any member of the following classes of natural persons, in the following order of priority, may act as surrogate for the individual if such person is reasonably available at the time the health care decision is to be made on behalf of the individual and if such person has not been disqualified under the Health Care Surrogacy Act:

(i) The individual's spouse unless legally separated from the individual or unless proceedings are pending for divorce, annulment, or legal separation between the individual and his or her spouse;

(ii) A child of the individual who is an adult or an emancipated minor;

(iii) A parent of the individual; or

(iv) A brother or sister of the individual who is an adult or an emancipated minor.

(c) A person in a class with greater priority to serve as a surrogate may decline to serve as surrogate by informing the primary health care provider of that fact. Such fact shall be noted in the individual's medical record.

(d) The primary health care provider may use discretion to disqualify a person who would otherwise be eligible to act as a surrogate based on the priority listed in subdivision (b) of this subsection if the provider has documented or otherwise clear and convincing evidence of an abusive relationship or documented or otherwise clear and convincing evidence of another basis for

finding that the potential surrogate is not acting on behalf of or in the best interests of the individual. Any evidence so used to disqualify a person from acting as a surrogate shall be documented in full in the individual's medical record.

(3) A person who has exhibited special care and concern for the individual, who is familiar with the individual's personal values, and who is reasonably available to act as a surrogate is eligible to act as a surrogate under subsection (2) of this section.

(4) A surrogate shall communicate his or her assumption of authority as promptly as possible to the members of the individual's family specified in subsection (2) of this section who can be readily contacted.

(5)(a) If more than one member of a class having priority has authority to act as an individual's surrogate, such persons may act as the individual's surrogate and any of such persons may be identified as one of the individual's surrogates by the primary health care provider within the individual's medical record, so long as such persons are in agreement about the health care decision to be made on behalf of the individual and attest to such agreement in a writing signed and dated by all persons claiming the authority and provided to the primary health care provider for inclusion with the individual's medical record.

(b)(i) If two or more members of a class having the same priority claim authority to act as an individual's surrogate and such persons are not in agreement about one or more health care decisions to be made on the individual's behalf, the persons claiming authority shall confer with each other for purposes of arriving at consensus regarding the health care decision to be made in light of the individual's known desires about health care, the individual's personal values, the individual's religious or moral beliefs, and the individual's best interests. Each person claiming authority to act as an individual's surrogate shall inform the primary health care provider about his or her claim and priority under the Health Care Surrogacy Act, the claim of any other person within the same class, the nature of the disagreement regarding the health care decision, and the efforts made by such person to reach agreement between and among other persons claiming authority to act as the individual's surrogate.

(ii) To the extent possible, the primary health care provider shall seek a consensus of the persons claiming authority to act as the individual's surrogate. The primary health care provider may convene a meeting of such persons with the primary health care provider and, as available and appropriate, other health care personnel involved in the individual's care for purposes of reviewing and discussing the individual's condition, prognosis, and options for treatment, the risks, benefits, or burdens of such options, the individual's known desires about health care, the individual's personal values, the individual's religious or moral beliefs, and the individual's best interests. If reasonably available, the primary health care provider may include members of other classes of priority in such meeting to hear and participate in the discussion.

(iii) The primary health care provider, in his or her discretion or at the request of the persons claiming authority as the individual's surrogate, may also seek the assistance of other health care providers or the ethics committee or ethics consultation process of the health care facility or another health care entity to facilitate the meeting.

(iv) If a consensus about the health care decisions to be made on behalf of the individual cannot be attained between the persons of the same class of priority claiming authority to act as the individual's surrogate to enable a timely decision to be made on behalf of the individual, then such persons shall be deemed disqualified to make health care decisions on behalf of the individual. The primary health care provider may then confer with other persons in the same class or within the other classes of lower priority consistent with subsection (2) of this section who may be reasonably available to make health care decisions on behalf of the individual.

(v) If no other person is reasonably available to act as a surrogate on behalf of the individual, then the primary health care provider may, consistent with the Health Care Surrogacy Act, take actions or decline to take actions determined by the primary health care provider to be appropriate, to be in accordance with the individual's personal values, if known, and moral and religious beliefs, if known, and to be in the best interests of the individual.

(6) A surrogate's authority shall continue in effect until the earlier of any of the following:

(a) A guardian is appointed for the individual;

(b) The primary health care provider determines that the individual is capable of making his or her own health care decision;

(c) A person with higher priority to act as a surrogate under subsection (2) of this section becomes reasonably available;

(d) The individual is transferred to another health care facility; or

(e) The death of the individual.

(7)(a) An individual, if able to communicate the same, may disqualify another person from serving as the individual's surrogate, including a member of the individual's family, by a signed and dated writing or by personally informing the primary health care provider and a witness of the disqualification. In order to be a witness under this subdivision, a person shall be an adult or emancipated minor who is not among the persons who may serve as a surrogate under subsection (2) of this section.

(b) When the existence of a disqualification under this subsection becomes known, it shall be made a part of the individual's medical record at the health care facility in which the individual is a patient or resides. The disqualification of a person to serve as a surrogate shall not revoke or terminate the authority as to a surrogate who acts in good faith under the surrogacy and without actual knowledge of the disqualification. An action taken in good faith and without actual knowledge of the disqualification of a person to serve as the individual's surrogate under this subsection, unless the action is otherwise invalid or unenforceable, shall bind the individual and his or her heirs, devisees, and personal representatives.

(8) A primary health care provider may require a person claiming the right to act as surrogate for an individual to provide a written declaration under penalty of perjury stating facts and circumstances reasonably sufficient to establish that person's claimed authority.

(9) The authority of a surrogate shall not supersede any other advance health care directive.

Source: Laws 2018, LB104, § 4.

30-605 Persons disqualified to serve as surrogate.

Unless related to the individual by blood, marriage, or adoption, a surrogate may not be an owner, operator, or employee of a health care facility at which the individual is residing or receiving health care or a facility or an institution of the Department of Correctional Services or the Department of Health and Human Services to which the individual has been committed.

Source: Laws 2018, LB104, § 5.

30-606 Incapability; determination; documentation.

(1) A determination that an individual is incapable of making a health care decision shall be made in writing by the primary health care provider and any physician consulted with respect to such determination, and the physician or physicians shall document the cause and nature of the individual's incapability. The determination shall be included in the individual's medical record with the primary health care provider and, when applicable, with the consulting physician and the health care facility in which the individual is a patient or resides. When a surrogate has been designated or determined pursuant to section 30-604, the surrogate shall be included in the individual's medical record.

(2) A physician who has been designated an individual's surrogate shall not make the determination that the individual is incapable of making health care decisions.

Source: Laws 2018, LB104, § 6.

30-607 Notice.

Notice of a determination that an individual is incapable of making health care decisions shall be given by the primary health care provider (1) to the individual when there is any indication of the individual's ability to comprehend such notice, (2) to the surrogate, and (3) to the health care facility.

Source: Laws 2018, LB104, § 7.

30-608 County court procedure; petition; guardian ad litem; hearing.

If a dispute arises as to whether the individual is incapable, a petition may be filed with the county court in the county in which the individual resides or is located requesting the court's determination as to whether the individual is incapable of making health care decisions. If such a petition is filed, the court shall appoint a guardian ad litem to represent the individual. The court shall conduct a hearing on the petition within seven days after the court's receipt of the petition. Within seven days after the hearing, the court shall issue its determination. If the court determines that the individual is incapable, the authority, rights, and responsibilities of the individual's surrogate shall become effective. If the court determines that the individual is capable, the authority, rights, and responsibilities of the surrogate shall not become effective.

Source: Laws 2018, LB104, § 8.

30-609 Surrogate; powers; objection to surrogate decision; how treated.

(1) When the authority conferred on a surrogate under the Health Care Surrogacy Act has commenced, the surrogate, subject to any individual instructions, shall make health care decisions on the individual's behalf, except that the surrogate shall not have authority (a) to consent to any act or omission to

which the individual could not consent under law, (b) to make any decision when the individual is known to be pregnant that will result in the death of the individual's unborn child if it is probable that the unborn child will develop to the point of live birth with continued application of health care, or (c) to make decisions regarding withholding or withdrawing a life-sustaining procedure or withholding or withdrawing artificially administered nutrition or hydration except as provided under section 30-610.

(2) If no agent or guardian has been appointed for the individual, the surrogate shall have priority over any person other than the individual to act for the individual in all health care decisions, except that the surrogate shall not have the authority to make any health care decision unless and until the individual has been determined to be incapable of making health care decisions pursuant to section 30-606.

(3) A person who would not otherwise be personally responsible for the cost of health care provided to the individual shall not become personally responsible for such cost because he or she has acted as the individual's surrogate.

(4) Except to the extent that the right is limited by the individual, a surrogate shall have the same right as the individual to receive information regarding the proposed health care, to receive and review medical and clinical records, and to consent to the disclosures of such records, except that the right to access such records shall not be a waiver of any evidentiary privilege.

(5) Notwithstanding a determination pursuant to section 30-606 that the individual is incapable of making health care decisions, when the individual objects to the determination or to a health care decision made by a surrogate, the individual's objection or decision shall prevail unless the individual is determined by a county court to be incapable of making health care decisions.

Source: Laws 2018, LB104, § 9.

30-610 Surrogate; duties.

(1) In exercising authority under the Health Care Surrogacy Act, a surrogate shall have a duty to consult with medical personnel, including the primary health care provider, and thereupon to make health care decisions (a) in accordance with the individual instructions or the individual's wishes as otherwise made known to the surrogate or (b) if the individual's wishes are not reasonably known and cannot with reasonable diligence be ascertained, in accordance with the individual's best interests, with due regard for the individual's religious and moral beliefs if known.

(2) Notwithstanding subdivision (1)(b) of this section, the surrogate shall not have the authority to consent to the withholding or withdrawing of a life-sustaining procedure or artificially administered nutrition or hydration unless (a) the individual is suffering from a terminal condition or is in a persistent vegetative state and such procedure or care would be an extraordinary or disproportionate means of medical treatment to the individual and (b) the individual explicitly grants such authority to the surrogate and the intent of the individual to have life-sustaining procedures or artificially administered nutrition or hydration withheld or withdrawn under such circumstances is established by clear and convincing evidence.

(3) In exercising any decision, the surrogate shall have no authority to withhold or withdraw consent to routine care necessary to maintain patient comfort or the usual and typical provision of nutrition and hydration.

Source: Laws 2018, LB104, § 10.

30-611 Primary health care provider; duties.

Before acting upon a health care decision made by a surrogate, other than those decisions made at or about the time of the initial determination of incapacity, the primary health care provider shall confirm that the individual continues to be incapable. The confirmation shall be stated in writing and shall be included in the individual's medical records. The notice requirements set forth in section 30-607 shall not apply to the confirmation required by this section.

Source: Laws 2018, LB104, § 11.

30-612 Petition; purposes; filed with county court.

(1) A petition may be filed for any one or more of the following purposes:

(a) To determine whether the authority of a surrogate under the Health Care Surrogacy Act is in effect or has been revoked or terminated;

(b) To determine whether the acts or proposed acts of a surrogate are consistent with the individual instruction or the individual's wishes as expressed or otherwise established by clear and convincing evidence or, when the wishes of the individual are unknown, whether the acts or proposed acts of the surrogate are clearly contrary to the best interests of the individual;

(c) To declare that the authority of a surrogate is revoked upon a determination by the court that the surrogate made or proposed to make a health care decision for the individual that authorized an illegal act or omission; or

(d) To declare that the authority of a surrogate is revoked upon a determination by the court of both of the following: (i) That the surrogate has violated, failed to perform, or is unable to perform the duty to act in a manner consistent with the individual instruction or the wishes of the individual or, when the desires of the individual are unknown, to act in a manner that is in the best interests of the individual; and (ii) that at the time of the determination by the court, the individual is unable to disqualify the surrogate as provided in subsection (7) of section 30-604.

(2) A petition under this section shall be filed with the county court of the county in which the individual resides or is located.

Source: Laws 2018, LB104, § 12.

30-613 Person eligible to file petition.

A petition under section 30-608 or 30-612 may be filed by any of the following:

(1) The individual;

(2) The surrogate;

(3) The spouse, parent, sibling, or child of the individual who is an adult or an emancipated minor;

(4) A close friend of the individual who is an adult or an emancipated minor;

(5) The primary health care provider or another health care provider; or

(6) Any other interested party.

Source: Laws 2018, LB104, § 13.

30-614 Liability for criminal offense; civil liability; violation of professional oath or code of ethics.

(1) A surrogate shall not be guilty of any criminal offense, subject to any civil liability, or in violation of any professional oath or code of ethics or conduct for any action taken in good faith pursuant to the Health Care Surrogacy Act.

(2) No primary health care provider, other health care provider, or health care facility shall be subject to criminal prosecution, civil liability, or professional disciplinary action for acting or declining to act in reliance upon the decision made by a person whom the primary health care provider or other health care provider in good faith believes is the surrogate. This subsection does not limit the liability of a primary health care provider, other health care provider, or health care facility for a negligent act or omission in connection with the medical diagnosis, treatment, or care of the individual.

Source: Laws 2018, LB104, § 14.

30-615 Individual's rights.

The existence of a surrogate for an individual under the Health Care Surrogacy Act does not waive the right of the individual to routine hygiene, nursing, and comfort care and the usual and typical provision of nutrition and hydration.

Source: Laws 2018, LB104, § 15.

30-616 Health care provider; exercise medical judgment.

In following the decision of a surrogate, a health care provider shall exercise the same independent medical judgment that the health care provider would exercise in following the decision of the individual if the individual were not incapable.

Source: Laws 2018, LB104, § 16.

30-617 Health care facility; rights; health care provider; rights.

(1) Nothing in the Health Care Surrogacy Act obligates a health care facility to honor a health care decision by a surrogate that the health care facility would not honor if the decision had been made by the individual because the decision is contrary to a formally adopted policy of the health care facility that is expressly based on religious beliefs or sincerely held ethical or moral convictions central to the operating principles of the health care facility. The health care facility may refuse to honor the decision whether made by the individual or by the surrogate if the health care facility has informed the individual or the surrogate of such policy, if reasonably possible. If the surrogate is unable or unwilling to arrange a transfer to another health care facility, the health care facility refusing to honor the decision may intervene to facilitate such a transfer.

(2) Nothing in the Health Care Surrogacy Act obligates a health care provider to honor or cooperate with a health care decision by a surrogate that the health

care provider would not honor or cooperate with if the decision had been made by the individual because the decision is contrary to the health care provider's religious beliefs or sincerely held moral or ethical convictions. The health care provider shall promptly inform the surrogate and the health care facility of his or her refusal to honor or cooperate with the decision of the surrogate. In such event, the health care facility shall promptly assist in the transfer of the individual to a health care provider selected by the individual or the surrogate.

Source: Laws 2018, LB104, § 17.

30-618 Attempted suicide; how construed.

For purposes of making health care decisions, an attempted suicide by an individual shall not be construed as any indication of his or her wishes with regard to health care.

Source: Laws 2018, LB104, § 18.

30-619 Prohibited acts; penalties.

(1) It shall be a Class II felony for a person to willfully conceal or destroy evidence of any person's disqualification as a surrogate under the Health Care Surrogacy Act with the intent and effect of causing the withholding or withdrawing of life-sustaining procedures or artificially administered nutrition or hydration which hastens the death of the individual.

(2) It shall be a Class I misdemeanor for a person without the authorization of the individual to willfully alter, forge, conceal, or destroy evidence of an advance health care directive, appointment of a guardian, appointment of an agent for the individual under a power of attorney for health care, or evidence of disqualification of any person as a surrogate under the Health Care Surrogacy Act.

(3) A physician or other health care provider who willfully prevents the transfer of an individual in accordance with section 30-617 with the intention of avoiding the provisions of the Health Care Surrogacy Act shall be guilty of a Class I misdemeanor.

Source: Laws 2018, LB104, § 19.

ARTICLE 7

FAMILY VISITATION

Section

30-701 Terms, defined.

For purposes of sections 30-701 to 30-713:

(1) Adult child means an individual who is at least nineteen years of age and who is related to a resident biologically, through adoption, through the marriage or former marriage of the resident to the biological parent of the adult child, or by a judgment of parentage entered by a court of competent jurisdiction;

(2) Caregiver means a guardian, a designee under a power of attorney for health care, or another person or entity denying visitation access between a family member petitioner and a resident;

(3) Family member petitioner means the spouse, adult child, adult grandchild, parent, grandparent, sibling, aunt, uncle, niece, nephew, cousin, or domestic partner of a resident;

(4) Guardian ad litem has the definition found in section 30-2601;

(5) Isolation has the definition found in section 28-358.01;

(6) Resident means an adult resident of:

(a) A health care facility as defined in section 71-413; or

(b) Any home or other residential dwelling in which the resident is receiving care and services from any person;

(7) Visitation means an in-person meeting or any telephonic, written, or electronic communication; and

(8) Visitor means a person appointed pursuant to section 30-2619.01.

Source: Laws 2017, LB122, § 1; R.S.Supp.,2017, § 42-1301; Laws 2018, LB845, § 1.

30-702 Legislative intent.

It is the intent of the Legislature that, in order to allow family member petitioners to remain connected, a caregiver may not arbitrarily deny visitation to a family member petitioner of a resident, whether or not the caregiver is related to such family member petitioner, unless such action is authorized by a nursing home administrator pursuant to section 71-6021.

Source: Laws 2017, LB122, § 2; R.S.Supp.,2017, § 42-1302; Laws 2018, LB845, § 2.

30-703 Petition to compel visitation; court findings; factors.

(1) If a family member petitioner is being denied visitation with a resident, the family member petitioner may petition the county court to compel visitation with the resident. If a guardian has been appointed for the resident under the jurisdiction of a county court, the petition shall be filed in the county court having such jurisdiction. If there is no such guardianship, the petition shall be filed in the county court for the county in which the resident resides. The court may not issue an order compelling visitation if the court finds any of the following:

(a) The resident, while having the capacity to evaluate and communicate decisions regarding visitation, expresses a desire to not have visitation with the family member petitioner; or

(b) Visitation between the family member petitioner and the resident is not in the best interests of the resident.

(2) In determining whether visitation between the family member petitioner and the resident has been arbitrarily denied, the court may consider factors including, but not limited to:

(a) The nature of relationship of the family member petitioner and the resident;

(b) The place where visitation rights will be exercised;

(c) The frequency and duration of the visits;

(d) The likely effect of visitation on the resident; and

(e) The likelihood of onerously disrupting established lifestyle of the resident.

Source: Laws 2018, LB845, § 3.

30-704 Emergency hearing; temporary orders.

If the petition filed pursuant to section 30-703 states that the resident's health is in significant decline or that the resident's death may be imminent, the court shall conduct an emergency hearing on the petition as soon as practicable and in no case later than ten days after the date the petition is served upon the resident and the caregiver. Each party to a contested proceeding for an emergency order relating to visitation under this section shall offer a verified information affidavit as an exhibit at the hearing before the court. If the allegations made under this section to request an emergency hearing are not made with probable cause, the court may order appropriate remedies under section 30-705. Temporary orders may be issued in the same manner as provided for guardianships. Temporary orders shall expire ninety days after the entry of the temporary order unless good cause is shown for continuation.

Source: Laws 2017, LB122, § 3; R.S.Supp.,2017, § 42-1303; Laws 2018, LB845, § 4.

30-705 Costs and attorney's fees; remedies.

(1) Upon a motion by a party or upon the court's own motion, if the court finds during a hearing pursuant to section 30-704 that a person is knowingly isolating the resident from visitation by a family member petitioner, the court may order such person to pay court costs and reasonable attorney's fees of the family member petitioner and may order other appropriate remedies.

(2) No costs, fees, or other sanctions may be paid from the resident's finances or estate.

(3) If the court determines that the family member petitioner did not have probable cause for filing the petition, the court may order the family member petitioner to pay court costs and reasonable attorney's fees of the other parties and may order other appropriate remedies.

(4) Remedies may include the payment of the fees and costs of a visitor or a guardian ad litem.

(5) An order may be entered prohibiting the family member petitioner from filing another petition under sections 30-701 to 30-713 in any court in this state for any period of time determined appropriate by the court for up to one year.

Source: Laws 2017, LB122, § 4; R.S.Supp.,2017, § 42-1304; Laws 2018, LB845, § 5.

30-706 Petition; contents; confidential; stay; when.

(1) Any action under sections 30-701 to 30-713 shall be commenced by filing in the county court a verified petition described in section 30-703. The family member petitioner shall include, if reasonably ascertainable under oath, the places where the resident has resided and the names and present addresses of the persons with whom the resident has lived during the previous five years. The petition shall include a statement under oath identifying whether:

(a) The family member petitioner has participated as a party, as a witness, or in any other capacity or in any other proceeding concerning custody or visitation with the resident and if so, identify the court, the case number, and the date of any order which may affect visitation;

(b) The family member petitioner knows of any proceeding that could affect the current proceeding relating to domestic violence, a protective order, termination of parental rights, adoption, guardianship, conservatorship, or habeas corpus or any other civil or criminal proceeding, and if so, identify the court, the case number, and the date of any order which may affect visitation;

(c) The family member petitioner knows the name and address of any person not a party to the proceeding who has physical custody of, is residing with, or is providing residential services to the resident and if so, the name and address of such person;

(d) The resident needs a guardian ad litem or a visitor appointed;

(e) Any other state would have jurisdiction under the Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act;

(f) A bond or probation condition exists which would affect the case; and

(g) The family member petitioner has filed petitions under section 30-703 within the preceding five years and if so, the court, the case number, and the date of any order resolving the prior petitions.

(2) Any matters which may be confidential under court rule or statute shall be filed as a confidential document for review by the court as to whether such matters shall remain filed as confidential matters.

(3) If the information required by subsection (1) of this section is not furnished, the court, upon the motion of a party or its own motion, may stay the proceeding until the information is furnished.

Source: Laws 2018, LB845, § 6.

Cross References

Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, see section 30-3901.

30-707 Simultaneous proceedings; how treated.

Any proceeding involving a guardianship, conservatorship, power of attorney for health care decisions, or power of attorney granted by the resident may continue in the trial court while an appeal is pending from an order granted under sections 30-701 to 30-713.

Source: Laws 2018, LB845, § 7.

30-708 Appointment of guardian ad litem or visitor.

At any point in a proceeding under sections 30-701 to 30-713, the court may appoint a guardian ad litem or a visitor.

Source: Laws 2018, LB845, § 8.

30-709 Jurisdiction; venue; court rules; notice; appeal; retention of jurisdiction.

(1) Jurisdiction under sections 30-701 to 30-713 applies to any resident who is in this state or for whom the provisions of the Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act vests authority over such resident in the courts of this state in a guardianship.

(2) Venue shall be determined pursuant to sections 30-703 and 30-2212.

(3) The Supreme Court shall have the authority pursuant to section 30-2213 to establish rules to carry into effect the provisions of sections 30-701 to 30-713.

(4) The notice provisions of section 30-2220 shall apply to a proceeding under sections 30-701 to 30-713.

(5) When final orders relating to proceedings under sections 30-701 to 30-713 are on appeal and such appeal is pending, the court that issued such orders shall retain jurisdiction to provide for such orders regarding visitation or other access or to prevent irreparable harm during the pendency of such appeal or other appropriate orders in aid of the appeal process. Such orders shall not be construed to prejudice any party on appeal.

Source: Laws 2018, LB845, § 9.

Cross References

Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, see section 30-3901.

30-710 Order; appeal.

Any order that is not intended as interlocutory or temporary under sections 30-701 to 30-713 shall be a final, appealable order. Such order may be appealed to the Court of Appeals in the same manner as an appeal from the district court directly to the Court of Appeals. The Court of Appeals shall conduct its review in an expedited manner and shall render its judgment and write its opinion, if any, as speedily as possible. The court may modify an existing order granting such visitation upon a showing that there has been a material change in circumstances which justifies such modification and that the modification would serve the best interests of the resident.

Source: Laws 2018, LB845, § 10.

30-711 Court; examine evidence; issue discovery orders.

In a proceeding under sections 30-701 to 30-713, the court may examine any medical evidence in camera or issue any protective discovery orders needed to comply with the provisions of the federal Health Insurance Portability and Accountability Act of 1996, any regulations promulgated under such federal act, or any other provision of law.

Source: Laws 2018, LB845, § 11.

30-712 Visitation schedule; civil contempt; remedies.

If the court enters a visitation order in a proceeding under sections 30-701 to 30-713, it may set out a visitation schedule including the time, place, and manner of visitation. Failure to comply with the order may be the subject of a civil contempt proceeding and may be subject to remedies under section 30-705. The court may provide for an expiration date or a review date in its

order, and such a provision does not affect the appealability of an order under section 30-710.

Source: Laws 2018, LB845, § 12.

30-713 Burden of proof.

In a proceeding under sections 30-701 to 30-712, the burden of proof is upon the family member petitioner to establish his or her case by a preponderance of the evidence.

Source: Laws 2018, LB845, § 13.

ARTICLE 9

BANKING TRANSACTIONS INVOLVING TRUST OR ESTATE ASSETS

Section
30-901. Copersonal representatives, cotrustees, coguardians, or coconservators; authority to act.

30-901 Copersonal representatives, cotrustees, coguardians, or coconservators; authority to act.

On and after January 1, 2020, in any case in which copersonal representatives, cotrustees, coguardians, or coconservators have been appointed, unless specifically restricted in a will, a trust, or an order of appointment, such copersonal representatives, cotrustees, coguardians, or coconservators shall have the authority to act independently with respect to, and shall not be required to act in concert with respect to, banking transactions involving trust or estate assets.

Source: Laws 2019, LB55, § 2.

ARTICLE 16

APPEALS IN PROBATE MATTERS

Section
30-1601. Appeal; procedure; operate as supersedeas; when; appellant; pay costs; when.

30-1601 Appeal; procedure; operate as supersedeas; when; appellant; pay costs; when.

(1) In all matters arising under the Nebraska Probate Code, in all matters in county court arising under the Nebraska Uniform Trust Code, and in all matters in county court arising under the Health Care Surrogacy Act, appeals may be taken to the Court of Appeals in the same manner as an appeal from district court to the Court of Appeals.

(2) An appeal may be taken by any party and may also be taken by any person against whom the final judgment or final order may be made or who may be affected thereby.

(3) When the appeal is by someone other than a personal representative, conservator, trustee, guardian, guardian ad litem, or surrogate pursuant to the Health Care Surrogacy Act the appealing party shall, within thirty days after the entry of the judgment or final order complained of, deposit with the clerk of the county court a supersedeas bond or undertaking in such sum as the court shall direct, with at least one good and sufficient surety approved by the court, conditioned that the appellant will satisfy any judgment and costs that may be

adjudged against him or her, including costs under subsection (6) of this section, unless the court directs that no bond or undertaking need be deposited. If an appellant fails to comply with this subsection, the Court of Appeals on motion and notice may take such action, including dismissal of the appeal, as is just.

(4) The appeal shall be a supersedeas for the matter from which the appeal is specifically taken, but not for any other matter. In appeals pursuant to sections 30-2601 to 30-2661, upon motion of any party to the action, the county court may remove the supersedeas or require the appealing party to deposit with the clerk of the county court a bond or other security approved by the court in an amount and conditioned in accordance with sections 30-2640 and 30-2641. Once the appeal is perfected, the court having jurisdiction over the appeal may, upon motion of any party to the action, reimpose or remove the supersedeas or require the appealing party to deposit with the clerk of the court a bond or other security approved by the court in an amount and conditioned in accordance with sections 30-2640 and 30-2641. Upon motion of any interested person or upon the court's own motion, the county court may appoint a special guardian or conservator pending appeal despite any supersedeas order.

(5) The judgment of the Court of Appeals shall not vacate the judgment in the county court. The judgment of the Court of Appeals shall be certified without cost to the county court for further proceedings consistent with the determination of the Court of Appeals.

(6) If it appears to the Court of Appeals that an appeal was taken vexatiously or for delay, the court shall adjudge that the appellant shall pay the cost thereof, including an attorney's fee, to the adverse party in an amount fixed by the Court of Appeals, and any bond required under subsection (3) of this section shall be liable for the costs. In a proceeding under sections 30-701 to 30-713, the Court of Appeals may also order remedies under section 30-705.

Source: Laws 1881, c. 47, § 1, p. 227; R.S.1913, § 1526; C.S.1922, § 1471; C.S.1929, § 30-1601; R.S.1943, § 30-1601; Laws 1975, LB 481, § 14; Laws 1981, LB 42, § 17; Laws 1995, LB 538, § 7; Laws 1997, LB 466, § 1; Laws 1999, LB 43, § 18; Laws 2003, LB 130, § 119; Laws 2011, LB157, § 4; Laws 2018, LB104, § 21; Laws 2018, LB845, § 14.

Cross References

Health Care Surrogacy Act, see section 30-601.
Nebraska Probate Code, see section 30-2201.
Nebraska Uniform Trust Code, see section 30-3801.

ARTICLE 22

PROBATE JURISDICTION

PART 1

SHORT TITLE, CONSTRUCTION, GENERAL PROVISIONS

Section
30-2201. Short title.

PART 1

SHORT TITLE, CONSTRUCTION, GENERAL PROVISIONS

30-2201 Short title.

Sections 30-401 to 30-406, 30-701 to 30-713, 30-2201 to 30-2902, 30-3901 to 30-3923, 30-4001 to 30-4045, and 30-4201 to 30-4210 and the Public Guardianship Act shall be known and may be cited as the Nebraska Probate Code.

Source: Laws 1974, LB 354, § 1, UPC § 1-101; Laws 1985, LB 292, § 1; Laws 1993, LB 250, § 33; Laws 1993, LB 782, § 2; Laws 1997, LB 466, § 2; Laws 1999, LB 100, § 1; Laws 2010, LB758, § 1; Laws 2011, LB157, § 28; Laws 2012, LB1113, § 46; Laws 2014, LB788, § 8; Laws 2014, LB920, § 19; Laws 2014, LB998, § 7; Laws 2015, LB43, § 1; Laws 2015, LB422, § 1; Laws 2016, LB934, § 13; Laws 2018, LB845, § 15; Laws 2020, LB966, § 10.

Cross References

Public Guardianship Act, see section 30-4101.

ARTICLE 23
INTESTATE SUCCESSION AND WILLS

PART 1

INTESTATE SUCCESSION

PART 1

INTESTATE SUCCESSION

30-2312.01 Related by two lines of relationship; single share.

An individual who is related to the decedent through two lines of relationship is entitled to only a single share based on the relationship that would entitle the individual to the larger share.

Source: Laws 2020, LB966, § 11.

30-2312.02 Termination of parental rights; effect.

(a) A parent is barred from inheriting from or through a child of the parent if the parent's parental rights were terminated and the parent-child relationship was not judicially reestablished.

(b) For the purpose of intestate succession from or through the deceased child, a parent who is barred from inheriting under this section is treated as if the parent predeceased the child.

Source: Laws 2020, LB966, § 12.

PART 2

ELECTIVE SHARE OF SURVIVING SPOUSE

30-2316 Waiver of right to elect and of other rights; enforceability.

(a) The right of election of a surviving spouse and the rights of the surviving spouse to homestead allowance, exempt property, and family allowance, or any of them, may be waived, wholly or partially, before or after marriage, by a written contract, agreement, or waiver signed by the surviving spouse.

(b) A surviving spouse's waiver is not enforceable if the surviving spouse proves that:

(1) he or she did not execute the waiver voluntarily; or

(2) the waiver was unconscionable when it was executed and, before execution of the waiver, he or she:

(i) was not provided a fair and reasonable disclosure of the property or financial obligations of the decedent;

(ii) did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the decedent beyond the disclosure provided; and

(iii) did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the decedent.

(c) An issue of unconscionability of a waiver is for decision by the court as a matter of law.

(d) Unless it provides to the contrary, a waiver of ''all rights'', or equivalent language, in the property or estate of a present or prospective spouse or a complete property settlement entered into after or in anticipation of separation, divorce, or annulment is a waiver of all rights to elective share, homestead allowance, exempt property, and family allowance by each spouse in the property of the other and a renunciation by each of all benefits that would otherwise pass to him or her from the other by intestate succession or by virtue of any will executed before the waiver or property settlement.

Source: Laws 1974, LB 354, § 38, UPC § 2-204; Laws 1994, LB 202, § 12; Laws 2018, LB847, § 1.

PART 5

WILLS

30-2333 Revocation by divorce or annulment; no revocation by other changes of circumstances.

(a) For purposes of this section:

(1) Beneficiary, as it relates to a trust beneficiary, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer; as it relates to a charitable trust, includes any person entitled to enforce the trust; and as it relates to a beneficiary of a beneficiary designation, refers to a beneficiary of an insurance or annuity policy, of an account with POD designation as defined in section 30-2716, of a security registered in beneficiary form, of a pension, profit-sharing, retirement, or similar benefit plan, or of any other nonprobate transfer at death;

(2) Beneficiary designated in a governing instrument includes a grantee of a deed, a beneficiary of a transfer on death deed, a transfer-on-death beneficiary, a beneficiary of a POD designation, a devisee, a trust beneficiary, a beneficiary of a beneficiary designation, a donee, appointee, or taker in default of a power of appointment, and a person in whose favor a power of attorney or a power held in any individual, fiduciary, or representative capacity is exercised;

(3) Disposition or appointment of property includes a transfer of an item of property or any other benefit to a beneficiary designated in a governing instrument;

(4) Divorce or annulment means any divorce or annulment, or any dissolution or declaration of invalidity of a marriage, that would exclude the spouse as a surviving spouse within the meaning of section 30-2353. A decree of separation that does not terminate the status of husband and wife is not a divorce for purposes of this section;

(5) Divorced individual includes an individual whose marriage has been annulled;

(6) Governing instrument means a deed, a will, a trust, an insurance or annuity policy, an account with POD designation, a security registered in beneficiary form, a transfer on death deed, a pension, profit-sharing, retirement, or similar benefit plan, an instrument creating or exercising a power of appointment or a power of attorney, or a dispositive, appointive, or nominative instrument of any similar type, which is executed by the divorced individual before the divorce or annulment of his or her marriage to his or her former spouse;

(7) Joint tenants with the right of survivorship and community property with the right of survivorship includes co-owners of property held under circumstances that entitle one or more to the whole of the property on the death of the other or others, but excludes forms of co-ownership registration in which the underlying ownership of each party is in proportion to that party's contribution;

(8) Payor means a trustee, an insurer, a business entity, an employer, a government, a governmental agency or subdivision, or any other person authorized or obligated by law or a governing instrument to make payments;

(9) Relative of the divorced individual's former spouse means an individual who is related to the divorced individual's former spouse by blood, adoption, or affinity and who, after the divorce or annulment, is not related to the divorced individual by blood, adoption, or affinity; and

(10) Revocable, with respect to a disposition, appointment, provision, or nomination, means one under which the divorced individual, at the time of the divorce or annulment, was alone empowered, by law or under the governing

instrument, to cancel the designation in favor of his or her former spouse or former spouse's relative, whether or not the divorced individual was then empowered to designate himself or herself in place of his or her former spouse or in place of his or her former spouse's relative and whether or not the divorced individual then had the capacity to exercise the power.

(b) For purposes of this section, subject to subsection (c) of this section, a person has knowledge of a fact if the person:

(1) Has actual knowledge of it;

(2) Has received a notice or notification of it; or

(3) From all the facts and circumstances known to the person at the time in question, has reason to know it.

(c) An organization that conducts activities through employees has notice or knowledge of a fact only from the time the information was received by an employee having responsibility to act for the organization, or would have been brought to the employee's attention if the organization had exercised reasonable diligence. An organization exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the employee having responsibility to act for the organization and there is reasonable compliance with the routines. Reasonable diligence does not require an employee of the organization to communicate information unless the communication is part of the individual's regular duties or the individual knows a matter involving the organization would be materially affected by the information.

(d) Except as provided by the express terms of a governing instrument, a court order, or a contract relating to the division of the marital estate made between the divorced individuals before or after the marriage, divorce, or annulment, the divorce or annulment of a marriage:

(1) Revokes any revocable

(A) disposition or appointment of property made by a divorced individual to his or her former spouse in a governing instrument and any disposition or appointment created by law or in a governing instrument to a relative of the divorced individual's former spouse;

(B) provision in a governing instrument conferring a general or nongeneral power of appointment on the divorced individual's former spouse or on a relative of the divorced individual's former spouse; and

(C) nomination in a governing instrument, nominating a divorced individual's former spouse or a relative of the divorced individual's former spouse to serve in any fiduciary or representative capacity, including a personal representative, executor, trustee, conservator, agent, or guardian; and

(2) Severs the interests of the former spouses in property held by them at the time of the divorce or annulment as joint tenants with the right of survivorship, transforming the interests of the former spouses into equal tenancies in common.

(e) A severance under subdivision (d)(2) of this section does not affect any third-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the survivor of the former spouses unless a writing declaring the severance has been noted, registered, filed, or recorded in records appropriate to the kind and location of the property which are relied upon, in the ordinary course of transactions involving such property, as evidence of ownership.

(f) Provisions of a governing instrument are given effect as if the former spouse and relatives of the former spouse disclaimed all provisions revoked by this section or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the former spouse and relatives of the divorced individual's former spouse died immediately before the divorce or annulment.

(g) Provisions revoked solely by this section are revived by the divorced individual's remarriage to the former spouse or by a nullification of the divorce or annulment.

(h) No change of circumstances other than as described in this section and section 30-2354 effects a revocation.

(i)(1)(A) Except as provided in subdivision (i)(1)(B) of this section, a payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument affected by a divorce, annulment, or remarriage, or for having taken any other action in good faith reliance on the validity of the governing instrument, before the payor or other third party received written notice of or has knowledge of the divorce, annulment, or remarriage.

(B) Liability of a payor or other third party which is a financial institution making payment on a jointly owned account or to a beneficiary pursuant to the terms of a governing instrument on an account with a POD designation shall be governed by section 30-2732.

(C) A payor or other third party is liable for a payment made or other action taken after the payor or other third party received written notice of a claimed forfeiture, severance, or revocation under this section.

(2) Written notice of the divorce, annulment, or remarriage under subdivision (i)(1)(A) of this section must be mailed to the payor's or other third party's main office or home, be personally delivered to the payor or other third party, or, in the case of written notice to a person other than a financial institution, be delivered by such other means which establish that the person has knowledge of the divorce, annulment, or remarriage. Written notice to a financial institution with respect to a jointly owned account or an account with a POD designation shall be governed by section 30-2732.

(3) Upon receipt of written notice of the divorce, annulment, or remarriage, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court that has jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or with the court that has jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement or transfer in accordance with the determination. Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

(j)(1) A person who purchases property from a former spouse, a relative of a former spouse, or any other person for value and without notice, or who receives from a former spouse, a relative of a former spouse, or any other person a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this section to return the payment, item of property, or benefit nor is liable under this section for the

amount of the payment or the value of the item of property or benefit. But a former spouse, relative of a former spouse, or other person who, not for value, received a payment, an item of property, or any other benefit to which that person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section.

(2) If this section or any part of this section is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this section, a former spouse, a relative of a former spouse, or any other person who, not for value, received a payment, an item of property, or any other benefit to which that person is not entitled under this section is obligated to return that payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.

(k) If a former spouse has notice of the fact that he or she is a former spouse, then any receipt of property or money to which this section applies is received by the former spouse as a trustee for the person or persons who would be entitled to that property under this section.

Source: Laws 1974, LB 354, § 55, UPC § 2-508; Laws 2017, LB517, § 1.

30-2336 Property owned at death and acquired by estate.

A will may provide for the passage of all property the testator owns at death and all property acquired by the estate after the testator's death.

Source: Laws 2020, LB966, § 13.

PART 8

GENERAL PROVISIONS

30-2353 Effect of divorce, annulment, and decree of separation.

(a) An individual who is divorced from the decedent or whose marriage to the decedent has been dissolved or annulled by a decree that has become final is not a surviving spouse unless, by virtue of a subsequent marriage, he or she is married to the decedent at the time of death. A decree of separation which does not terminate the status of husband and wife is not a divorce for purposes of this section.

(b) For purposes of parts 1, 2, 3, and 4 of this article and of section 30-2412, a surviving spouse does not include:

(1) an individual who obtains or consents to a final decree or judgment of divorce from the decedent or an annulment or dissolution of their marriage, which decree or judgment is not recognized as valid in this state, unless they subsequently participate in a marriage ceremony purporting to marry each to the other, or subsequently live together as man and wife;

(2) an individual who, following an invalid decree or judgment of divorce or annulment or dissolution of marriage obtained by the decedent, participates in a marriage ceremony with a third individual; or

(3) an individual who was a party to a valid proceeding concluded by an order purporting to terminate all marital property rights against the decedent.

Source: Laws 1974, LB 354, § 75, UPC § 2-802; Laws 2017, LB517, § 2.

ARTICLE 24

PROBATE OF WILLS AND ADMINISTRATION

PART 3

INFORMAL PROBATE AND APPOINTMENT PROCEEDINGS

PART 4

FORMAL TESTACY AND APPOINTMENT PROCEEDINGS

PART 7

DUTIES AND POWERS OF PERSONAL REPRESENTATIVES

PART 8

CREDITORS' CLAIMS

PART 12

COLLECTION OF PERSONAL PROPERTY BY AFFIDAVIT AND SUMMARY ADMINISTRATION PROCEDURE FOR SMALL ESTATES

PART 13

SUCCESSION TO REAL PROPERTY BY AFFIDAVIT FOR SMALL ESTATES

PART 3

INFORMAL PROBATE AND APPOINTMENT PROCEEDINGS

30-2414 Informal probate or appointment proceedings; application; contents.

Applications for informal probate or informal appointment shall be directed to the registrar and verified by the applicant to be accurate and complete to the best of the applicant's knowledge and belief as to the following information:

(1) Every application for informal probate of a will or for informal appointment of a personal representative, other than a special or successor representative, shall contain the following:

(i) a statement of the interest of the applicant;

(ii) the name and date of death of the decedent, the decedent's age, and the county and state of domicile at the time of death, and the names and addresses of the spouse, children, heirs and devisees and the ages of any who are minors so far as known or ascertainable with reasonable diligence by the applicant;

(iii) if the decedent was not domiciled in the state at the time of death, a statement showing venue;

(iv) a statement identifying and indicating the address of any personal representative of the decedent appointed in this state or elsewhere whose appointment has not been terminated;

(v) a statement indicating whether the applicant has received a demand for notice or is aware of any demand for notice of any probate or appointment proceeding concerning the decedent that may have been filed in this state or elsewhere.

(2) An application for informal probate of a will shall state the following in addition to the statements required by subdivision (1) of this section:

(i) that the original of the decedent's last will or an authenticated copy of a will probated in another jurisdiction:

(A) is in the possession of the court;

(B) accompanies the application; or

(C) is in the possession of the applicant, that the applicant will deliver such original or authenticated copy to the court within ten days after the filing of the application, and that a true and accurate copy of such original or authenticated copy accompanies the application;

(ii) that the applicant, to the best of the applicant's knowledge, believes the will to have been validly executed; and

(iii) that after the exercise of reasonable diligence the applicant is unaware of any instrument revoking the will, and that the applicant believes that the instrument which is the subject of the application is the decedent's last will.

(3) An application for informal appointment of a personal representative to administer an estate under a will shall describe the will by date of execution and state the time and place of probate or the pending application or petition for probate. The application for appointment shall adopt the statements in the application or petition for probate and state the name, address and priority for appointment of the person whose appointment is sought.

(4) An application for informal appointment of an administrator in intestacy shall state, in addition to the statements required by subdivision (1) of this section:

(i) that after the exercise of reasonable diligence the applicant is unaware of any unrevoked testamentary instrument relating to property having a situs in this state under section 30-2210, or a statement why any such instrument of which the applicant may be aware is not being probated;

(ii) the priority of the person whose appointment is sought and the names of any other persons having a prior or equal right to the appointment under section 30-2412.

(5) An application for appointment of a personal representative to succeed a personal representative appointed under a different testacy status shall refer to the order in the most recent testacy proceeding, state the name and address of the person whose appointment is sought and of the person whose appointment will be terminated if the application is granted, and describe the priority of the applicant.

(6) An application for appointment of a personal representative to succeed a personal representative who has tendered a resignation as provided in subsec-

tion (c) of section 30-2453, or whose appointment has been terminated by death or removal, shall adopt the statements in the application or petition which led to the appointment of the person being succeeded except as specifically changed or corrected, state the name and address of the person who seeks appointment as successor, and describe the priority of the applicant.

Source: Laws 1974, LB 354, § 92, UPC § 3-301; Laws 1978, LB 650, § 9; Laws 2020, LB966, § 14.

30-2416 Informal probate; proof and findings required.

(a) In an informal proceeding for original probate of a will, the registrar shall determine whether:

(1) the application is complete;

(2) the applicant has made oath or affirmation that the statements contained in the application are true to the best of the applicant's knowledge and belief;

(3) the applicant appears from the application to be an interested person as defined in subdivision (21) of section 30-2209;

(4) on the basis of the statements in the application, venue is proper;

(5) either:

(i) an original, duly executed, and apparently unrevoked will is in the registrar's possession; or

(ii) the applicant has represented that an original, duly executed, and apparently unrevoked will is in the applicant's possession, the applicant has provided a true and accurate copy of such original will with the application, and the applicant has represented that the original, duly executed, and apparently unrevoked will will be delivered to the court within ten days after the filing of the application; and

(6) any notice required by section 30-2413 has been given and that the application is not within section 30-2417.

(b) The application shall be denied if it indicates that a personal representative has been appointed in another county of this state or, except as provided in subsection (d) of this section, if it appears that this or another will of the decedent has been the subject of a previous probate order.

(c) A will which appears to have the required signatures and which contains an attestation clause showing that requirements of execution under section 30-2327, 30-2328, or 30-2331 have been met shall be probated without further proof. In other cases, the registrar may assume execution if the will appears to have been properly executed, or the registrar may accept a sworn statement or affidavit of any person having knowledge of the circumstances of execution, whether or not the person was a witness to the will.

(d) Informal probate of a will which has been previously probated elsewhere may be granted at any time upon written application by any interested person, together with deposit of an authenticated copy of the will and of the statement probating it from the office or court where it was first probated.

(e) A will from a place which does not provide for probate of a will after death and which is not eligible for probate under subsection (a) of this section may be probated in this state upon receipt by the registrar of a duly authenticated copy of the will and a duly authenticated certificate of its legal custodian

that the copy filed is a true copy and that the will has become operative under the law of the other place.

Source: Laws 1974, LB 354, § 94, UPC § 3-303; Laws 1978, LB 650, § 10; Laws 2020, LB966, § 15.

PART 4

FORMAL TESTACY AND APPOINTMENT PROCEEDINGS

30-2426 Formal testacy or appointment proceedings; petition; contents.

(a) Petitions for formal probate of a will, or for adjudication of intestacy with or without request for appointment of a personal representative, must be directed to the court, request a judicial order after notice and hearing and contain further statements as indicated in this section. A petition for formal probate of a will

(1) requests an order as to the testacy of the decedent in relation to a particular instrument which may or may not have been informally probated and determining the heirs,

(2) contains the statements required for informal applications as stated in subdivisions (1)(i) through (v) of section 30-2414, the statements required by subdivisions (2)(ii) and (iii) of section 30-2414, and

(3) states whether the original of the last will of the decedent is in the possession of the court, accompanies the petition, or has been filed electronically and will be delivered to the court within ten days after the filing of the application.

The petition also must state the contents of the will and indicate that it is lost, destroyed, or otherwise unavailable if the original will or an authenticated copy of the will probated in another jurisdiction:

(i) is not in the possession of the court;

(ii) did not accompany the application; and

(iii) has not been filed electronically, subject to delivery within ten days after the filing of the application.

(b) A petition for adjudication of intestacy and appointment of an administrator in intestacy must request a judicial finding and order that the decedent left no will and determining the heirs, contain the statements required by subdivisions (1) and (4) of section 30-2414 and indicate whether supervised administration is sought. A petition may request an order determining intestacy and heirs without requesting the appointment of an administrator, in which case the statements required by subdivision (4)(ii) of section 30-2414 may be omitted.

Source: Laws 1974, LB 354, § 104, UPC § 3-402; Laws 2020, LB966, § 16.

30-2429.01 Formal testacy proceedings; objection; informal probate; petition to set aside; transfer to district court; procedure; fees.

(1) If there is an objection to probate of a will or if a petition is filed to set aside an informal probate of a will or to prevent informal probate of a will which is the subject of a pending application, the county court shall continue the originally scheduled hearing for at least fourteen days from the date of the

hearing. At any time prior to the continued hearing date any party may transfer the proceeding to determine whether the decedent left a valid will to the district court by filing with the county court a notice of transfer, depositing with the clerk of the county court a docket fee of the district court for cases originally commenced in district court, and paying to the clerk of the county court a fee of twenty dollars.

(2) Within ten days of the completion of the requirements of subsection (1) of this section, the clerk of the county court shall transmit to the clerk of the district court a certification of the case file and docket fee.

(3) Upon the filing of the certification as provided in subsection (2) of this section in the district court, such court shall have jurisdiction over the proceeding on the contest. Within thirty days of the filing of such certification, any party may file additional objections.

(4) The district court may order such additional pleadings as necessary and shall thereafter determine whether the decedent left a valid will. Trial shall be to a jury unless a jury is waived by all parties who have filed pleadings in the matter.

(5) The final decision and judgment in the matter transferred shall be certified to the county court, and proceedings shall be had thereon necessary to carry the final decision and judgment into execution.

Source: Laws 1981, LB 42, § 18; Laws 1985, LB 293, § 3; Laws 1992, LB 999, § 1; Laws 2018, LB193, § 64.

PART 7

DUTIES AND POWERS OF PERSONAL REPRESENTATIVES

30-2478 Corepresentatives; when joint action required.

If two or more persons are appointed corepresentatives and unless the will provides otherwise, the concurrence of all is required on all acts connected with the administration and distribution of the estate. This restriction does not apply when any corepresentative receives and receipts for property due the estate, when the concurrence of all cannot readily be obtained in the time reasonably available for emergency action necessary to preserve the estate, when a corepresentative has been delegated to act for the others, or as provided in section 30-901. Persons dealing with a corepresentative, if actually unaware that another has been appointed to serve with him or her or if advised by the personal representative with whom they deal that he or she has authority to act alone for any of the reasons mentioned herein, are as fully protected as if the person with whom they dealt had been the sole personal representative.

Source: Laws 1974, LB 354, § 156, UPC § 3-717; Laws 2019, LB55, § 1.

PART 8

CREDITORS' CLAIMS

30-2483 Notice to creditors.

(a) Unless notice has already been given under this article and except when an appointment of a personal representative is made pursuant to subdivision (4) of section 30-2408, the clerk of the court upon the appointment of a personal representative shall publish a notice once a week for three successive weeks in

a newspaper of general circulation in the county announcing the appointment and the address of the personal representative, and notifying creditors of the estate to present their claims within two months after the date of the first publication of the notice or be forever barred. The first publication shall be made within thirty days after the appointment. The party instituting or maintaining the proceeding or his or her attorney is required to mail the published notice and give proof thereof in accordance with section 25-520.01.

(b) If the decedent was fifty-five years of age or older or resided in a medical institution as defined in subsection (1) of section 68-919, the notice shall also be provided to the Department of Health and Human Services with the decedent's social security number and, if the decedent was predeceased by a spouse, the name and social security number of such spouse. The notice shall be provided to the department in a delivery manner and at an address designated by the department, which manner may include email. The department shall post the acceptable manner of delivering notice on its website. Any notice that fails to conform with such manner is void.

Source: Laws 1974, LB 354, § 161, UPC § 3-801; Laws 1978, LB 650, § 18; Laws 2008, LB928, § 1; Laws 2017, LB268, § 3; Laws 2019, LB593, § 1.

30-2488 Allowance of claims; transfer of certain claims; procedures.

(a) As to claims presented in the manner described in section 30-2486 within the time limit prescribed in section 30-2485, the personal representative may mail a notice to any claimant stating that the claim has been disallowed. If, after allowing or disallowing a claim, the personal representative changes his or her decision concerning the claim, he or she shall notify the claimant. The personal representative may not change a disallowance of a claim after the time for the claimant to file a petition for allowance or to commence a proceeding on the claim has run and the claim has been barred. Every claim which is disallowed in whole or in part by the personal representative is barred so far as not allowed unless the claimant files a petition for allowance in the court or commences a proceeding against the personal representative not later than sixty days after the mailing of the notice of disallowance or partial allowance if the notice warns the claimant of the impending bar. Failure of the personal representative to mail notice to a claimant of action on his or her claim for sixty days after the time for original presentation of the claim has expired has the effect of a notice of allowance.

(b) At any time within fourteen days of the filing of a petition for allowance of a claim, the personal representative may transfer the claim to the regular docket of the county court by filing with the court a notice of transfer. The county court shall hear and determine the claim in the same manner as actions originally filed in the county court on the regular docket. The county court may order such additional pleadings as are necessary. If the claim is greater than the jurisdictional amount in subdivision (5) of section 24-517 and the personal representative requests transfer of the claim to the district court, upon payment by the personal representative to the clerk of the district court of a docket fee of the district court, the county court shall transfer the claim to the district court as provided in section 25-2706. If the claim is transferred to the district court, a jury trial is allowed unless waived by the parties as provided under section 25-1104.

(c) Upon the petition of the personal representative or of a claimant in a proceeding for the purpose, the court may allow in whole or in part any claim or claims filed with the clerk of the court in due time and not barred by subsection (a) of this section. Notice in this proceeding shall be given to the claimant, the personal representative, and those other persons interested in the estate as the court may direct by order entered at the time the proceeding is commenced.

(d) A final judgment in a proceeding in any court against a personal representative to enforce a claim against a decedent's estate is an allowance of the claim.

(e) Unless otherwise provided in any final judgment in any court entered against the personal representative, allowed claims bear interest at the legal rate for the period commencing sixty days after the time for original presentation of the claim has expired unless based on a contract making a provision for interest, in which case they bear interest in accordance with that provision.

Source: Laws 1974, LB 354, § 166, UPC § 3-806; Laws 1981, LB 42, § 21; Laws 1983, LB 137, § 4; Laws 1991, LB 422, § 4; Laws 2001, LB 269, § 3; Laws 2018, LB193, § 65.

PART 12

COLLECTION OF PERSONAL PROPERTY BY AFFIDAVIT AND SUMMARY ADMINISTRATION PROCEDURE FOR SMALL ESTATES

30-24,125 Collection of personal property by affidavit.

(a) Thirty days after the death of a decedent, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock, or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock, or chose in action to a person claiming to be the successor of the decedent upon being presented an affidavit made by or on behalf of the successor stating:

(1) the value of all of the personal property in the decedent's estate, wherever located, less liens and encumbrances, does not exceed one hundred thousand dollars;

(2) thirty days have elapsed since the death of the decedent as shown in a certified or authenticated copy of the decedent's death certificate attached to the affidavit;

(3) the claiming successor's relationship to the decedent or, if there is no relationship, the basis of the successor's claim to the personal property;

(4) the person or persons claiming as successors under the affidavit swear or affirm that all statements in the affidavit are true and material and further acknowledge that any false statement may subject the person or persons to penalties relating to perjury under section 28-915;

(5) no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction; and

(6) the claiming successor is entitled to payment or delivery of the property.

(b) A transfer agent of any security shall change the registered ownership on the books of a corporation from the decedent to the successor or successors upon the presentation of an affidavit as provided in subsection (a).

(c) In addition to compliance with the requirements of subsection (a), a person seeking a transfer of a certificate of title to a motor vehicle, motorboat, all-terrain vehicle, utility-type vehicle, or minibike shall be required to furnish to the Department of Motor Vehicles an affidavit showing applicability of this section and compliance with the requirements of this section to authorize the department to issue a new certificate of title.

Source: Laws 1974, LB 354, § 203, UPC § 3-1201; Laws 1996, LB 909, § 1; Laws 1999, LB 100, § 4; Laws 1999, LB 141, § 6; Laws 2004, LB 560, § 2; Laws 2009, LB35, § 22; Laws 2010, LB650, § 2; Laws 2022, LB1124, § 1.
Effective date July 21, 2022.

PART 13

SUCCESSION TO REAL PROPERTY BY AFFIDAVIT FOR SMALL ESTATES

30-24,129 Succession to real property by affidavit.

(a) Thirty days after the death of a decedent, any person claiming as successor to the decedent's interest in real property in this state may file or cause to be filed on his or her behalf, with the register of deeds office of a county in which the real property of the decedent that is the subject of the affidavit is located, an affidavit describing the real property owned by the decedent and the interest of the decedent in the property. The affidavit shall be signed by all persons claiming as successors or by parties legally acting on their behalf and shall be prima facie evidence of the facts stated in the affidavit. The affidavit shall state:

(1) the value of the decedent's interest in all real property in the decedent's estate located in this state does not exceed fifty thousand dollars. The value of the decedent's interest shall be determined from the value of the property shown on the assessment rolls for the year in which the decedent died less real estate taxes and interest thereon if any is due at the time of death;

(2) thirty days have elapsed since the death of the decedent as shown in a certified or authenticated copy of the decedent's death certificate attached to the affidavit;

(3) no application or petition for the appointment of a personal representative is pending or has been granted in the State of Nebraska;

(4) the claiming successor is entitled to the real property either by reason of the homestead allowance, exempt property allowance, or family allowance, by intestate succession, or by devise under the will of the decedent. If claiming by devise under the will of the decedent, a copy of such will shall be attached to the affidavit;

(5) the claiming successor has made an investigation and has been unable to determine any subsequent will;

(6) no other person has a right to the interest of the decedent in the described property;

(7) the claiming successor's relationship to the decedent and the value of the entire estate of the decedent subject to probate; and

(8) the person or persons claiming as successors under the affidavit swear or affirm that all statements in the affidavit are true and material and further

acknowledge that any false statement may subject the person or persons to penalties relating to perjury under section 28-915.

(b) The recorded affidavit and certified or authenticated copy of the decedent's death certificate shall also be recorded by the claiming successor in any other county in this state in which the real property of the decedent that is the subject of the affidavit is located.

Source: Laws 1999, LB 100, § 2; Laws 2009, LB35, § 23; Laws 2014, LB693, § 1; Laws 2021, LB501, § 62.

ARTICLE 26

PROTECTION OF PERSONS UNDER DISABILITY AND THEIR PROPERTY

PART 1

GENERAL PROVISIONS

PART 2

GUARDIANS OF MINORS

PART 4

PROTECTION OF PROPERTY OF PERSONS UNDER DISABILITY AND MINORS

PART 1

GENERAL PROVISIONS

30-2602.02 Guardian or conservator; national criminal history record check; report; waiver by court.

(1) A person, except for a financial institution as that term is defined in section 8-101.03 or its officers, directors, employees, or agents or a trust company, who has been nominated for appointment as a guardian or conservator shall obtain a national criminal history record check through a process approved by the State Court Administrator and a report of the results and file such report with the court at least ten days prior to the appointment hearing date, unless waived or modified by the court (a) for good cause shown by affidavit filed simultaneously with the petition for appointment or (b) in the event the protected person requests an expedited hearing under section 30-2630.01.

(2) An order appointing a guardian or conservator shall not be signed by the judge until such report has been filed with the court and reviewed by the judge. Such report, or the lack thereof, shall be certified either by affidavit or by obtaining a certified copy of the report. No report or national criminal history record check shall be required by the court upon the application of a petitioner for an emergency temporary guardianship or emergency temporary conserva-

torship. The court may waive the requirements of this section for good cause shown.

Source: Laws 2011, LB157, § 34; Laws 2017, LB140, § 151.

PART 2

GUARDIANS OF MINORS

30-2608 Natural guardians; court appointment of guardian of minor; standby guardian; conditions for appointment; child born out of wedlock; additional considerations; filings.

(a) The father and mother are the natural guardians of their minor children and are duly entitled to their custody and to direct their education, being themselves competent to transact their own business and not otherwise unsuitable. If either dies or is disqualified for acting, or has abandoned his or her family, the guardianship devolves upon the other except as otherwise provided in this section.

(b) In the appointment of a parent as a guardian when the other parent has died and the child was born out of wedlock, the court shall consider the wishes of the deceased parent as expressed in a valid will executed by the deceased parent. If in such valid will the deceased parent designates someone other than the other natural parent as guardian for the minor children, the court shall take into consideration the designation by the deceased parent. In determining whether or not the natural parent should be given priority in awarding custody, the court shall also consider the natural parent's acknowledgment of paternity, payment of child support, and whether the natural parent is a fit, proper, and suitable custodial parent for the child.

(c) The court may appoint a standby guardian for a minor whose parent is chronically ill or near death. The appointment of a guardian under this subsection does not suspend or terminate the parent's parental rights of custody to the minor. The standby guardian's authority would take effect, if the minor is left without a remaining parent, upon (1) the death of the parent, (2) the mental incapacity of the parent, or (3) the physical debilitation and consent of the parent.

(d) The court may appoint a guardian for a minor if all parental rights of custody have been terminated or suspended by prior or current circumstances or prior court order. The juvenile court may appoint a guardian for a child adjudicated to be under subdivision (3)(a) of section 43-247 as provided in section 43-1312.01. A guardian appointed by will as provided in section 30-2606 whose appointment has not been prevented or nullified under section 30-2607 has priority over any guardian who may be appointed by the court, but the court may proceed with an appointment upon a finding that the testamentary guardian has failed to accept the testamentary appointment within thirty days after notice of the guardianship proceeding.

(e) The petition and all other court filings for a guardianship proceeding shall be filed with the clerk of the county court. The party shall state in the petition whether such party requests that the proceeding be heard by the county court or, in cases in which a separate juvenile court already has jurisdiction over the child in need of a guardian under the Nebraska Juvenile Code, such separate juvenile court. Such proceeding is considered a county court proceeding even if heard by a separate juvenile court judge, and an order of the separate juvenile

court in such guardianship proceeding has the force and effect of a county court order. The testimony in a guardianship proceeding heard before a separate juvenile court judge shall be preserved as in any other separate juvenile court proceeding.

Source: Laws 1974, LB 354, § 226, UPC § 5-204; Laws 1995, LB 712, § 18; Laws 1998, LB 1041, § 4; Laws 1999, LB 375, § 1; Laws 2014, LB908, § 1; Laws 2018, LB193, § 66.

Cross References

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

PART 4

PROTECTION OF PROPERTY OF PERSONS UNDER DISABILITY AND MINORS

30-2640 Bond.

For estates with a net value of more than ten thousand dollars, the bond for a conservator shall be in the amount of the aggregate capital value of the personal property of the estate in the conservator's control plus one year's estimated income from all sources minus the value of securities and other assets deposited under arrangements requiring an order of the court for their removal. The bond of the conservator shall be conditioned upon the faithful discharge of all duties of the trust according to law, with sureties as the court shall specify. The court, in lieu of sureties on a bond, may accept other security for the performance of the bond, including a pledge of securities or a mortgage of land owned by the conservator. For good cause shown, the court may eliminate the requirement of a bond or decrease or increase the required amount of any such bond previously furnished. The court shall not require a bond if the protected person executed a written, valid power of attorney that specifically nominates a guardian or conservator and specifically does not require a bond. The court shall consider as one of the factors of good cause, when determining whether a bond should be required and the amount thereof, the protected person's choice of any attorney in fact or alternative attorney in fact. No bond shall be required of any financial institution, as that term is defined in section 8-101.03, or any officer, director, employee, or agent of the financial institution serving as a conservator, or any trust company serving as a conservator. The Public Guardian shall not be required to post bond.

Source: Laws 1974, LB 354, § 258, UPC § 5-411; Laws 1985, LB 292, § 4; Laws 2011, LB157, § 43; Laws 2014, LB920, § 26; Laws 2017, LB140, § 152.

ARTICLE 27

NONPROBATE TRANSFERS

PART 1

PROVISIONS RELATING TO EFFECT OF DEATH

Section
30-2715. Nonprobate transfers on death.
30-2715.01. Vehicle or motorboat; transfer on death; certificate of title.

Section

PART 2

MULTIPLE-PERSON ACCOUNTS

SUBPART B

OWNERSHIP AS BETWEEN PARTIES AND OTHERS

PART 3

UNIFORM TOD SECURITY REGISTRATION

PART 1

PROVISIONS RELATING TO EFFECT OF DEATH

30-2715 Nonprobate transfers on death.

(a) Subject to sections 30-2333 and 30-2354, a provision for a nonprobate transfer on death in an insurance policy, contract of employment, bond, mortgage, promissory note, certificated or uncertificated security, account agreement, custodial agreement, deposit agreement, compensation plan, pension plan, individual retirement plan, employee benefit plan, trust, marital property agreement, certificate of title, or other written instrument of a similar nature is nontestamentary. This subsection includes a written provision that:

(1) money or other benefits due to, controlled by, or owned by a decedent before death must be paid after the decedent's death to a person whom the decedent designates either in the instrument or in a separate writing, including a will, executed either before or at the same time as the instrument, or later;

(2) money due or to become due under the instrument ceases to be payable in the event of death of the promisee or the promisor before payment or demand; or

(3) any property controlled by or owned by the decedent before death which is the subject of the instrument passes to a person the decedent designates either in the instrument or in a separate writing, including a will, executed either before or at the same time as the instrument, or later.

(b) This section does not limit rights of creditors under other laws of this state.

Source: Laws 1993, LB 250, § 1; Laws 2010, LB712, § 24; Laws 2017, LB517, § 3.

30-2715.01 Vehicle or motorboat; transfer on death; certificate of title.

(1) Subject to section 30-2333, a person who owns any of the following for which a certificate of title may be issued pursuant to the Motor Vehicle Certificate of Title Act or the State Boat Act may use a transfer-on-death certificate of title as prescribed in this section: A vehicle or a motorboat. Such person may provide for the transfer of such property upon his or her death or the death of the last survivor of a joint tenancy with right of survivorship by including in the certificate of title a designation of beneficiary or beneficiaries to whom such property will be transferred on the death of the owner or the last survivor, subject to the rights of all lienholders, whether created before,

simultaneously with, or after the creation of the transfer-on-death interest. A trust may be the beneficiary of a transfer-on-death certificate of title. The certificate of title shall include the name of the owner, the name of any tenant-in-common owner or the name of any joint-tenant-with-right-of-survivorship owner, followed in substance by the words transfer on death to (name of beneficiary or beneficiaries or name of trustee if a trust is to be the beneficiary). The abbreviation TOD may be used instead of the words transfer on death to.

(2) A transfer-on-death beneficiary shall have no interest in such property until the death of the owner or the last survivor of the joint-tenant-with-right-of-survivorship owners. A beneficiary designation may be changed at any time by the owner or by the joint-tenant-with-right-of-survivorship owners then surviving without the consent of any beneficiary by filing an application for a subsequent certificate of title.

(3) Ownership of property which has a designation of beneficiary as provided in subsection (1) of this section and for which an application for a subsequent certificate of title has not been filed shall vest in the designated beneficiary or beneficiaries on the death of the owner or the last of the joint-tenant-with-right-of-survivorship owners, subject to the rights of all lienholders.

Source: Laws 2010, LB712, § 23; Laws 2017, LB517, § 4; Laws 2022, LB750, § 1.
Operative date July 21, 2022.

Cross References

Motor Vehicle Certificate of Title Act, see section 60-101.
State Boat Act, see section 37-1201.

PART 2

MULTIPLE-PERSON ACCOUNTS

SUBPART B

OWNERSHIP AS BETWEEN PARTIES AND OTHERS

30-2723 Rights at death.

(a) Except as otherwise provided in sections 30-2716 to 30-2733, on death of a party sums on deposit in a multiple-party account belong to the surviving party or parties. If two or more parties survive and one is the surviving spouse of the decedent, the amount to which the decedent, immediately before death, was beneficially entitled under section 30-2722 belongs to the surviving spouse. If two or more parties survive and none is the surviving spouse of the decedent, the amount to which the decedent, immediately before death, was beneficially entitled under such section belongs to the surviving parties in equal shares, and augments the proportion to which each survivor, immediately before the decedent's death, was beneficially entitled under section 30-2722, and the right of survivorship continues between the surviving parties.

(b) In an account with a POD designation:

(1) On death of one of two or more parties, the rights in sums on deposit are governed by subsection (a) of this section.

(2)(A) On death of the sole party or the last survivor of two or more parties, sums on deposit belong to the surviving beneficiary or beneficiaries. If two or more beneficiaries survive, sums on deposit belong to them in such proportions

as specified in the POD designation or, if the POD designation does not specify different proportions, in equal and undivided shares, and there is no right of survivorship in the event of death of a beneficiary thereafter. If no beneficiary survives, sums on deposit belong to the estate of the last surviving party.

(B) Except as otherwise specified in the POD designation, if there are two or more beneficiaries, and if any beneficiary fails to survive the sole party or the last survivor of two or more parties, sums on deposit belong to the surviving beneficiaries in proportion to their respective interests as beneficiaries under subdivision (2)(A) of this subsection.

(c) Sums on deposit in a single-party account without a POD designation, or in a multiple-party account that, by the terms of the account, is without right of survivorship, are not affected by death of a party, but the amount to which the decedent, immediately before death, was beneficially entitled under section 30-2722 is transferred as part of the decedent's estate. A POD designation in a multiple-party account without right of survivorship is ineffective. For purposes of this section, designation of an account as a tenancy in common establishes that the account is without right of survivorship.

(d) The ownership right of a surviving party or beneficiary, or of the decedent's estate, in sums on deposit is subject to requests for payment made by a party before the party's death, whether paid by the financial institution before or after death, or unpaid. The surviving party or beneficiary, or the decedent's estate, is liable to the payee of an unpaid request for payment. The liability is limited to a proportionate share of the amount transferred under this section, to the extent necessary to discharge the request for payment.

Source: Laws 1993, LB 250, § 9; Laws 2019, LB55, § 3.

PART 3

UNIFORM TOD SECURITY REGISTRATION

30-2734 Definitions.

In sections 30-2734 to 30-2745:

(1) Beneficiary form means a registration of a security which indicates the present owner of the security and the intention of the owner regarding the person who will become the owner of the security upon the death of the owner.

(2) Business means a corporation, partnership, limited liability company, limited partnership, limited liability partnership, or any other legal or commercial entity.

(3) Register, including its derivatives, means to issue a certificate showing the ownership of a certificated security or, in the case of an uncertificated security, to initiate or transfer an account showing ownership of securities.

(4) Registering entity means a person who originates or transfers a security title by registration, and includes a broker maintaining security accounts for customers and a transfer agent or other person acting for or as an issuer of securities.

(5) Security means a share, participation, or other interest in property, in a business, or in an obligation of an enterprise or other issuer, and includes a certificated security, an uncertificated security, and a security account.

(6) Security account means (i) a reinvestment account associated with a security, a securities account with a broker, a cash balance in a brokerage

account, cash, interest, earnings, or dividends earned or declared on a security in an account, a reinvestment account, or a brokerage account, whether or not credited to the account before the owner's death, (ii) an investment management or custody account with a trust company or a trust department of a bank with trust powers, including the securities in the account, a cash balance in the account, and cash, cash equivalents, interest, earnings, or dividends earned or declared on a security in the account, whether or not credited to the account before the owner's death, or (iii) a cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, whether or not credited to the account before the owner's death.

(7) The words transfer on death or the abbreviation TOD and the words pay on death or the abbreviation POD are used without regard for whether the subject is a money claim against an insurer, such as its own note or bond for money loaned, or is a claim to securities evidenced by conventional title documentation.

Source: Laws 1993, LB 250, § 20; Laws 2004, LB 999, § 23; Laws 2017, LB138, § 1.

30-2742 Nontestamentary transfer on death.

(a) Subject to section 30-2333, a transfer on death resulting from a registration in beneficiary form is effective by reason of the contract regarding the registration between the owner and the registering entity and sections 30-2734 to 30-2745 and is not testamentary.

(b) Sections 30-2734 to 30-2745 do not limit the rights of creditors of security owners against beneficiaries and other transferees under other laws of this state.

Source: Laws 1993, LB 250, § 28; Laws 2017, LB517, § 5.

ARTICLE 32

FIDUCIARIES

Section
30-3205. Fiduciary; interests in private investment fund, investment company, or investment trust; investments authorized; bank or trust company; investments authorized.

30-3205 Fiduciary; interests in private investment fund, investment company, or investment trust; investments authorized; bank or trust company; investments authorized.

(1) Notwithstanding the prohibition on investments in section 8-224.01, a fiduciary holding funds for investment may invest such funds in securities of, or other interests in, a private investment fund or any open-end or closed-end management-type investment company or investment trust registered or exempt from registration under the federal Investment Company Act of 1940, as amended, if a court order, will, agreement, or other instrument creating or defining the investment powers of the fiduciary directs, requires, authorizes, or permits the investment of such funds in any of the following:

(a) Such investments as the fiduciary may, in his or her discretion, select;

(b) Investments generally, other than those in which fiduciaries are by law authorized to invest trust funds; and

(c) United States Government obligations if the portfolio of such investment company or investment trust is limited to United States Government obligations and to repurchase agreements fully collateralized by such obligations and if such investment company or investment trust takes delivery of the collateral, either directly or through an authorized custodian.

(2)(a) Notwithstanding the prohibition on investments in section 8-224.01, a bank or trust company acting as a fiduciary, agent, or otherwise may, in the exercise of its investment discretion or at the direction of another person authorized to direct investment of funds held by the bank or trust company as a fiduciary, invest and reinvest interests in the securities of a private investment fund or an open-end or closed-end management-type investment company or investment trust registered or exempt from registration under the federal Investment Company Act of 1940, as amended, or may retain, sell, or exchange such interests so long as the portfolio of the investment company or investment trust as an entity consists substantially of investments not prohibited by the instrument governing the fiduciary relationship.

(b) The fact that the bank or trust company or an affiliate of the bank or trust company provides services to the investment company, investment trust, or private investment fund, such as that of an investment advisor, custodian, transfer agent, registrar, sponsor, distributor, manager, or otherwise, and is receiving reasonable compensation for the services shall not preclude the bank or trust company from investing, reinvesting, retaining, or exchanging any interest held by the trust estate in the securities of a private investment fund or any open-end or closed-end management-type investment company or investment trust registered or exempt from registration under the federal Investment Company Act of 1940, as amended.

Source: Laws 1987, LB 576, § 1; R.S.Supp.,1988, § 24-638; Laws 1993, LB 91, § 1; Laws 2000, LB 932, § 28; Laws 2003, LB 130, § 135; Laws 2020, LB909, § 22.

ARTICLE 34

HEALTH CARE POWER OF ATTORNEY

Section
30-3402. Terms, defined.
30-3405. Witness; disqualification; declaration.
30-3406. Attorney in fact; disqualification.
30-3408. Power of attorney; form; validity.
30-3423. Attorney in fact; attending physician; health care provider; immunity.

30-3402 Terms, defined.

For purposes of sections 30-3401 to 30-3432:

(1) Adult shall mean any person who is nineteen years of age or older or who is or has been married;

(2) Attending physician shall mean the physician, selected by or assigned to a principal, who has primary responsibility for the care and treatment of such principal;

(3) Attorney in fact shall mean an adult properly designated and authorized under sections 30-3401 to 30-3432 to make health care decisions for a principal pursuant to a power of attorney for health care and shall include a successor attorney in fact;

(4) Health care shall mean any treatment, procedure, or intervention to diagnose, cure, care for, or treat the effects of disease, injury, and degenerative conditions. Health care shall include mental health care;

(5) Health care decision shall include consent, refusal of consent, or withdrawal of consent to health care. Health care decision shall not include (a) the withdrawal or withholding of routine care necessary to maintain patient comfort, (b) the withdrawal or withholding of the usual and typical provision of nutrition and hydration, or (c) the withdrawal or withholding of life-sustaining procedures or of artificially administered nutrition or hydration, except as provided by sections 30-3401 to 30-3432;

(6) Health care provider shall mean an individual or facility licensed, certified, or otherwise authorized or permitted by law to administer health care in the ordinary course of business or professional practice and shall include all facilities defined in the Health Care Facility Licensure Act;

(7) Except as otherwise provided in section 30-4404 for an advance mental health care directive, incapable shall mean the inability to understand and appreciate the nature and consequences of health care decisions, including the benefits of, risks of, and alternatives to any proposed health care or the inability to communicate in any manner an informed health care decision;

(8) Life-sustaining procedure shall mean any medical procedure, treatment, or intervention that (a) uses mechanical or other artificial means to sustain, restore, or supplant a spontaneous vital function and (b) when applied to a person suffering from a terminal condition or who is in a persistent vegetative state, serves only to prolong the dying process. Life-sustaining procedure shall not include routine care necessary to maintain patient comfort or the usual and typical provision of nutrition and hydration;

(9) Mental health care shall include, but not be limited to, mental health care and treatment expressly provided for in the Advance Mental Health Care Directives Act;

(10) Persistent vegetative state shall mean a medical condition that, to a reasonable degree of medical certainty as determined in accordance with currently accepted medical standards, is characterized by a total and irreversible loss of consciousness and capacity for cognitive interaction with the environment and no reasonable hope of improvement;

(11) Power of attorney for health care shall mean a power of attorney executed in accordance with sections 30-3401 to 30-3432 which authorizes a designated attorney in fact to make health care decisions for the principal when the principal is incapable;

(12) Principal shall mean an adult who, when competent, confers upon another adult a power of attorney for health care;

(13) Reasonably available shall mean that a person can be contacted with reasonable efforts by an attending physician or another person acting on behalf of the attending physician;

(14) Terminal condition shall mean an incurable and irreversible medical condition caused by injury, disease, or physical illness which, to a reasonable degree of medical certainty, will result in death regardless of the continued application of medical treatment including life-sustaining procedures; and

(15) Usual and typical provision of nutrition and hydration shall mean delivery of food and fluids orally, including by cup, eating utensil, bottle, or drinking straw.

Source: Laws 1992, LB 696, § 2; Laws 2000, LB 819, § 66; Laws 2020, LB247, § 16.

Cross References

Advance Mental Health Care Directives Act, see section 30-4401.
Health Care Facility Licensure Act, see section 71-401.

30-3405 Witness; disqualification; declaration.

(1)(a) The following shall not qualify to witness a power of attorney for health care: Any person who at the time of witnessing is the principal's spouse, parent, child, grandchild, sibling, presumptive heir, known devisee, attending physician, mental health treatment team member, romantic or dating partner, or attorney in fact; or an employee of a life or health insurance provider for the principal.

(b) No more than one witness may be an administrator or employee of a health care provider who is caring for or treating the principal.

(2) Each witness shall make the written declaration in substantially the form prescribed in section 30-3408.

Source: Laws 1992, LB 696, § 5; Laws 2020, LB247, § 17.

30-3406 Attorney in fact; disqualification.

None of the following may serve as an attorney in fact:

(1) The attending physician or a member of the mental health treatment team of the principal;

(2) An employee of the attending physician or a member of the mental health treatment team of the principal who is unrelated to the principal by blood, marriage, or adoption;

(3) A person unrelated to the principal by blood, marriage, or adoption who is an owner, operator, or employee of a health care provider in or of which the principal is a patient or resident; and

(4) A person unrelated to the principal by blood, marriage, or adoption if, at the time of the proposed designation, he or she is presently serving as an attorney in fact for ten or more principals.

Source: Laws 1992, LB 696, § 6; Laws 2020, LB247, § 18.

30-3408 Power of attorney; form; validity.

(1) A power of attorney for health care executed on or after September 9, 1993, shall be in a form which complies with sections 30-3401 to 30-3432 and may be in the form provided in this subsection.

POWER OF ATTORNEY FOR HEALTH CARE

I appoint . . . . . , whose address is . . . . . , and whose telephone number is . . . . . , as my attorney in fact for health care. I appoint . . . . . , whose address is . . . . . , and whose telephone number is . . . . . , as my successor attorney in fact for health care. I authorize my attorney in fact appointed by this document to make health care decisions for me when I am determined to be incapable of making my own health care

decisions. I have read the warning which accompanies this document and understand the consequences of executing a power of attorney for health care.

I direct that my attorney in fact comply with the following instructions or limitations: . . . . . .

I direct that my attorney in fact comply with the following instructions on life-sustaining treatment: (optional) . . . . . .

I direct that my attorney in fact comply with the following instructions on artificially administered nutrition and hydration: (optional) . . . . . .

I HAVE READ THIS POWER OF ATTORNEY FOR HEALTH CARE. I UNDERSTAND THAT IT ALLOWS ANOTHER PERSON TO MAKE LIFE AND DEATH DECISIONS FOR ME IF I AM INCAPABLE OF MAKING SUCH DECISIONS. I ALSO UNDERSTAND THAT I CAN REVOKE THIS POWER OF ATTORNEY FOR HEALTH CARE AT ANY TIME BY NOTIFYING MY ATTORNEY IN FACT, MY PHYSICIAN, OR THE FACILITY IN WHICH I AM A PATIENT OR RESIDENT. I ALSO UNDERSTAND THAT I CAN REQUIRE IN THIS POWER OF ATTORNEY FOR HEALTH CARE THAT THE FACT OF MY INCAPACITY IN THE FUTURE BE CONFIRMED BY A SECOND PHYSICIAN.

. . . . . .

(Signature of person making designation/date)

DECLARATION OF WITNESSES

We declare that the principal is personally known to us, that the principal signed or acknowledged his or her signature on this power of attorney for health care in our presence, that the principal appears to be of sound mind and not under duress or undue influence, and that neither of us nor the principal's attending physician is the person appointed as attorney in fact by this document.

Witnessed By:

. . . . .	. . . . .
(Signature of Witness/Date)	(Printed Name of Witness)
. . . . .	. . . . .
(Signature of Witness/Date)	(Printed Name of Witness)

OR

State of Nebraska,)
)ss.
County of . . . . .)

On this . . . . . day of . . . . . 20. . . ., before me, ... , a notary public in and for . . . . . County, personally came . . . . . , personally to me known to be the identical person whose name is affixed to the above power of attorney for health care as principal, and I declare that he or she appears in sound mind and not under duress or undue influence, that he or she acknowledges the

execution of the same to be his or her voluntary act and deed, and that I am not the attorney in fact or successor attorney in fact designated by this power of attorney for health care.

Witness my hand and notarial seal at ..... in such county the day and year last above written.

. . . . . .
Seal Signature of Notary Public

(2) A power of attorney for health care may be included in a durable power of attorney drafted under the Nebraska Uniform Power of Attorney Act or in any other form if the power of attorney for health care included in such durable power of attorney or any other form fully complies with the terms of section 30-3404.

(3) A power of attorney for health care executed prior to January 1, 1993, shall be effective if it fully complies with the terms of section 30-3404.

(4) A power of attorney for health care which is executed in another state and is valid under the laws of that state shall be valid according to its terms.

(5) A power of attorney for health care may include an advance mental health care directive under the Advance Mental Health Care Directives Act.

Source: Laws 1992, LB 696, § 8; Laws 1993, LB 782, § 22; Laws 2004, LB 813, § 11; Laws 2012, LB1113, § 47; Laws 2020, LB247, § 19.

Cross References

Advance Mental Health Care Directives Act, see section 30-4401.
Nebraska Uniform Power of Attorney Act, see section 30-4001.

30-3423 Attorney in fact; attending physician; health care provider; immunity.

(1) An attorney in fact shall not be guilty of any criminal offense, subject to any civil liability, or in violation of any professional oath or code of ethics or conduct for any action taken in good faith pursuant to a power of attorney for health care or an advance mental health care directive under the Advance Mental Health Care Directives Act.

(2) No attending physician or health care provider acting or declining to act in reliance upon the decision made by a person whom the attending physician or health care provider in good faith believes is the attorney in fact for health care shall be subject to criminal prosecution, civil liability, or professional disciplinary action. Nothing in sections 30-3401 to 30-3432, however, shall limit the liability of an attending physician or health care provider for a negligent act or omission in connection with the medical diagnosis, treatment, or care of the principal.

Source: Laws 1992, LB 696, § 23; Laws 1993, LB 782, § 27; Laws 2020, LB247, § 20.

Cross References

Advance Mental Health Care Directives Act, see section 30-4401.

ARTICLE 38
NEBRASKA UNIFORM TRUST CODE

PART 1

GENERAL PROVISIONS AND DEFINITIONS

PART 1

GENERAL PROVISIONS AND DEFINITIONS

30-3805 (UTC 105) Default and mandatory rules.

(UTC 105) (a) Except as otherwise provided in the terms of the trust, the Nebraska Uniform Trust Code governs the duties and powers of a trustee, relations among trustees, and the rights and interests of a beneficiary.

(b) The terms of a trust prevail over any provision of the code except:

(1) the requirements for creating a trust;

(2) subject to sections 30-4309, 30-4311, and 30-4312, the duty of a trustee to act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries;

(3) the requirement that a trust and its terms be for the benefit of its beneficiaries, and that the trust have a purpose that is lawful, not contrary to public policy, and possible to achieve;

(4) the power of the court to modify or terminate a trust under sections 30-3836 to 30-3842;

(5) the effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in sections 30-3846 to 30-3852;

(6) the power of the court under section 30-3858 to require, dispense with, or modify or terminate a bond;

(7) the power of the court under subsection (b) of section 30-3864 to adjust a trustee's compensation specified in the terms of the trust;

(8) the duty under subsection (a) of section 30-3878 to keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests, and to respond to the request of a qualified beneficiary of an irrevocable trust for trustee's reports and other information reasonably related to the administration of a trust;

(9) the effect of an exculpatory term under section 30-3897;

(10) the rights under sections 30-3899 to 30-38,107 of a person other than a trustee or beneficiary;

(11) periods of limitation for commencing a judicial proceeding;

(12) the power of the court to take such action and exercise such jurisdiction as may be necessary in the interests of justice;

(13) the subject matter jurisdiction of the court and venue for commencing a proceeding as provided in sections 30-3814 and 30-3815;

(14) the power of a court under subdivision (a)(1) of section 30-3807; and

(15) the power of a court to review the action or the proposed action of the trustee for an abuse of discretion.

Source: Laws 2003, LB 130, § 5; Laws 2005, LB 533, § 37; Laws 2007, LB124, § 22; Laws 2019, LB536, § 20.

30-3808 (UTC 108) Principal place of administration.

(UTC 108) (a) Without precluding other means for establishing a sufficient connection with the designated jurisdiction, terms of a trust designating the principal place of administration are valid and controlling if:

(1) a trustee's principal place of business is located in or a trustee is a resident of the designated jurisdiction;

(2) all or part of the administration occurs in the designated jurisdiction; or

(3) a trust director's principal place of business is located in or a trust director is a resident of the designated jurisdiction.

(b) A trustee is under a continuing duty to administer the trust at a place appropriate to its purposes, its administration, and the interests of the beneficiaries.

(c) Without precluding the right of the court to order, approve, or disapprove a transfer, the trustee, in furtherance of the duty prescribed by subsection (b) of this section, may transfer the trust's principal place of administration to another state or to a jurisdiction outside of the United States.

(d) The trustee shall notify the qualified beneficiaries of a proposed transfer of a trust's principal place of administration not less than sixty days before initiating the transfer. The notice of proposed transfer must include:

(1) the name of the jurisdiction to which the principal place of administration is to be transferred;

(2) the address and telephone number at the new location at which the trustee can be contacted;

(3) an explanation of the reasons for the proposed transfer;

(4) the date on which the proposed transfer is anticipated to occur; and

(5) the date, not less than sixty days after the giving of the notice, by which the qualified beneficiary must notify the trustee of an objection to the proposed transfer.

(e) The authority of a trustee under this section to transfer a trust's principal place of administration terminates if a qualified beneficiary notifies the trustee of an objection to the proposed transfer on or before the date specified in the notice.

(f) In connection with a transfer of the trust's principal place of administration, the trustee may transfer some or all of the trust property to a successor trustee designated in the terms of the trust or appointed pursuant to section 30-3860.

Source: Laws 2003, LB 130, § 8; Laws 2019, LB536, § 21.

PART 5

CREDITOR'S CLAIMS; SPENDTHRIFT AND DISCRETIONARY TRUSTS

30-3850 (UTC 505) Creditor's claim against settlor.

(UTC 505) (a) Whether or not the terms of a trust contain a spendthrift provision, the following rules apply:

(1) During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors.

(2) With respect to an irrevocable trust:

(A) A creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit. If a trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.

(B) A trustee's discretionary authority to pay directly to the taxing authorities or to reimburse the settlor for any tax on trust income or principal, that is payable by the settlor under the law imposing the tax, shall not be considered to be an amount that can be distributed to or for the settlor's benefit, and a creditor or assignee of the settlor shall not be entitled to reach any amount solely by reason of this discretionary authority.

(C) Anything in the Nebraska Uniform Trust Code to the contrary notwithstanding, the settlor shall not be considered to be a beneficiary of an irrevocable trust solely by reason of the trustee's authority to pay directly to the taxing authorities or to reimburse the settlor for any tax on trust income or principal that is payable by the settlor under the law imposing the tax, whether such authority arises pursuant to subsection (b) of section 30-3881 or the terms of the trust.

(3) After the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust that was revocable at the settlor's death is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains, and statutory allowances to a surviving spouse and children to the extent the settlor's probate estate is inadequate to satisfy those claims, costs, expenses, and allowances. A proceeding to assert the liability for claims against the estate and statutory allowances may not be

commenced unless the personal representative has received a written demand by the surviving spouse, a creditor, a child, or a person acting for a child of the decedent. The proceeding must be commenced within one year after the death of the decedent. Sums recovered by the personal representative of the settlor's estate must be administered as part of the decedent's estate. The liability created by this subdivision shall not apply to any assets to the extent that such assets are otherwise exempt under the laws of this state or under federal law.

(4) A beneficiary of a trust subject to subdivision (a)(3) of this section who receives one or more distributions from the trust after the death of the settlor against whom a proceeding to account is brought may join as a party to the proceeding any other beneficiary who has received a distribution from that trust or any other trust subject to subdivision (a)(3) of this section, any surviving owner or beneficiary under sections 30-2734 to 30-2745 of any other security or securities account of the decedent or proceeds thereof, or a surviving party or beneficiary of any account under sections 30-2716 to 30-2733.

(5) Unless a written notice asserting that a decedent's probate estate is insufficient to pay allowed claims and statutory allowances has been received from the decedent's personal representative before the distribution, a trustee is released from liability under this section on any assets distributed to the trust's beneficiaries.

(b) For purposes of this section:

(1) during the period the power may be exercised, the holder of a power of withdrawal is treated in the same manner as the settlor of a revocable trust to the extent of the property subject to the power; and

(2) upon the lapse, release, or waiver of the power, the holder is treated as the settlor of the trust only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greater of the amount specified in section 2041(b)(2), 2503(b), or 2514(e) of the Internal Revenue Code as defined in section 49-801.01.

Source: Laws 2003, LB 130, § 50; Laws 2022, LB707, § 32.
Operative date July 21, 2022.

PART 6

REVOCABLE TRUSTS

30-3854 (UTC 602) Revocation or amendment of revocable trust.

(UTC 602) (a) Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust. This subsection does not apply to a trust created under an instrument executed before January 1, 2005.

(b) If a revocable trust is created or funded by more than one settlor:

(1) to the extent the trust consists of community property, the trust may be revoked by either spouse acting alone but may be amended only by joint action of both spouses;

(2) to the extent the trust consists of property other than community property, each settlor may revoke or amend the trust with regard to the portion of the trust property attributable to that settlor's contribution; and

(3) upon the revocation or amendment of the trust by fewer than all of the settlors, the trustee shall promptly notify the other settlors of the revocation or amendment.

(c) The settlor may revoke or amend a written revocable trust:

(1) by substantial compliance with a method provided in the terms of the trust; or

(2) if the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by:

(A) a later will or codicil that expressly refers to the trust or specifically devises property that would otherwise have passed according to the terms of the trust; or

(B) an instrument evidencing an intent to amend or revoke the trust signed by the settlor, or in the settlor's name by some other individual in the presence of and by the direction of the settlor. The instrument must have an indication of the date of the writing or signing and, in the absence of such indication of the date, be the only such writing or contain no inconsistency with any other like writing or permit determination of such date of writing or signing from the content of such writing, from extrinsic circumstances, or from any other evidence.

(d) Upon revocation of a revocable trust, the trustee shall deliver the trust property as the settlor directs.

(e) A settlor's powers with respect to revocation, amendment, or distribution of trust property may be exercised by an agent under a power of attorney only to the extent expressly authorized by the terms of the trust or the power.

(f) A conservator of the settlor or, if no conservator has been appointed, a guardian of the settlor may exercise a settlor's powers with respect to revocation, amendment, or distribution of trust property only with the approval of the court supervising the conservatorship or guardianship.

(g) A trustee who does not know that a trust has been revoked or amended is not liable to the settlor or settlor's successors in interest for distributions made and other actions taken in reliance on the terms of the trust.

(h) The revocation, amendment, and distribution of trust property of a trust pursuant to this section is subject to section 30-2333.

Source: Laws 2003, LB 130, § 54; Laws 2004, LB 999, § 26; Laws 2017, LB517, § 6.

30-3855 (UTC 603) Rights and duties.

(UTC 603) (a) To the extent a trust is revocable by a settlor, a trustee may follow a direction of the settlor that is contrary to the terms of the trust. To the extent a trust is revocable by a settlor in conjunction with a person other than a trustee or person holding an adverse interest, the trustee may follow a direction from the settlor and the other person holding the power to revoke even if the direction is contrary to the terms of the trust.

(b) While a trust is revocable, rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the settlor.

(c) While the trust is irrevocable and during the period the power may be exercised, the holder of a power of withdrawal has the rights of a settlor of a revocable trust under this section and the duties of the trustee are owed exclusively to the holder of the power to the extent of the property subject to the power.

(d) While the trust is irrevocable and during the period the interest of any beneficiary not having a present interest may be terminated by the exercise of a power of appointment or other power, the duties of the trustee are owed exclusively to the holder of the power to the extent of the property subject to the power.

Source: Laws 2003, LB 130, § 55; Laws 2004, LB 999, § 27; Laws 2005, LB 533, § 43; Laws 2013, LB38, § 2; Laws 2019, LB536, § 22.

PART 7

OFFICE OF TRUSTEE

30-3859 (UTC 703) Cotrustees.

(UTC 703) (a) Cotrustees who are unable to reach a unanimous decision may act by majority decision, except that any cotrustee may act independently as provided in section 30-901.

(b) If a vacancy occurs in a cotrusteeship, the remaining cotrustees may act for the trust.

(c) Subject to section 30-4312, a cotrustee must participate in the performance of a trustee's function unless the cotrustee is unavailable to perform the function because of absence, illness, disqualification under other law, or other temporary incapacity or the cotrustee has properly delegated the performance of the function to another trustee.

(d) If a cotrustee is unavailable to perform duties because of absence, illness, disqualification under other law, or other temporary incapacity, and prompt action is necessary to achieve the purposes of the trust or to avoid injury to the trust property, the remaining cotrustee or a majority of the remaining cotrustees may act for the trust.

(e) A trustee may not delegate to a cotrustee the performance of a function the settlor reasonably expected the trustees to perform jointly. Unless a delegation was irrevocable, a trustee may revoke a delegation previously made.

(f) Except as otherwise provided in subsection (g) of this section, a trustee who does not join in an action of another trustee is not liable for the action.

(g) Subject to section 30-4312, each trustee shall exercise reasonable care to:

(1) prevent a cotrustee from committing a serious breach of trust; and

(2) compel a cotrustee to redress a serious breach of trust.

(h) A dissenting trustee who joins in an action at the direction of the majority of the trustees and who notified any cotrustee of the dissent at or before the time of the action is not liable for the action unless the action is a serious breach of trust.

Source: Laws 2003, LB 130, § 59; Laws 2019, LB55, § 4; Laws 2019, LB536, § 23.

PART 8

DUTIES AND POWERS OF TRUSTEE

30-3873 Repealed. Laws 2019, LB536, § 25.

30-3880 (UTC 815) General powers of trustee.

(UTC 815) (a) A trustee, without authorization by the court, may exercise:

(1) powers conferred by the terms of the trust; and

(2) except as limited by the terms of the trust:

(A) all powers over the trust property which an unmarried competent owner has over individually owned property;

(B) any other powers appropriate to achieve the proper investment, management, and distribution of the trust property; and

(C) any other powers conferred by the Nebraska Uniform Trust Code.

(b) The exercise of a power is subject to the fiduciary duties prescribed by sections 30-3866 to 30-3882.

(c) The changes made to this section by Laws 2019, LB593, shall apply retroactively to August 30, 2015.

Source: Laws 2003, LB 130, § 80; Laws 2015, LB72, § 1; Laws 2017, LB268, § 4; Laws 2019, LB593, § 2.

30-3881 (UTC 816) Specific powers of trustee.

(UTC 816) (a) Without limiting the authority conferred by section 30-3880, a trustee may:

(1) collect trust property and accept or reject additions to the trust property from a settlor or any other person;

(2) acquire or sell property, for cash or on credit, at public or private sale;

(3) exchange, partition, or otherwise change the character of trust property;

(4) deposit trust money in an account in a regulated financial-service institution;

(5) borrow money, including from the trustee, with or without security, and mortgage or pledge trust property for a period within or extending beyond the duration of the trust;

(6) with respect to an interest in a proprietorship, partnership, limited liability company, business trust, corporation, or other form of business or enterprise, continue the business or other enterprise and take any action that may be taken by shareholders, members, or property owners, including merging, dissolving, or otherwise changing the form of business organization or contributing additional capital;

(7) with respect to stocks or other securities, exercise the rights of an absolute owner, including the right to:

(A) vote, or give proxies to vote, with or without power of substitution, or enter into or continue a voting trust agreement;

(B) hold a security in the name of a nominee or in other form without disclosure of the trust so that title may pass by delivery;

(C) pay calls, assessments, and other sums chargeable or accruing against the securities, and sell or exercise stock subscription or conversion rights; and

(D) deposit the securities with a depositary or other regulated financial-service institution;

(8) with respect to an interest in real property, construct, or make ordinary or extraordinary repairs to, alterations to, or improvements in, buildings or other structures, demolish improvements, raze existing or erect new party walls or

buildings, subdivide or develop land, dedicate land to public use or grant public or private easements, and make or vacate plats and adjust boundaries;

(9) enter into a lease for any purpose as lessor or lessee, including a lease or other arrangement for exploration and removal of natural resources, with or without the option to purchase or renew, for a period within or extending beyond the duration of the trust;

(10) grant an option involving a sale, lease, or other disposition of trust property or acquire an option for the acquisition of property, including an option exercisable beyond the duration of the trust, and exercise an option so acquired;

(11) insure the property of the trust against damage or loss and insure the trustee, the trustee's agents, and beneficiaries against liability arising from the administration of the trust;

(12) abandon or decline to administer property of no value or of insufficient value to justify its collection or continued administration;

(13) with respect to possible liability for violation of environmental law:

(A) inspect or investigate property the trustee holds or has been asked to hold, or property owned or operated by an organization in which the trustee holds or has been asked to hold an interest, for the purpose of determining the application of environmental law with respect to the property;

(B) take action to prevent, abate, or otherwise remedy any actual or potential violation of any environmental law affecting property held directly or indirectly by the trustee, whether taken before or after the assertion of a claim or the initiation of governmental enforcement;

(C) decline to accept property into trust or disclaim any power with respect to property that is or may be burdened with liability for violation of environmental law;

(D) compromise claims against the trust which may be asserted for an alleged violation of environmental law; and

(E) pay the expense of any inspection, review, abatement, or remedial action to comply with environmental law;

(14) pay or contest any claim, settle a claim by or against the trust, and release, in whole or in part, a claim belonging to the trust;

(15) pay taxes, assessments, compensation of the trustee and of employees and agents of the trust, and other expenses incurred in the administration of the trust;

(16) exercise elections with respect to federal, state, and local taxes;

(17) select a mode of payment under any employee benefit or retirement plan, annuity, or life insurance payable to the trustee, exercise rights thereunder, including exercise of the right to indemnification for expenses and against liabilities, and take appropriate action to collect the proceeds;

(18) make loans out of trust property, including loans to a beneficiary on terms and conditions the trustee considers to be fair and reasonable under the circumstances, and the trustee has a lien on future distributions for repayment of those loans;

(19) pledge trust property to guarantee loans made by others to the beneficiary;

(20) appoint a trustee to act in another jurisdiction with respect to trust property located in the other jurisdiction, confer upon the appointed trustee all of the powers and duties of the appointing trustee, require that the appointed trustee furnish security, and remove any trustee so appointed;

(21) pay an amount distributable to a beneficiary who is under a legal disability or who the trustee reasonably believes is incapacitated, by paying it directly to the beneficiary or applying it for the beneficiary's benefit, or by:

(A) paying it to the beneficiary's conservator or, if the beneficiary does not have a conservator, the beneficiary's guardian;

(B) paying it to the beneficiary's custodian under the Nebraska Uniform Transfers to Minors Act or custodial trustee under the Nebraska Uniform Custodial Trust Act, and, for that purpose, creating a custodianship or custodial trust;

(C) if the trustee does not know of a conservator, guardian, custodian, or custodial trustee, paying it to an adult relative or other person having legal or physical care or custody of the beneficiary, to be expended on the beneficiary's behalf; or

(D) managing it as a separate fund on the beneficiary's behalf, subject to the beneficiary's continuing right to withdraw the distribution;

(22) on distribution of trust property or the division or termination of a trust, make distributions in divided or undivided interests, allocate particular assets in proportionate or disproportionate shares, value the trust property for those purposes, and adjust for resulting differences in valuation;

(23) resolve a dispute concerning the interpretation of the trust or its administration by mediation, arbitration, or other procedure for alternative dispute resolution;

(24) prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to protect trust property and the trustee in the performance of the trustee's duties;

(25) sign and deliver contracts and other instruments that are useful to achieve or facilitate the exercise of the trustee's powers; and

(26) on termination of the trust, exercise the powers appropriate to wind up the administration of the trust and distribute the trust property to the persons entitled to it.

(b) Except as otherwise provided under the terms of the trust, a trustee, other than a trustee who is a related or subordinate party with respect to the settlor within the meaning of section 672(c) of the Internal Revenue Code as defined in section 49-801.01, may, from time to time, in the trustee's absolute discretion, pay directly to the taxing authorities or reimburse the settlor for any tax on trust income or principal that is payable by the settlor for the portion of the settlor's income tax liability attributable to the trust under sections 671 to 678 of the Internal Revenue Code as defined in section 49-801.01 or any similar tax law. A trustee shall not exercise or participate in the exercise of discretion pursuant to this subsection in a manner that (1) would cause the inclusion of the trust assets in the settlor's gross taxable estate for federal estate tax purposes at the time of exercise or (2) is inconsistent with the qualification of all or any portion of the trust for the federal gift or estate tax marital deduction, to the extent the trust is intended to qualify for such deduction.

(c) The changes made to this section by Laws 2019, LB593, shall apply retroactively to August 30, 2015.

Source: Laws 2003, LB 130, § 81; Laws 2015, LB72, § 2; Laws 2017, LB268, § 5; Laws 2019, LB593, § 3; Laws 2022, LB707, § 33. Operative date July 21, 2022.

Cross References

Nebraska Uniform Custodial Trust Act, see section 30-3501.
Nebraska Uniform Transfers to Minors Act, see section 43-2701.

30-3882 (UTC 817) Distribution upon termination.

(UTC 817) (a) Upon termination or partial termination of a trust, the trustee may send to the beneficiaries a proposal for distribution. The right of any beneficiary to object to the proposed distribution terminates if the beneficiary does not notify the trustee of an objection within thirty days after the proposal was sent but only if the proposal informed the beneficiary of the right to object and of the time allowed for objection.

(b) Upon the occurrence of an event terminating or partially terminating a trust, the trustee shall proceed expeditiously to distribute the trust property to the persons entitled to it, subject to the right of the trustee to retain a reasonable reserve for the payment of debts, expenses, and taxes.

(c) A release by a beneficiary of a trustee from liability for breach of trust is invalid to the extent:

(1) it was induced by improper conduct of the trustee; or

(2) the beneficiary, at the time of the release, did not know of the beneficiary's rights or of the material facts relating to the breach.

(d) The changes made to this section by Laws 2019, LB593, shall apply retroactively to August 30, 2015.

Source: Laws 2003, LB 130, § 82; Laws 2015, LB72, § 3; Laws 2017, LB268, § 6; Laws 2019, LB593, § 4.

ARTICLE 40

NEBRASKA UNIFORM POWER OF ATTORNEY ACT

PART 1

GENERAL PROVISIONS

PART 2

AUTHORITY

PART 1

GENERAL PROVISIONS

30-4020 Liability for refusal to accept acknowledged power of attorney.

(1) Except as otherwise provided in subsection (2) of this section:

(a) A person shall either accept an acknowledged power of attorney or request a certification, a translation, or an opinion of counsel under subsection

(4) of section 30-4019 no later than seven business days after presentation of the power of attorney for acceptance;

(b) If a person requests a certification, a translation, or an opinion of counsel under subsection (4) of section 30-4019, the person shall accept the power of attorney no later than five business days after receipt of the certification, translation, or opinion of counsel; and

(c) A person may not require an additional or different form of power of attorney for authority granted in the power of attorney presented, except as provided in section 30-4031.

(2) A person is not required to accept an acknowledged power of attorney if:

(a) The person is not otherwise required to engage in a transaction with the principal in the same circumstances;

(b) Engaging in a transaction with the agent or the principal in the same circumstances would be inconsistent with state or federal law;

(c) The person has actual knowledge of the termination of the agent's authority or of the power of attorney before exercise of the power;

(d) A request for a certification, a translation, or an opinion of counsel under subsection (4) of section 30-4019 is refused;

(e) The person in good faith believes that the power is not valid or that the agent does not have the authority to perform the act requested, whether or not a certification, a translation, or an opinion of counsel under subsection (4) of section 30-4019 has been requested or provided;

(f) The person makes, or has actual knowledge that another person has made, a report to the local adult protective services office stating a good faith belief that the principal may be subject to physical or financial abuse, neglect, exploitation, or abandonment by the agent or a person acting for or with the agent;

(g) The person brought, or has actual knowledge that another person has brought, a judicial proceeding for construction of a power of attorney or review of the agent's conduct; or

(h) The power of attorney becomes effective upon the occurrence of an event or contingency, and neither a certification nor evidence of the occurrence of the event or contingency is presented to the person being asked to accept the power of attorney.

(3) A person may not refuse to accept an acknowledged power of attorney if any of the following applies:

(a) The person's reason for refusal is based exclusively upon the date the power of attorney was executed; or

(b) The person's refusal is based exclusively on a mandate that an additional or different power of attorney form must be used.

(4)(a) A person may bring an action or proceeding to mandate the acceptance of an acknowledged power of attorney.

(b) In any action or proceeding to mandate the acceptance of an acknowledged power of attorney or confirm the validity of an acknowledged power of attorney, a person found liable for refusing to accept such power of attorney is subject to:

(i) Liability to the principal and to the principal's heirs, assigns, and personal representative of the estate of the principal in the same manner as the person would be liable had the person refused to accept the authority of the principal to act on the principal's own behalf;

(ii) A court order mandating acceptance of the power of attorney; and

(iii) Liability for reasonable attorney's fees and costs incurred in such action or proceeding.

(c) In any action or proceeding in which a person's refusal to accept an acknowledged power of attorney in violation of this section prevents an agent from completing a transaction requested by the agent with respect to a security account as defined in section 30-2734, owned by the principal, such person, in addition to being subject to the provisions of subdivision (4)(b) of this section, is subject to:

(i) Economic damages of the principal proximately caused by the person's refusal to accept the acknowledged power of attorney and failure to comply with the instructions of the agent designated in such power of attorney with respect to such security account; and

(ii) Reasonable attorney's fees and costs incurred to seek damages resulting from such person's refusal to accept the acknowledged power of attorney and failure to comply with the instructions of such agent designated in the power of attorney with respect to the security account.

Source: Laws 2012, LB1113, § 20; Laws 2019, LB145, § 1; Laws 2019, LB146, § 1.

PART 2

AUTHORITY

30-4031 Banks and other financial institutions.

Unless the power of attorney otherwise provides, language in a power of attorney granting authority with respect to banks and other financial institutions authorizes the agent to:

(1) Continue, modify, and terminate an account or other banking arrangement made by or on behalf of the principal;

(2) Establish, modify, and terminate an account or other banking arrangement with a bank, trust company, savings and loan association, credit union, thrift company, brokerage firm, or other financial institution selected by the agent;

(3) Contract for services available from a financial institution, including renting a safe deposit box or space in a vault;

(4) Withdraw, by check, order, electronic funds transfer, or otherwise, money or property of the principal deposited with or left in the custody of a financial institution;

(5) Receive statements of account, vouchers, notices, and similar documents from a financial institution and act with respect to them;

(6) Enter a safe deposit box or vault and withdraw or add to the contents;

(7) Borrow money and pledge as security personal property of the principal necessary to borrow money or pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;

(8) Make, assign, draw, endorse, discount, guarantee, and negotiate promissory notes, checks, drafts, and other negotiable or nonnegotiable paper of the principal or payable to the principal or the principal's order, transfer money, receive the cash or other proceeds of those transactions, and accept a draft drawn by a person upon the principal and pay it when due;

(9) Receive for the principal and act upon a sight draft, warehouse receipt, or other document of title whether tangible or electronic, or other negotiable or nonnegotiable instrument;

(10) Apply for, receive, and use letters of credit, credit and debit cards, electronic transaction authorizations, and traveler's checks from a financial institution and give an indemnity or other agreement in connection with letters of credit;

(11) Consent to an extension of the time of payment with respect to commercial paper or a financial transaction with a financial institution; and

(12) Execute such powers of attorney as may be required and necessary for interacting with a bank, trust company, savings and loan association, credit union, thrift company, brokerage firm, or other financial institution so long as the terms and conditions in the financial institution's power of attorney are similar to those in the power of attorney granting authority, including the identification of the acting agent and the agent's successors. The execution of a financial institution's power of attorney document does not revoke the power of attorney document granting authority.

Source: Laws 2012, LB1113, § 31; Laws 2019, LB145, § 2.

ARTICLE 41

PUBLIC GUARDIANSHIP ACT

Section
30-4108. Advisory Council on Public Guardianship; duties; meetings; expenses.

30-4108 Advisory Council on Public Guardianship; duties; meetings; expenses.

(1) The council shall advise the Public Guardian on the administration of public guardianship and public conservatorship.

(2) The council shall meet at least four times per year and at other times deemed necessary to perform its functions upon the call of the chairperson. Members of the council shall be reimbursed for expenses as provided in sections 81-1174 to 81-1177.

Source: Laws 2014, LB920, § 8; Laws 2020, LB381, § 25.

ARTICLE 43

NEBRASKA UNIFORM DIRECTED TRUST ACT

Section
30-4301. (UDTA 1) Act, how cited.
30-4302. (UDTA 2) Definitions.
30-4303. (UDTA 3) Application; principal place of administration.
30-4304. (UDTA 4) Common law and principles of equity.
30-4305. (UDTA 5) Exclusions.
30-4306. (UDTA 6) Powers of trust director.
30-4307. (UDTA 7) Limitation on trust director.
30-4308. (UDTA 8) Duty and liability of trust director.

Section

30-4301 (UDTA 1) Act, how cited.

(UDTA 1) Sections 30-4301 to 30-4319 shall be known and may be cited as the Nebraska Uniform Directed Trust Act.

Source: Laws 2019, LB536, § 1.

30-4302 (UDTA 2) Definitions.

(UDTA 2) In the Nebraska Uniform Directed Trust Act:

(1) Breach of trust includes a violation by a trust director or trustee of a duty imposed on that director or trustee by the terms of the trust, the Nebraska Uniform Directed Trust Act, or law of this state other than the Nebraska Uniform Directed Trust Act pertaining to trusts.

(2) Directed trust means a trust for which the terms of the trust grant a power of direction.

(3) Directed trustee means a trustee that is subject to a trust director's power of direction.

(4) Person means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(5) Power of direction means a power over a trust granted to a person by the terms of the trust to the extent the power is exercisable while the person is not serving as a trustee. The term includes a power over the investment, management, or distribution of trust property or other matters of trust administration, including, but not limited to, amendment, reform, or termination of the trust. The term excludes the powers described in subsection (b) of section 30-4305.

(6) Settlor has the same meaning as in section 30-3803.

(7) State means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any other territory or possession subject to the jurisdiction of the United States.

(8) Terms of a trust means:

(A) except as otherwise provided in subdivision (8)(B) of this section, the manifestation of the settlor's intent regarding a trust's provisions as:

(i) expressed in the trust instrument; or

(ii) established by other evidence that would be admissible in a judicial proceeding; or

(B) the trust's provisions as established, determined, or amended by:

(i) a trustee or trust director in accordance with applicable law;

(ii) court order; or

(iii) a nonjudicial settlement agreement under section 30-3811.

(9) Trust director means a person that is granted a power of direction by the terms of a trust to the extent the power is exercisable while the person is not serving as a trustee. The person is a trust director whether or not the terms of the trust refer to the person as a trust director and whether or not the person is a beneficiary or settlor of the trust.

(10) Trustee has the same meaning as in section 30-3803.

Source: Laws 2019, LB536, § 2.

30-4303 (UDTA 3) Application; principal place of administration.

(UDTA 3) The Nebraska Uniform Directed Trust Act applies to a trust, whenever created, that has its principal place of administration in this state, subject to the following rules:

(1) If the trust was created before September 7, 2019, the Nebraska Uniform Directed Trust Act applies only to a decision or action occurring on or after September 7, 2019.

(2) If the principal place of administration of the trust is changed to this state on or after September 7, 2019, the Nebraska Uniform Directed Trust Act applies only to a decision or action occurring on or after the date of the change.

Source: Laws 2019, LB536, § 3.

30-4304 (UDTA 4) Common law and principles of equity.

(UDTA 4) The common law and principles of equity supplement the Nebraska Uniform Directed Trust Act, except to the extent modified by the Nebraska Uniform Directed Trust Act or law of this state other than the Nebraska Uniform Directed Trust Act.

Source: Laws 2019, LB536, § 4.

30-4305 (UDTA 5) Exclusions.

(UDTA 5) (a) In this section, power of appointment means a power that enables a person acting in a nonfiduciary capacity to designate a recipient of an ownership interest in or another power of appointment over trust property.

(b) The Nebraska Uniform Directed Trust Act does not apply to a:

(1) power of appointment;

(2) power to appoint or remove a trustee or trust director;

(3) power of a settlor over a trust to the extent the settlor has a power to revoke the trust;

(4) power of a beneficiary over a trust to the extent the exercise or nonexercise of the power affects the beneficial interest of:

(A) the beneficiary; or

(B) the beneficial interest of another beneficiary represented by the beneficiary under sections 30-3822 to 30-3826 with respect to the exercise or nonexercise of the power;

(5) power over a trust if:

(A) the terms of the trust provide that the power is held in a nonfiduciary capacity; and

(B) the power must be held in a nonfiduciary capacity to achieve the settlor's tax objectives under the Internal Revenue Code of 1986 as defined in section 49-801.01; or

(6) power over a trust if:

(A) the terms of the trust provide that the power is held in a nonfiduciary capacity; and

(B) the power must be held in a nonfiduciary capacity to correct a mistake of the scrivener in order to conform the terms of the trust with the intention of a settlor. The correction must not reform the trust in any material respect.

(c) Unless the terms of a trust provide otherwise, a power granted to a person to designate a recipient of an ownership interest in or power of appointment over trust property which is exercisable while the person is not serving as a trustee is a power of appointment and not a power of direction.

Source: Laws 2019, LB536, § 5; Laws 2021, LB248, § 1.

30-4306 (UDTA 6) Powers of trust director.

(UDTA 6) (a) Subject to section 30-4307, the terms of a trust may grant a power of direction to a trust director.

(b) Unless the terms of a trust provide otherwise:

(1) a trust director may exercise any further power appropriate to the exercise or nonexercise of a power of direction granted to the trust director under subsection (a) of this section; and

(2) trust directors with joint powers must act by majority decision.

(c) A power of direction includes only those powers granted by the terms of the trust and further powers pursuant to subdivision (b)(1) of this section must be appropriate to the exercise or nonexercise of such power of direction granted by the terms of the trust.

Source: Laws 2019, LB536, § 6.

30-4307 (UDTA 7) Limitation on trust director.

(UDTA 7) A trust director is subject to the same rules as a trustee in a like position and under similar circumstances in the exercise or nonexercise of a power of direction or further power under subdivision (b)(1) of section 30-4306 regarding:

(1) a payback provision in the terms of a trust necessary to comply with the medicaid reimbursement requirements of section 68-919; and

(2) a charitable interest in the trust, including notice regarding the interest to the Attorney General.

Source: Laws 2019, LB536, § 7.

30-4308 (UDTA 8) Duty and liability of trust director.

(UDTA 8) (a) Subject to subsection (b) of this section, with respect to a power of direction or further power under subdivision (b)(1) of section 30-4306:

(1) a trust director has the same fiduciary duty and liability in the exercise or nonexercise of the power:

(A) if the power is held individually, as a sole trustee in a like position and under similar circumstances; or

(B) if the power is held jointly with a trustee or another trust director, as a cotrustee in a like position and under similar circumstances; and

(2) the terms of the trust may vary the director's duty or liability to the same extent the terms of the trust could vary the duty or liability of a trustee in a like position and under similar circumstances.

(b) Unless the terms of a trust provide otherwise, if a trust director is licensed, certified, or otherwise authorized or permitted by law other than the Nebraska Uniform Directed Trust Act to provide health care in the ordinary course of the director's business or practice of a profession, to the extent the director acts in that capacity, the director has no duty or liability under the Nebraska Uniform Directed Trust Act.

(c) The terms of a trust may impose a duty or liability on a trust director in addition to the duties and liabilities under this section.

Source: Laws 2019, LB536, § 8.

30-4309 (UDTA 9) Duty and liability of directed trustee.

(UDTA 9) (a) Subject to subsections (b) and (c) of this section, a directed trustee shall take reasonable action to comply with a trust director's exercise or nonexercise of a power of direction or further power under subdivision (b)(1) of section 30-4306, and the trustee is not liable for the action.

(b) A directed trustee must not comply with a trust director's exercise or nonexercise of a power of direction or further power under subdivision (b)(1) of section 30-4306 to the extent that by complying the trustee would engage in willful misconduct.

(c) A directed trustee must determine that the trust director's exercise of power of direction under subsection (a) of section 30-4306 or appropriation of further power under subsection (b) of section 30-4306 is granted by the terms of the trust pursuant to subsection (c) of section 30-4306.

(d) An exercise of a power of direction under which a trust director may release a trustee or another trust director from liability for breach of trust is not effective if:

(1) the breach involved the trustee's or other director's willful misconduct;

(2) the release was induced by improper conduct of the trustee or other director in procuring the release; or

(3) at the time of the release, the director did not know the material facts relating to the breach.

(e) A directed trustee that has reasonable doubt about its duty under this section may petition the court for instructions.

(f) The terms of a trust may impose a duty or liability on a directed trustee in addition to the duties and liabilities under this section.

Source: Laws 2019, LB536, § 9.

30-4310 (UDTA 10) Duty to provide information to trust director or trustee.

(UDTA 10) (a) Subject to section 30-4311, a trustee shall provide information to a trust director to the extent the information is reasonably related both to:

(1) the powers or duties of the trustee; and

(2) the powers or duties of the director.

(b) Subject to section 30-4311, a trust director shall provide information to a trustee or another trust director to the extent the information is reasonably related both to:

(1) the powers or duties of the director; and

(2) the powers or duties of the trustee or other director.

(c) A trustee that acts in reliance on information provided by a trust director is not liable for a breach of trust to the extent the breach resulted from the reliance, unless by so acting the trustee engages in willful misconduct.

(d) A trust director that acts in reliance on information provided by a trustee or another trust director is not liable for a breach of trust to the extent the breach resulted from the reliance, unless by so acting the trust director engages in willful misconduct.

Source: Laws 2019, LB536, § 10.

30-4311 (UDTA 11) No duty to monitor, inform, or advise.

(UDTA 11) (a) Unless the terms of a trust provide otherwise:

(1) a trustee does not have a duty to:

(A) monitor a trust director; or

(B) inform or give advice to a settlor, beneficiary, trustee, or trust director concerning an instance in which the trustee might have acted differently than the director; and

(2) by taking an action described in subdivision (a)(1) of this section, a trustee does not assume the duty excluded by such subdivision.

(b) Unless the terms of a trust provide otherwise:

(1) a trust director does not have a duty to:

(A) monitor a trustee or another trust director; or

(B) inform or give advice to a settlor, beneficiary, trustee, or another trust director concerning an instance in which the director might have acted differently than a trustee or another trust director; and

(2) by taking an action described in subdivision (b)(1) of this section, a trust director does not assume the duty excluded by such subdivision.

Source: Laws 2019, LB536, § 11.

30-4312 (UDTA 12) Application to cotrustee.

(UDTA 12) The terms of a trust may relieve a cotrustee from duty and liability with respect to another cotrustee's exercise or nonexercise of a power of the other cotrustee to the same extent that in a directed trust a directed trustee is relieved from duty and liability with respect to a trust director's power of direction under sections 30-4309 to 30-4311.

Source: Laws 2019, LB536, § 12.

30-4313 (UDTA 13) Limitation of action against trust director.

(UDTA 13) (a) An action against a trust director for breach of trust must be commenced within the same limitation period as under section 30-3894 for an

action for breach of trust against a trustee in a like position and under similar circumstances.

(b) A report or accounting has the same effect on the limitation period for an action against a trust director for breach of trust that the report or accounting would have under section 30-3894 in an action for breach of trust against a trustee in a like position and under similar circumstances.

Source: Laws 2019, LB536, § 13.

30-4314 (UDTA 14) Defenses in action against trust director.

(UDTA 14) In an action against a trust director for breach of trust, the director may assert the same defenses a trustee in a like position and under similar circumstances could assert in an action for breach of trust against the trustee.

Source: Laws 2019, LB536, § 14.

30-4315 (UDTA 15) Jurisdiction over trust director.

(UDTA 15) (a) By accepting appointment as a trust director of a trust subject to the Nebraska Uniform Directed Trust Act, the director submits to personal jurisdiction of the courts of this state regarding any matter related to a power or duty of the director.

(b) This section does not preclude other methods of obtaining jurisdiction over a trust director.

Source: Laws 2019, LB536, § 15.

30-4316 (UDTA 16) Office of trust director.

(UDTA 16) Unless the terms of a trust provide otherwise, the rules applicable to a trustee apply to a trust director regarding the following matters:

(1) acceptance under section 30-3857;

(2) giving of bond to secure performance under section 30-3858;

(3) reasonable compensation under section 30-3864;

(4) resignation under section 30-3861;

(5) removal under section 30-3862; and

(6) vacancy and appointment of successor under section 30-3860.

Source: Laws 2019, LB536, § 16.

30-4317 (UDTA 17) Uniformity of application and construction.

(UDTA 17) In applying and construing the Nebraska Uniform Directed Trust Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Source: Laws 2019, LB536, § 17.

30-4318 (UDTA 18) Electronic records and signatures.

(UDTA 18) The provisions of the Nebraska Uniform Directed Trust Act governing the legal effect, validity, or enforceability of electronic records or electronic signatures, and of contracts formed or performed with the use of such records or signatures, conform to the requirements of section 102 of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7002,

as such section existed on January 1 immediately preceding January 1, 2005, and supersede, modify, and limit the requirements of the Electronic Signatures in Global and National Commerce Act.

Source: Laws 2019, LB536, § 18.

30-4319 Date; applicability.

(a) Except as otherwise provided in the Nebraska Uniform Directed Trust Act, on January 1, 2021:

(1) the Nebraska Uniform Directed Trust Act applies to all trusts created before, on, or after January 1, 2021;

(2) the Nebraska Uniform Directed Trust Act applies to all judicial proceedings concerning trust directors, trustees, and cotrustees commenced on or after January 1, 2021;

(3) the Nebraska Uniform Directed Trust Act applies to judicial proceedings concerning trusts commenced before January 1, 2021, unless the court finds that application of a particular provision of the Nebraska Uniform Directed Trust Act would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the particular provision of the Nebraska Uniform Directed Trust Act does not apply and the superseded law applies; and

(4) an act done before January 1, 2021, is not affected by the Nebraska Uniform Directed Trust Act.

(b) If a right is acquired, extinguished, or barred upon the expiration of a prescribed period that has commenced to run under any other statute before January 1, 2021, that statute continues to apply to the right even if it has been repealed or superseded.

Source: Laws 2019, LB536, § 19.

ARTICLE 44

ADVANCE MENTAL HEALTH CARE DIRECTIVES ACT

Section

30-4401 Act, how cited.

Sections 30-4401 to 30-4415 shall be known and may be cited as the Advance Mental Health Care Directives Act.

Source: Laws 2020, LB247, § 1.

30-4402 Legislative findings; act; purposes.

(1) The Legislature finds that:

(a) Issues implicated in advance planning for end-of-life care are distinct from issues implicated in advance planning for mental health care;

(b) Mental illness can be episodic and include periods of incapacity which obstruct an individual's ability to give informed consent and impede the individual's access to mental health care;

(c) An acute mental health episode can induce an individual to refuse treatment when the individual would otherwise consent to treatment if the individual's judgment were unimpaired;

(d) An individual may lose capacity without meeting the criteria for civil commitment in Nebraska; and

(e) An individual with mental illness has the same right to plan in advance for treatment as an individual planning for end-of-life care.

(2) The purposes of the Advance Mental Health Care Directives Act are to:

(a) Facilitate advance planning to help (i) prevent unnecessary involuntary commitment and incarceration, (ii) improve patient safety and health, (iii) improve mental health care, and (iv) enable an individual to exercise control over such individual's mental health treatment; and

(b) Protect patient safety, autonomy, and health by allowing an individual to create an advance mental health care directive to instruct and direct the individual's mental health care.

Source: Laws 2020, LB247, § 2.

30-4403 Advance mental health care directive; use; legislative declarations; right of individual.

(1) The Legislature hereby declares that an advance mental health care directive can only accomplish the purposes stated in section 30-4402 if an individual may use an advance mental health care directive to:

(a) Set forth instructions for any foreseeable mental health care when the individual loses capacity to make decisions regarding such mental health care, including, but not limited to, consenting to inpatient mental health treatment, psychotropic medication, or electroconvulsive therapy;

(b) Dictate whether the directive is revocable during periods of incapacity and provide consent to treatment despite illness-induced refusals;

(c) Choose the standard by which the directive becomes active; and

(d) In compliance with the federal Health Insurance Portability and Accountability Act of 1996, include in the directive a release authorization form stating the names of persons to whom information regarding the mental health treatment of the principal may be disclosed during the time the directive is activated, including, but not limited to, health care professionals, mental health

care professionals, family, friends, and other interested persons with whom treatment providers are allowed to communicate if the principal loses capacity.

(2) An individual with capacity has the right to control decisions relating to the individual's mental health care unless subject to a court order involving mental health care under any other provision of law.

Source: Laws 2020, LB247, § 3.

30-4404 Terms, defined.

For purposes of the Advance Mental Health Care Directives Act:

(1) Activation means the point at which an advance mental health care directive is used as the basis for decisionmaking as provided in section 30-4409;

(2) Attorney in fact means an individual designated under a power of attorney for health care to make mental health care decisions for a principal;

(3)(a) Capacity means having both (i) the ability to understand and appreciate the nature and consequences of mental health care decisions, including the benefits and risks of each, and alternatives to any proposed mental health treatment, and to reach an informed decision, and (ii) the ability to communicate in any manner such mental health care decision.

(b) An individual's capacity is evaluated in relation to the demands of a particular mental health care decision;

(4) Principal means an individual who is nineteen years of age or older with capacity who provides instructions, preferences, or both instructions and preferences for any foreseeable mental health care in an advance mental health care directive; and

(5) Relative means the spouse, child, parent, sibling, grandchild, or grandparent, by blood, marriage, or adoption, of an individual.

Source: Laws 2020, LB247, § 4.

30-4405 Advance mental health care directive; requirements; irrevocable, when; witnesses; release authorization form.

(1) An advance mental health care directive shall:

(a) Be in writing;

(b) Be dated and signed by the principal or, subject to subsection (5) of this section, another individual acting at the direction of the principal if the principal is physically unable to sign. The attorney in fact of the principal may not sign the directive for the principal;

(c) State whether the principal wishes to be able to revoke the directive at any time or whether the directive remains irrevocable during periods of incapacity. Failure to clarify whether the directive is revocable does not render it unenforceable. If the directive fails to state whether it is revocable or irrevocable, the principal may revoke it at any time;

(d) State that the principal affirms that the principal is aware of the nature of the directive and signs the directive freely and voluntarily; and

(e)(i) Be signed in the presence of a notary public who is not the attorney in fact of the principal; or

(ii) Be witnessed in writing by at least two disinterested adults as provided in subsections (4) and (5) of this section.

(2) An advanced mental health care directive shall be valid upon execution.

(3) To be irrevocable during periods of incapacity, the directive shall state that the directive remains irrevocable during periods of incapacity.

(4) A witness shall not be:

(a) The principal's attending physician or a member of the principal's mental health treatment team at the time of executing the directive;

(b) The principal's spouse, parent, child, grandchild, sibling, presumptive heir, or known devisee at the time of the witnessing;

(c) In a romantic or dating relationship with the principal;

(d) The attorney in fact of the principal or a person designated to make mental health care decisions for the principal; or

(e) The owner, operator, employee, or relative of an owner or operator of a treatment facility at which the principal is receiving care.

(5) Each witness shall attest that:

(a) The witness was present when the principal signed the directive or, if the principal was physically unable to sign the directive, when another individual signed the directive as provided in subdivision (1)(b) of this section;

(b) The principal did not appear incapacitated or under undue influence or duress when the directive was signed; and

(c) The principal presented identification or the witness personally knew the principal when the directive was signed.

(6) A principal may, in compliance with the federal Health Insurance Portability and Accountability Act of 1996, include in the directive a release authorization form stating the name of persons to whom information regarding the mental health treatment of the principal may be disclosed during the time the directive is activated, including, but not limited to, health care professionals, mental health care professionals, family, friends, and other interested persons with whom treatment providers are allowed to communicate if the principal loses capacity.

Source: Laws 2020, LB247, § 5.

30-4406 Instructions and preferences; binding; matters addressed; limitation.

(1) Except as provided in subsection (2) of this section, in an advance mental health care directive, a principal may issue instructions, preferences, or both instructions and preferences concerning the principal's mental health treatment. If the principal has designated an attorney in fact under a power of attorney for health care, the advance mental health care directive shall be binding on the principal's attorney in fact. The instructions and preferences may address matters including, but not limited to:

(a) Consent to or refusal of specific types of mental health treatment, such as inpatient mental health treatment, psychotropic medication, or electroconvulsive therapy. Consent to electroconvulsive therapy must be express;

(b) Treatment facilities and care providers;

(c) Alternatives to hospitalization if twenty-four-hour care is deemed necessary;

(d) Physicians who will provide treatment;

(e) Medications for psychiatric treatment;

(f) Emergency interventions, including seclusion, restraint, or medication;

(g) The provision of trauma-informed care and treatment;

(h) In compliance with the federal Health Insurance Portability and Accountability Act of 1996, a release authorization form stating the name of persons to whom information regarding the mental health treatment of the principal may be disclosed during the time the directive is activated, including persons who should be notified immediately of admission to an inpatient facility;

(i) Individuals who should be prohibited from visitation; and

(j) Other instructions or preferences regarding mental health care.

(2) A principal may not consent to or authorize an attorney in fact to consent to psychosurgery in a directive. If such consent or authorization is expressed in the directive, this does not revoke the entire directive, but such a provision is unenforceable.

Source: Laws 2020, LB247, § 6.

30-4407 Expiration; revocation.

(1) An advance mental health care directive, including an irrevocable advance mental health care directive, shall remain in effect until it expires according to its terms or until it is revoked by the principal, whichever is earlier.

(2) A principal may revoke the directive even if the principal is incapacitated unless the principal has made the directive irrevocable during periods of incapacity pursuant to subsection (3) of section 30-4405.

(3) A principal with capacity or a principal without capacity who did not make the directive irrevocable during periods of incapacity may revoke the directive by:

(a) A written statement revoking the directive; or

(b) A subsequent directive that revokes the original directive. If the subsequent directive does not revoke the original directive in its entirety, only inconsistent provisions in the original directive are revoked.

(4) When a principal with capacity consents to treatment that is different than the treatment requested in the directive or refuses treatment that the principal requested in the directive, this consent or refusal does not revoke the entire directive but is a waiver of the inconsistent provision.

Source: Laws 2020, LB247, § 7.

30-4408 Self-binding arrangement for mental health care; advance consent to inpatient treatment or administration of psychotropic medication; requirements.

(1) A principal has a right to form a self-binding arrangement for mental health care in an advance mental health care directive. A self-binding arrangement allows the principal to obtain mental health treatment in the event that an acute mental health episode renders the principal incapacitated and induces the principal to refuse treatment.

(2) To provide advance consent to inpatient treatment despite the principal's illness-induced refusal, a principal shall, in such directive:

(a) Make the directive irrevocable pursuant to subsection (3) of section 30-4405; and

(b) Consent to admission to an inpatient treatment facility.

(3) To provide advance consent to administration of psychotropic medication despite the principal's illness-induced refusal of medication, a principal shall, in such directive:

(a) Make the directive irrevocable pursuant to subsection (3) of section 30-4405; and

(b) Consent to administration of psychotropic medication.

Source: Laws 2020, LB247, § 8.

30-4409 Activation.

(1) Unless a principal designates otherwise in the advance mental health care directive, a directive becomes active when the principal loses capacity. Activation is the point at which the directive shall be used as the basis for decision-making and shall dictate mental health treatment of the principal.

(2) The principal may designate in the directive an activation standard other than incapacity by describing the circumstances under which the directive becomes active.

Source: Laws 2020, LB247, § 9.

30-4410 Attorney in fact; authority.

(1) Except as otherwise provided in subsection (2) of this section, a specific grant of authority to an attorney in fact to consent to the principal's inpatient mental health treatment or psychotropic medication is not required to convey authority to the attorney in fact to consent to such treatments. An attorney in fact may consent to such treatments for the principal if the principal's written grant of authority in the principal's advance mental health care directive is sufficiently broad to encompass these decisions.

(2) When an incapacitated principal refuses inpatient mental health treatment or psychotropic medication, the principal's attorney in fact only has the authority to consent to such treatments for the principal if the principal's directive is irrevocable and expressly authorizes the attorney in fact to consent to the applicable treatment. An attorney in fact shall only have the authority to consent to electroconvulsive therapy for the principal if the principal's directive is irrevocable and expressly authorizes the attorney in fact to consent to electroconvulsive therapy.

(3) An attorney in fact's decisions for the principal must be in good faith and consistent with the principal's instructions expressed in the principal's directive. If the directive fails to address an issue, the attorney in fact shall make decisions in accordance with the principal's instructions or preferences otherwise known to the attorney in fact. If the attorney in fact does not know the principal's instructions or preferences, the attorney in fact shall make decisions in the best interests of the principal.

(4) If the principal grants the attorney in fact authority to make decisions for the principal in circumstances in which the principal still has capacity, the

principal's decisions when the principal has capacity shall nonetheless override the attorney in fact's decisions.

Source: Laws 2020, LB247, § 10.

30-4411 Principal who has capacity; contemporaneous preferences; effect; conflicting documents; which controls.

(1) Despite activation, an advance mental health care directive, including an irrevocable directive, shall not prevail over contemporaneous preferences expressed by a principal who has capacity.

(2) If an individual has a power of attorney for health care and an advance mental health care directive and there is any conflict between the two documents, the advance mental health care directive controls with regard to any mental health care instructions or preferences.

Source: Laws 2020, LB247, § 11.

30-4412 Inpatient treatment facility; principal refuses admission; facility; duties.

(1) If the principal forms a self-binding arrangement for treatment in an advance mental health care directive but then refuses admission to an inpatient treatment facility despite the directive's instructions to admit, the inpatient treatment facility shall respond as follows:

(a) The facility shall, as soon as practicable, obtain the informed consent of the principal's attorney in fact, if the principal has an attorney in fact;

(b) Two licensed physicians shall, within twenty-four hours after the principal's arrival at the facility, evaluate the principal to determine whether the principal has capacity and shall document in the principal's medical record a summary of findings, evaluations, and recommendations; and

(c) If the evaluating physicians determine the principal lacks capacity, the principal shall be admitted into the inpatient treatment facility pursuant to the principal's directive.

(2) After twenty-one days following the date of admission, if the principal has not regained capacity or has regained capacity but refuses to consent to remain for additional treatment, the facility shall dismiss the principal from the facility's care and the principal shall be released during daylight hours or to the care of an individual available only during nondaylight hours. This subsection does not apply if the principal is detained pursuant to involuntary commitment standards.

(3) A principal may specify in the advance mental health care directive a shorter amount of time than twenty-one days.

Source: Laws 2020, LB247, § 12.

30-4413 Psychotropic medication; administration after refusal; conditions.

If a principal with an irrevocable advance mental health care directive consenting to inpatient treatment refuses psychotropic medication through words or actions, psychotropic medication may only be administered by or under the immediate direction of a licensed psychiatrist, and only if:

(1) The principal expressly consented to psychotropic medication in the principal's irrevocable directive;

(2) The principal's attorney in fact, if the principal has an attorney in fact, consents to psychotropic medication; and

(3) Two of the following health care professionals recommend, in writing, treatment with the specific psychotropic medication: A licensed psychiatrist, physician, physician assistant, or advanced practice registered nurse or any other health care professional licensed to diagnose illnesses and prescribe drugs for mental health care.

Source: Laws 2020, LB247, § 13.

30-4414 Health care professional; immunity.

(1) A health care professional acting or declining to act, in accord with reasonable medical standards, in good faith reliance upon the principal's advance mental health care directive, and, if the principal has an attorney in fact, in reliance upon the decision made by a person whom the health care professional in good faith believes is the attorney in fact acting pursuant to the advance mental health care directive, shall not be subject to criminal prosecution, civil liability, or discipline for unprofessional conduct for so acting or declining to act.

(2) In the absence of knowledge of the revocation of an advance mental health care directive, a health care professional who acts or declines to act based upon the advance mental health care directive and in accord with reasonable medical standards shall not be subject to criminal prosecution, civil liability, or discipline for unprofessional conduct for so acting or declining to act.

(3) Nothing in the Advance Mental Health Care Directives Act shall limit the liability of an attorney in fact or a health care professional for a negligent act or omission.

Source: Laws 2020, LB247, § 14.

30-4415 Form; department powers and duties.

(1) An advance mental health care directive shall be in a form that complies with the Advance Mental Health Care Directives Act and may be in the form provided in this subsection.

ADVANCE MENTAL HEALTH CARE DIRECTIVE

I . . . . . , being an adult nineteen years of age or older and of sound mind, freely and voluntarily make this directive for mental health care to be followed if it is determined that my ability to receive and evaluate information effectively or communicate decisions is impaired to such an extent that I lack the capacity to refuse or consent to mental health care. ''Mental health care'' includes, but is not limited to, treatment of mental illness with psychotropic medication, admission to and retention in a treatment facility for a period up to 21 days, or electroconvulsive therapy.

I understand that I may become incapable of giving or withholding informed consent for mental health care due to the symptoms of a diagnosed mental disorder. These symptoms may include, but not be limited to:

. . . . . .

PSYCHOTROPIC MEDICATIONS

If I become incapable of giving or withholding informed consent for mental health care, my wishes regarding psychotropic medications, including classes of medications if appropriate, are as follows (check one or both of the following, if applicable):

[ ] I consent to the administration of the following medications:

. . . . . .

[ ] I do not consent to the administration of the following medications:

. . . . . .

Conditions or limitations, if any:

. . . . . .

ADMISSION TO AND RETENTION IN FACILITY

If I become incapable of giving or withholding informed consent for mental health care, my wishes regarding admission to and retention in a health care facility for mental health care are as follows (check one of the following, if applicable):

[ ] I consent to being admitted to a treatment facility for mental health care.

[ ] I do not consent to being admitted to a treatment facility for mental health care.

This directive cannot, by law, provide consent to retain me in a treatment facility for more than 21 days.

Conditions or limitations, if any:

. . . . . .

ELECTROCONVULSIVE THERAPY

If I become incapable of giving or withholding informed consent for mental health care, my wishes regarding electroconvulsive therapy are as follows (check one of the following, if applicable):

[ ] I consent to the administration of electroconvulsive therapy.

[ ] I do not consent to the administration of electroconvulsive therapy.

Conditions or limitations, if any:

. . . . . .

DESIGNATION OF IRREVOCABILITY DURING INCAPACITY

If I become incapable of giving or withholding informed consent for mental health care, my advance mental health care directive remains irrevocable during such period of incapacity:

[ ] Yes

[ ] No

If yes, the directive is irrevocable during such period of incapacity with regard to:

[ ] Admission and retention in a treatment facility for mental health care for up to 21 days;

[ ] Psychotropic medication as follows:

. . . . . .;

[ ] Electroconvulsive therapy; or

[ ] All of the above.

If there is anything in this document that you do not understand, you should ask a lawyer to explain it to you. This directive will not be valid unless it is signed in the presence of a notary public or signed by two qualified witnesses who are either personally known to you or verify your identity and who are present when you sign or acknowledge your signature.

SELECTION OF PHYSICIAN

(OPTIONAL)

If it becomes necessary to determine if I have become incapable of giving or withholding informed consent for mental health care, I choose .... of .... (address of licensed physician) to be one of the two licensed physicians who will determine whether I am incapable. If that licensed physician is unavailable, that physician's designee shall serve as one of the two licensed physicians who will determine whether I am incapable.

ADDITIONAL REFERENCES OR INSTRUCTIONS

....

Conditions or limitations, if any:

....

This document will continue in effect until you revoke it as described below or until a date you designate in this document. If you wish to have this document terminate on a certain date, please indicate:

....	....
(Date of expiration of directive)	(Signature of Principal)
	....
	(Printed Name of Principal)
	....
	(Date signed)

THIS DOCUMENT MUST BE SIGNED IN
THE PRESENCE OF WITNESSES
OR SIGNED IN THE PRESENCE OF A
NOTARY PUBLIC. COMPLETE THE
APPROPRIATE PORTION WHICH FOLLOWS:

AFFIRMATION OF WITNESSES

We affirm that the principal is personally known to us or the principal presented identification, that the principal signed this advance mental health care directive in our presence or, if the principal was unable to sign the directive, the principal's designated representative signed the directive in our presence, that the principal did not appear to be incapacitated or under duress or undue influence, and that neither of us is:

(a) The principal's attending physician or a member of the principal's mental health treatment team;

(b) The principal's spouse, parent, child, grandchild, sibling, presumptive heir, or known devisee at the time of the witnessing;

(c) In a romantic or dating relationship with the principal;

(d) The attorney in fact of the principal or a person designated to make mental health care decisions for the principal; or

(e) The owner, operator, employee, or relative of an owner or operator of a treatment facility at which the principal is receiving care.

Witnessed By:

. . . . .	. . . . .
(Signature of Witness)	(Signature of Witness)
. . . . .	. . . . .
(Printed Name of Witness)	(Printed Name of Witness)
. . . . .	. . . . .
(Date)	(Date)

OR COMPLETE THE FOLLOWING PORTION IF THIS DOCUMENT IS SIGNED IN THE PRESENCE OF A NOTARY PUBLIC

State of Nebraska,)
)ss.
County of . . . . .)

On this . . . . . day of . . . . . 20. . . ., before me, ... , a notary public in and for . . . . . County, personally came . . . . . , personally to me known to be the identical person whose name is affixed to the above advance mental health care directive as principal, and I declare that such person appears in sound mind and not under duress or undue influence, that such person acknowledges the execution of the same to be such person's voluntary act and deed, and that I am not the attorney in fact of the principal designated by any power of attorney for health care.

Witness my hand and notarial seal at . . . . . in such county the day and year last above written.

. . . . . .

Seal Signature of Notary Public

NOTICE TO PERSON MAKING AN ADVANCE MENTAL HEALTH CARE DIRECTIVE

This is an important legal document. It creates an advance mental health care directive. Before signing this document, you should know these important facts:

This document allows you to make decisions in advance about mental health care, including administration of psychotropic medication, short-term (up to 21 days) admission to a treatment facility, and use of electroconvulsive therapy. The instructions that you include in this advance mental health care directive will be followed only if you are incapable of making treatment decisions. Otherwise, you will be considered capable to give or withhold consent for the treatments.

If you have an attorney in fact appointed under a power of attorney for health care, your attorney in fact has a duty to act consistent with your desires as stated in this document or, if your desires are not stated or otherwise made known to the attorney in fact, to act in a manner consistent with what your attorney in fact in good faith believes to be in your best interest. The person has the right to withdraw from acting as your attorney in fact at any time.

You have the right to revoke this document in whole or in part at any time you have been determined to be capable of giving or withholding informed consent for mental health care. A revocation is effective when it is communicated to your attending health care professional in writing and is signed by you. The revocation may be in a form similar to the following:

REVOCATION

I, ..., knowingly and voluntarily revoke my advance mental health care directive as indicated (check one of the following):

[ ] I revoke my entire directive.

[ ] I revoke the following portion or portions of my directive:

.....
.....
(Signature of Principal)
.....
(Printed Name of Principal)
.....
(Date)

EVALUATION BY HEALTH CARE PROFESSIONAL

(OPTIONAL)

I, ..., have evaluated the principal and determined that the principal is capable of giving or withholding informed consent for mental health care.

.....
(Signature of health care professional)
.....
(Printed Name of health care professional)
.....
(Date)

(2) The Department of Health and Human Services may adopt and promulgate rules and regulations to provide information to the public regarding the Advance Mental Health Care Directives Act. The rules and regulations may include information relating to the need to review and update an advance mental health care directive in a timely manner and the creation of a wellness recovery action plan upon dismissal from a treatment facility for ongoing mental health issues and rehabilitation goals. The department shall publish the form in this section on its website for use by the public.

Source: Laws 2020, LB247, § 15.

ARTICLE 45

UNIFORM TRUST DECANTING ACT

Section
30-4501. Act, how cited.
30-4502. Definitions.
30-4503. Scope.
30-4504. Fiduciary duty.
30-4505. Application; governing law.
30-4506. Reasonable reliance.

Section

30-4501 Act, how cited.

Sections 30-4501 to 30-4529 shall be known and may be cited as the Uniform Trust Decanting Act.

Source: Laws 2020, LB808, § 11.

30-4502 Definitions.

In the Uniform Trust Decanting Act:

(1) Appointive property means the property or property interest subject to a power of appointment.

(2) Ascertainable standard has the same meaning as in section 30-3803.

(3) Authorized fiduciary means:

(A) a trustee or other fiduciary, other than a settlor, that has discretion to distribute or direct a trustee to distribute part or all of the principal of the first trust to one or more current beneficiaries;

(B) a special fiduciary appointed under section 30-4509; or

(C) a special-needs fiduciary under section 30-4513.

(4) Beneficiary means a person that:

(A) has a present or future, vested or contingent, beneficial interest in a trust;

(B) holds a power of appointment over trust property; or

(C) is an identified charitable organization that will or may receive distributions under the terms of the trust.

(5) Charitable interest means an interest in a trust which:

(A) is held by an identified charitable organization and makes the organization a qualified beneficiary;

(B) benefits only charitable organizations and, if the interest were held by an identified charitable organization, would make the organization a qualified beneficiary; or

(C) is held solely for charitable purposes and, if the interest were held by an identified charitable organization, would make the organization a qualified beneficiary.

(6) Charitable organization means:

(A) a person, other than an individual, organized and operated exclusively for charitable purposes; or

(B) a government or governmental subdivision, agency, or instrumentality, to the extent it holds funds exclusively for a charitable purpose.

(7) Charitable purpose has the same meaning as the description of a charitable trust in section 30-3831.

(8) Court means the court in this state having jurisdiction in matters relating to trusts.

(9) Current beneficiary means a beneficiary that on the date the beneficiary's qualification is determined is a distributee or permissible distributee of trust income or principal. The term includes the holder of a presently exercisable general power of appointment but does not include a person that is a beneficiary only because the person holds any other power of appointment.

(10) Decanting power or the decanting power means the power of an authorized fiduciary under the act to distribute property of a first trust to one or more second trusts or to modify the terms of the first trust.

(11) Expanded distributive discretion means a discretionary power of distribution that is not limited to an ascertainable standard or a reasonably definite standard.

(12) First trust means a trust over which an authorized fiduciary may exercise the decanting power.

(13) First-trust instrument means the trust instrument for a first trust.

(14) General power of appointment means a power of appointment exercisable in favor of a powerholder, the powerholder's estate, a creditor of the powerholder, or a creditor of the powerholder's estate.

(15) Jurisdiction has the same meaning as in section 30-3803.

(16) Person means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(17) Power of appointment means a power that enables a powerholder acting in a nonfiduciary capacity to designate a recipient of an ownership interest in or another power of appointment over the appointive property. The term does not include a power of attorney.

(18) Powerholder means a person in which a donor creates a power of appointment.

(19) Presently exercisable power of appointment means a power of appointment exercisable by the powerholder at the relevant time. The term:

(A) includes a power of appointment exercisable only after the occurrence of a specified event, the satisfaction of an ascertainable standard, or the passage of a specified time only after:

(i) the occurrence of the specified event;

(ii) the satisfaction of the ascertainable standard; or

(iii) the passage of the specified time; and

(B) does not include a power exercisable only at the powerholder's death.

(20) Qualified beneficiary has the same meaning as in section 30-3803.

(21) Reasonably definite standard means a clearly measurable standard under which a holder of a power of distribution is legally accountable within the meaning of 26 U.S.C. 674(b)(5)(A), as such section existed on November 14, 2020, and any applicable regulations.

(22) Record means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(23) Second trust means:

(A) a first trust after modification under the Uniform Trust Decanting Act; or

(B) a trust to which a distribution of property from a first trust is or may be made under the act.

(24) Second-trust instrument means the trust instrument for a second trust.

(25) Settlor, except as otherwise provided in section 30-4525, has the same meaning as in section 30-3803.

(26) Sign means, with present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the record an electronic symbol, sound, or process.

(27) State has the same meaning as in section 30-3803.

(28) Terms of the trust means:

(A) Except as otherwise provided in subdivision (B) of this subdivision, the manifestation of the settlor's intent regarding a trust's provisions as:

(i) expressed in the trust instrument; or

(ii) established by other evidence that would be admissible in a judicial proceeding; or

(B) the trust's provisions as established, determined, or amended by:

(i) a trustee or other person in accordance with applicable law;

(ii) a court order; or

(iii) a nonjudicial settlement agreement under section 30-3811.

(29) Trust instrument means a record executed by the settlor to create a trust or by any person to create a second trust which contains some or all of the terms of the trust, including any amendments.

Source: Laws 2020, LB808, § 12.

30-4503 Scope.

(a) Except as otherwise provided in subsections (b) and (c) of this section, the Uniform Trust Decanting Act applies to an express trust that is irrevocable or revocable by the settlor only with the consent of the trustee or a person holding an adverse interest.

(b) The act does not apply to a trust held solely for charitable purposes.

(c) Subject to section 30-4515, a trust instrument may restrict or prohibit exercise of the decanting power.

(d) The act does not limit the power of a trustee, powerholder, or other person to distribute or appoint property in further trust or to modify a trust under the trust instrument, law of this state other than the act, common law, a court order, or a nonjudicial settlement agreement.

(e) The act does not affect the ability of a settlor to provide in a trust instrument for the distribution of the trust property or appointment in further trust of the trust property or for modification of the trust instrument.

Source: Laws 2020, LB808, § 13.

30-4504 Fiduciary duty.

(a) In exercising the decanting power, an authorized fiduciary shall act in accordance with its fiduciary duties, including the duty to act in accordance with the purposes of the first trust.

(b) The Uniform Trust Decanting Act does not create or imply a duty to exercise the decanting power or to inform beneficiaries about the applicability of the act.

(c) Except as otherwise provided in a first-trust instrument, for purposes of the act and section 30-3866 and subsection (a) of section 38-3867, the terms of the first trust are deemed to include the decanting power.

Source: Laws 2020, LB808, § 14.

30-4505 Application; governing law.

The Uniform Trust Decanting Act applies to a trust created before, on, or after November 14, 2020, which:

(1) has its principal place of administration in this state, including a trust whose principal place of administration has been changed to this state; or

(2) provides by its trust instrument that it is governed by the law of this state or is governed by the law of this state for the purpose of:

(A) administration, including administration of a trust whose governing law for purposes of administration has been changed to the law of this state;

(B) construction of terms of the trust; or

(C) determining the meaning or effect of terms of the trust.

Source: Laws 2020, LB808, § 15.

30-4506 Reasonable reliance.

A trustee or other person that reasonably relies on the validity of a distribution of part or all of the property of a trust to another trust, or a modification of a trust, under the Uniform Trust Decanting Act, law of this state other than the act, or the law of another jurisdiction is not liable to any person for any action or failure to act as a result of the reliance.

Source: Laws 2020, LB808, § 16.

30-4507 Notice; exercise of decanting power.

(a) In this section, a notice period begins on the day notice is given under subsection (c) of this section and ends fifty-nine days after the day notice is given.

(b) Except as otherwise provided in the Uniform Trust Decanting Act, an authorized fiduciary may exercise the decanting power without the consent of any person and without court approval.

(c) Except as otherwise provided in subsection (f) of this section, an authorized fiduciary shall give notice in a record of the intended exercise of the decanting power not later than sixty days before the exercise to:

(1) each settlor of the first trust, if living or then in existence;

(2) each qualified beneficiary of the first trust;

(3) each holder of a presently exercisable power of appointment over any part or all of the first trust;

(4) each person that currently has the right to remove or replace the authorized fiduciary;

(5) each other fiduciary of the first trust;

(6) each fiduciary of the second trust;

(7) each person acting as an advisor or protector of the first trust;

(8) each person holding an adverse interest who has the power to consent to the revocation of the first trust; and

(9) the Attorney General, if subsection (b) of section 30-4514 applies.

(d) An authorized fiduciary is not required to give notice under subsection (c) of this section to a person that is not known to the fiduciary or is known to the fiduciary but cannot be located by the fiduciary after reasonable diligence.

(e) A notice under subsection (c) of this section must:

(1) specify the manner in which the authorized fiduciary intends to exercise the decanting power;

(2) specify the proposed effective date for exercise of the power;

(3) include a copy of the first-trust instrument; and

(4) include a copy of all second-trust instruments.

(f) The decanting power may be exercised before expiration of the notice period under subsection (a) of this section if all persons entitled to receive notice waive the period in a signed record.

(g) The receipt of notice, waiver of the notice period, or expiration of the notice period does not affect the right of a person to file an application under section 30-4509 asserting that:

(1) an attempted exercise of the decanting power is ineffective because it did not comply with the act or was an abuse of discretion or breach of fiduciary duty; or

(2) section 30-4522 applies to the exercise of the decanting power.

(h) An exercise of the decanting power is not ineffective because of the failure to give notice to one or more persons under subsection (c) of this section if the authorized fiduciary acted with reasonable care to comply with subsection (c) of this section.

Source: Laws 2020, LB808, § 17.

30-4508 Representation.

(a) Notice to a person with authority to represent and bind another person under a first-trust instrument or sections 30-3822 to 30-3826 has the same effect as notice given directly to the person represented.

(b) Consent of or waiver by a person with authority to represent and bind another person under a first-trust instrument or sections 30-3822 to 30-3826 is binding on the person represented unless the person represented objects to the representation before the consent or waiver otherwise would become effective.

(c) A person with authority to represent and bind another person under a first-trust instrument or sections 30-3822 to 30-3826 may file an application under section 30-4509 on behalf of the person represented.

(d) A settlor may not represent or bind a beneficiary for purposes of the Uniform Trust Decanting Act.

Source: Laws 2020, LB808, § 18.

30-4509 Court involvement.

(a) On application of an authorized fiduciary, a person entitled to notice under subsection (c) of section 30-4507, a beneficiary, or with respect to a charitable interest the Attorney General or other person that has standing to enforce the charitable interest, the court may:

(1) provide instructions to the authorized fiduciary regarding whether a proposed exercise of the decanting power is permitted under the Uniform Trust Decanting Act and consistent with the fiduciary duties of the authorized fiduciary;

(2) appoint a special fiduciary and authorize the special fiduciary to determine whether the decanting power should be exercised under the act and to exercise the decanting power;

(3) approve an exercise of the decanting power;

(4) determine that a proposed or attempted exercise of the decanting power is ineffective because:

(A) after applying section 30-4522, the proposed or attempted exercise does not or did not comply with the act; or

(B) the proposed or attempted exercise would be or was an abuse of the fiduciary's discretion or a breach of fiduciary duty;

(5) determine the extent to which section 30-4522 applies to a prior exercise of the decanting power;

(6) provide instructions to the trustee regarding the application of section 30-4522 to a prior exercise of the decanting power; or

(7) order other relief to carry out the purposes of the act.

(b) On application of an authorized fiduciary, the court may approve:

(1) an increase in the fiduciary's compensation under section 30-4516; or

(2) a modification under section 30-4518 of a provision granting a person the right to remove or replace the fiduciary.

Source: Laws 2020, LB808, § 19.

30-4510 Formalities.

An exercise of the decanting power must be made in a record signed by an authorized fiduciary. The signed record must, directly or by reference to the notice required by section 30-4507, identify the first trust and the second trust or trusts and state the property of the first trust being distributed to each second trust and the property, if any, that remains in the first trust.

Source: Laws 2020, LB808, § 20.

30-4511 Decanting power under expanded distributive discretion.

(a) In this section:

(1) Noncontingent right means a right that is not subject to the exercise of discretion or the occurrence of a specified event that is not certain to occur. The term does not include a right held by a beneficiary if any person has discretion to distribute property subject to the right to any person other than the beneficiary or the beneficiary's estate.

(2) Presumptive remainder beneficiary means a qualified beneficiary other than a current beneficiary.

(3) Successor beneficiary means a beneficiary that is not a qualified beneficiary on the date the beneficiary's qualification is determined. The term does not include a person that is a beneficiary only because the person holds a nongeneral power of appointment.

(4) Vested interest means:

(A) a right to a mandatory distribution that is a noncontingent right as of the date of the exercise of the decanting power;

(B) a current and noncontingent right, annually or more frequently, to a mandatory distribution of income, a specified dollar amount, or a percentage of value of some or all of the trust property;

(C) a current and noncontingent right, annually or more frequently, to withdraw income, a specified dollar amount, or a percentage of value of some or all of the trust property;

(D) a presently exercisable general power of appointment; or

(E) a right to receive an ascertainable part of the trust property on the trust's termination which is not subject to the exercise of discretion or to the occurrence of a specified event that is not certain to occur.

(b) Subject to subsection (c) of this section and section 30-4514, an authorized fiduciary that has expanded distributive discretion over the principal of a first trust for the benefit of one or more current beneficiaries may exercise the decanting power over the principal of the first trust.

(c) Subject to section 30-4513, in an exercise of the decanting power under this section, a second trust may not:

(1) include as a current beneficiary a person that is not a current beneficiary of the first trust, except as otherwise provided in subsection (d) of this section;

(2) include as a presumptive remainder beneficiary or successor beneficiary a person that is not a current beneficiary, presumptive remainder beneficiary, or successor beneficiary of the first trust, except as otherwise provided in subsection (d) of this section; or

(3) reduce or eliminate a vested interest.

(d) Subject to subdivision (3) of subsection (c) of this section and section 30-4514, in an exercise of the decanting power under this section, a second trust may be a trust created or administered under the law of any jurisdiction and may:

(1) retain a power of appointment granted in the first trust;

(2) omit a power of appointment granted in the first trust, other than a presently exercisable general power of appointment;

(3) create or modify a power of appointment if the powerholder is a current beneficiary of the first trust and the authorized fiduciary has expanded distributive discretion to distribute principal to the beneficiary; and

(4) create or modify a power of appointment if the powerholder is a presumptive remainder beneficiary or successor beneficiary of the first trust, but the exercise of the power may take effect only after the powerholder becomes, or would have become if then living, a current beneficiary.

(e) A power of appointment described in subdivisions (1) through (4) of subsection (d) of this section may be general or nongeneral. The class of permissible appointees in favor of which the power may be exercised may be broader than or different from the beneficiaries of the first trust.

(f) If an authorized fiduciary has expanded distributive discretion over part but not all of the principal of a first trust, the fiduciary may exercise the decanting power under this section over that part of the principal over which the authorized fiduciary has expanded distributive discretion.

Source: Laws 2020, LB808, § 21.

30-4512 Decanting power under limited distributive discretion.

(a) In this section, limited distributive discretion means a discretionary power of distribution that is limited to an ascertainable standard or a reasonably definite standard.

(b) An authorized fiduciary that has limited distributive discretion over the principal of the first trust for benefit of one or more current beneficiaries may exercise the decanting power over the principal of the first trust.

(c) Under this section and subject to section 30-4514, a second trust may be created or administered under the law of any jurisdiction. Under this section, the second trusts, in the aggregate, must grant each beneficiary of the first trust beneficial interests which are substantially similar to the beneficial interests of the beneficiary in the first trust.

(d) A power to make a distribution under a second trust for the benefit of a beneficiary who is an individual is substantially similar to a power under the first trust to make a distribution directly to the beneficiary. A distribution is for the benefit of a beneficiary if:

(1) the distribution is applied for the benefit of the beneficiary;

(2) the beneficiary is under a legal disability or the trustee reasonably believes the beneficiary is incapacitated, and the distribution is made as permitted under the Nebraska Uniform Trust Code; or

(3) the distribution is made as permitted under the terms of the first-trust instrument and the second-trust instrument for the benefit of the beneficiary.

(e) If an authorized fiduciary has limited distributive discretion over part but not all of the principal of a first trust, the fiduciary may exercise the decanting

power under this section over that part of the principal over which the authorized fiduciary has limited distributive discretion.

Source: Laws 2020, LB808, § 22.

Cross References

Nebraska Uniform Trust Code, see section 30-3801.

30-4513 Trust for beneficiary with disability.

(a) In this section:

(1) Beneficiary with a disability means a beneficiary of a first trust who the special-needs fiduciary believes may qualify for governmental benefits based on disability, whether or not the beneficiary currently receives those benefits or is an individual who has been adjudicated incapacitated.

(2) Governmental benefits means financial aid or services from a state, federal, or other public agency.

(3) Special-needs fiduciary means, with respect to a trust that has a beneficiary with a disability:

(A) a trustee or other fiduciary, other than a settlor, that has discretion to distribute part or all of the principal of a first trust to one or more current beneficiaries;

(B) if no trustee or fiduciary has discretion under subdivision (3)(A) of this subsection, a trustee or other fiduciary, other than a settlor, that has discretion to distribute part or all of the income of the first trust to one or more current beneficiaries; or

(C) if no trustee or fiduciary has discretion under subdivisions (3)(A) and (B) of this subsection, a trustee or other fiduciary, other than a settlor, that is required to distribute part or all of the income or principal of the first trust to one or more current beneficiaries.

(4) Special-needs trust means a trust the trustee believes would not be considered a resource for purposes of determining whether a beneficiary with a disability is eligible for governmental benefits.

(b) A special-needs fiduciary may exercise the decanting power under section 30-4511 over the principal of a first trust as if the fiduciary had authority to distribute principal to a beneficiary with a disability subject to expanded distributive discretion if:

(1) a second trust is a special-needs trust that benefits the beneficiary with a disability; and

(2) the special-needs fiduciary determines that exercise of the decanting power will further the purposes of the first trust.

(c) In an exercise of the decanting power under this section, the following rules apply:

(1) Notwithstanding subdivision (c)(2) of section 30-4511, the interest in the second trust of a beneficiary with a disability may:

(A) be a pooled trust as defined by medicaid law for the benefit of the beneficiary with a disability under 42 U.S.C. 1396p(d)(4)(C), as such section existed on November 14, 2020; or

(B) contain payback provisions complying with reimbursement requirements of medicaid law under 42 U.S.C. 1396p(d)(4)(A), as such section existed on November 14, 2020.

(2) Subdivision (c)(3) of section 30-4511 does not apply to the interests of the beneficiary with a disability.

(3) Except as affected by any change to the interests of the beneficiary with a disability, the second trust, or if there are two or more second trusts, the second trusts in the aggregate, must grant each other beneficiary of the first trust beneficial interests in the second trusts which are substantially similar to the beneficiary's beneficial interests in the first trust.

Source: Laws 2020, LB808, § 23.

30-4514 Protection of charitable interest.

(a) In this section:

(1) Determinable charitable interest means a charitable interest that is a right to a mandatory distribution currently, periodically, on the occurrence of a specified event, or after the passage of a specified time and which is unconditional or will be held solely for charitable purposes.

(2) Unconditional means not subject to the occurrence of a specified event that is not certain to occur, other than a requirement in a trust instrument that a charitable organization be in existence or qualify under a particular provision of the Internal Revenue Code of 1986, as amended, on the date of the distribution, if the charitable organization meets the requirement on the date of determination.

(b) If a first trust contains a determinable charitable interest, the Attorney General has the rights of a qualified beneficiary and may represent and bind the charitable interest.

(c) If a first trust contains a charitable interest, the second trust or trusts may not:

(1) diminish the charitable interest;

(2) diminish the interest of an identified charitable organization that holds the charitable interest;

(3) alter any charitable purpose stated in the first-trust instrument; or

(4) alter any condition or restriction related to the charitable interest.

(d) If there are two or more second trusts, the second trusts shall be treated as one trust for purposes of determining whether the exercise of the decanting power diminishes the charitable interest or diminishes the interest of an identified charitable organization for purposes of subsection (c) of this section.

(e) If a first trust contains a determinable charitable interest, the second trust or trusts that include a charitable interest pursuant to subsection (c) of this section must be administered under the law of this state unless:

(1) the Attorney General, after receiving notice under section 30-4507, fails to object in a signed record delivered to the authorized fiduciary within the notice period;

(2) the Attorney General consents in a signed record to the second trust or trusts being administered under the law of another jurisdiction; or

(3) the court approves the exercise of the decanting power.

(f) The Uniform Trust Decanting Act does not limit the powers and duties of the Attorney General under law of this state other than the act.

Source: Laws 2020, LB808, § 24.

30-4515 Trust limitation on decanting.

(a) An authorized fiduciary may not exercise the decanting power to the extent the first-trust instrument expressly prohibits exercise of:

(1) the decanting power; or

(2) a power granted by state law to the fiduciary to distribute part or all of the principal of the trust to another trust or to modify the trust.

(b) Exercise of the decanting power is subject to any restriction in the first-trust instrument that expressly applies to exercise of:

(1) the decanting power; or

(2) a power granted by state law to a fiduciary to distribute part or all of the principal of the trust to another trust or to modify the trust.

(c)(1) An authorized fiduciary who is a current beneficiary of the first trust or a beneficiary to which the net income or principal of the first trust would be distributed if the first trust were terminated may not exercise the decanting power under the Uniform Trust Decanting Act in a manner to eliminate or restrict a spendthrift clause or a clause restraining the voluntary or involuntary transfer of a beneficiary's interest in the first trust.

(2) Subject to subdivision (c)(1) of this section, a general prohibition of the amendment or revocation of a first trust, a spendthrift clause, or a clause restraining the voluntary or involuntary transfer of a beneficiary's interest does not preclude exercise of the decanting power.

(d) Subject to subsections (a) and (b) of this section, an authorized fiduciary may exercise the decanting power under the Uniform Trust Decanting Act even if the first-trust instrument permits the authorized fiduciary or another person to modify the first-trust instrument or to distribute part or all of the principal of the first trust to another trust.

(e) If a first-trust instrument contains an express prohibition described in subsection (a) of this section or an express restriction described in subsection (b) of this section, the provision must be included in the second-trust instrument.

Source: Laws 2020, LB808, § 25.

30-4516 Change in compensation.

(a) If a first-trust instrument specifies an authorized fiduciary's compensation, the fiduciary may not exercise the decanting power to increase the fiduciary's compensation above the specified compensation unless:

(1) all qualified beneficiaries of the second trust consent to the increase in a signed record; or

(2) the increase is approved by the court.

(b) If a first-trust instrument does not specify an authorized fiduciary's compensation, the fiduciary may not exercise the decanting power to increase the fiduciary's compensation above the compensation permitted by the Nebraska Uniform Trust Code unless:

(1) all qualified beneficiaries of the second trust consent to the increase in a signed record; or

(2) the increase is approved by the court.

(c) A change in an authorized fiduciary's compensation which is incidental to other changes made by the exercise of the decanting power is not an increase in the fiduciary's compensation for purposes of subsections (a) and (b) of this section.

Source: Laws 2020, LB808, § 26.

Cross References

Nebraska Uniform Trust Code, see section 30-3801.

30-4517 Relief from liability and indemnification.

(a) Except as otherwise provided in this section, a second-trust instrument may not relieve an authorized fiduciary from liability for breach of trust to a greater extent than the first-trust instrument.

(b) A second-trust instrument may provide for indemnification of an authorized fiduciary of the first trust or another person acting in a fiduciary capacity under the first trust for any liability or claim that would have been payable from the first trust if the decanting power had not been exercised.

(c) A second-trust instrument may not reduce fiduciary liability in the aggregate.

(d) Subject to subsection (c) of this section, a second-trust instrument may divide and reallocate fiduciary powers among fiduciaries, including one or more trustees, distribution advisors, investment advisors, trust protectors, or other persons, and relieve a fiduciary from liability for an act or failure to act of another fiduciary as permitted by law of this state other than the Uniform Trust Decanting Act.

Source: Laws 2020, LB808, § 27.

30-4518 Removal or replacement of authorized fiduciary.

An authorized fiduciary may not exercise the decanting power to modify a provision in a first-trust instrument granting another person power to remove or replace the fiduciary unless:

(1) the person holding the power consents to the modification in a signed record and the modification applies only to the person;

(2) the person holding the power and the qualified beneficiaries of the second trust consent to the modification in a signed record and the modification grants a substantially similar power to another person; or

(3) the court approves the modification and the modification grants a substantially similar power to another person.

Source: Laws 2020, LB808, § 28.

30-4519 Tax-related limitations.

(a) In this section:

(1) Grantor trust means a trust as to which a settlor of a first trust is considered the owner under 26 U.S.C. 671 to 677 or 26 U.S.C. 679, as such sections existed on November 14, 2020.

(2) Internal Revenue Code means the Internal Revenue Code of 1986, as amended.

(3) Nongrantor trust means a trust that is not a grantor trust.

(4) Qualified benefits property means property subject to the minimum distribution requirements of 26 U.S.C. 401(a)(9) and any applicable regulations, or to any similar requirements that refer to 26 U.S.C. 401(a)(9) or the regulations, as such section and regulations existed on November 14, 2020.

(b) An exercise of the decanting power is subject to the following limitations:

(1) If a first trust contains property that qualified, or would have qualified but for provisions of the Uniform Trust Decanting Act other than this section, for a marital deduction for purposes of the gift or estate tax under the Internal Revenue Code or a state gift, estate, or inheritance tax, the second-trust instrument must not include or omit any term that, if included in or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying for the deduction, or would have reduced the amount of the deduction, under the same provisions of the Internal Revenue Code or state law under which the transfer qualified.

(2) If the first trust contains property that qualified, or would have qualified but for provisions of the Uniform Trust Decanting Act other than this section, for a charitable deduction for purposes of the income, gift, or estate tax under the Internal Revenue Code or a state income, gift, estate, or inheritance tax, the second-trust instrument must not include or omit any term that, if included in or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying for the deduction, or would have reduced the amount of the deduction, under the same provisions of the Internal Revenue Code or state law under which the transfer qualified.

(3) If the first trust contains property that qualified, or would have qualified but for provisions of the Uniform Trust Decanting Act other than this section, for the exclusion from the gift tax described in 26 U.S.C. 2503(b), as such section existed on November 14, 2020, the second-trust instrument must not include or omit a term that, if included in or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying under 26 U.S.C. 2503(b), as such section existed on November 14, 2020. If the first trust contains property that qualified, or would have qualified but for provisions of the Uniform Trust Decanting Act other than this section, for the exclusion from the gift tax described in 26 U.S.C. 2503(b), as such section existed on November 14, 2020, by application of 26 U.S.C. 2503(c), as such section existed on November 14, 2020, the second-trust instrument must not include or omit a term that, if included or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying under 26 U.S.C. 2503(c), as such section existed on November 14, 2020.

(4) If the property of the first trust includes shares of stock in an S corporation, as defined in 26 U.S.C. 1361, as such section existed on November 14, 2020, and the first trust is, or but for provisions of the Uniform Trust Decanting Act other than this section would be, a permitted shareholder under any provision of 26 U.S.C. 1361, as such section existed on November 14, 2020, an authorized fiduciary may exercise the power with respect to part or all of the S-corporation stock only if any second trust receiving the stock is a

permitted shareholder under 26 U.S.C. 1361(c)(2), as such section existed on November 14, 2020. If the property of the first trust includes shares of stock in an S corporation and the first trust is, or but for provisions of the Uniform Trust Decanting Act other than this section would be, a qualified subchapter-S trust within the meaning of 26 U.S.C. 1361(d), as such section existed on November 14, 2020, the second-trust instrument must not include or omit a term that prevents the second trust from qualifying as a qualified subchapter-S trust.

(5) If the first trust contains property that qualified, or would have qualified but for provisions of the Uniform Trust Decanting Act other than this section, for a zero inclusion ratio for purposes of the generation-skipping transfer tax under 26 U.S.C. 2642(c), as such section existed on November 14, 2020, the second-trust instrument must not include or omit a term that, if included in or omitted from the first-trust instrument, would have prevented the transfer to the first trust from qualifying for a zero inclusion ratio under 26 U.S.C. 2642(c), as such section existed on November 14, 2020.

(6) If the first trust is directly or indirectly the beneficiary of qualified benefits property, the second-trust instrument may not include or omit any term that, if included in or omitted from the first-trust instrument, would have increased the minimum distributions required with respect to the qualified benefits property under 26 U.S.C. 401(a)(9), as such section existed on November 14, 2020, and any applicable regulations, or any similar requirements that refer to 26 U.S.C. 401(a)(9), as such section existed on November 14, 2020, or the regulations. If an attempted exercise of the decanting power violates the preceding sentence, the trustee is deemed to have held the qualified benefits property and any reinvested distributions of the property as a separate share from the date of the exercise of the power and section 30-4522 applies to the separate share.

(7) If the first trust qualifies as a grantor trust because of the application of 26 U.S.C. 672(f)(2)(A), as such section existed on November 14, 2020, the second trust may not include or omit a term that, if included in or omitted from the first-trust instrument, would have prevented the first trust from qualifying under 26 U.S.C. 672(f)(2)(A), as such section existed on November 14, 2020.

(8) In this subdivision, tax benefit means a federal or state tax deduction, exemption, exclusion, or other benefit not otherwise listed in this section, except for a benefit arising from being a grantor trust. Subject to subdivision (9) of this subsection, a second-trust instrument may not include or omit a term that, if included in or omitted from the first-trust instrument, would have prevented qualification for a tax benefit if:

(A) the first-trust instrument expressly indicates an intent to qualify for the benefit or the first-trust instrument clearly is designed to enable the first trust to qualify for the benefit; and

(B) the transfer of property held by the first trust or the first trust qualified, or but for provisions of the Uniform Trust Decanting Act other than this section, would have qualified for the tax benefit.

(9) Subject to subdivision (4) of this subsection:

(A) except as otherwise provided in subdivision (7) of this subsection, the second trust may be a nongrantor trust, even if the first trust is a grantor trust; and

(B) except as otherwise provided in subdivision (10) of this subsection, the second trust may be a grantor trust, even if the first trust is a nongrantor trust.

(10) An authorized fiduciary may not exercise the decanting power if a settlor objects in a signed record delivered to the fiduciary within the notice period and:

(A) the first trust and a second trust are both grantor trusts, in whole or in part, the first trust grants the settlor or another person the power to cause the first trust to cease to be a grantor trust, and the second trust does not grant an equivalent power to the settlor or other person; or

(B) the first trust is a nongrantor trust and a second trust is a grantor trust, in whole or in part, with respect to the settlor, unless:

(i) the settlor has the power at all times to cause the second trust to cease to be a grantor trust; or

(ii) the first-trust instrument contains a provision granting the settlor or another person a power that would cause the first trust to cease to be a grantor trust and the second-trust instrument contains the same provision.

Source: Laws 2020, LB808, § 29.

30-4520 Duration of second trust.

(a) Subject to subsection (b) of this section, a second trust may have a duration that is the same as or different from the duration of the first trust.

(b) To the extent that property of a second trust is attributable to property of the first trust, the property of the second trust is subject to any rules governing maximum perpetuity, accumulation, or suspension of the power of alienation which apply to property of the first trust.

Source: Laws 2020, LB808, § 30.

30-4521 Need to distribute not required.

An authorized fiduciary may exercise the decanting power whether or not under the first trust's discretionary distribution standard the fiduciary would have made or could have been compelled to make a discretionary distribution of principal at the time of the exercise.

Source: Laws 2020, LB808, § 31.

30-4522 Saving provision.

(a) If exercise of the decanting power would be effective under the Uniform Trust Decanting Act except that the second-trust instrument in part does not comply with the act, the exercise of the power is effective and the following rules apply with respect to the principal of the second trust attributable to the exercise of the power:

(1) A provision in the second-trust instrument which is not permitted under the act is void to the extent necessary to comply with the act.

(2) A provision required by the act to be in the second-trust instrument which is not contained in the instrument is deemed to be included in the instrument to the extent necessary to comply with the act.

(b) If a trustee or other fiduciary of a second trust determines that subsection (a) of this section applies to a prior exercise of the decanting power, the fiduciary shall take corrective action consistent with the fiduciary's duties.

Source: Laws 2020, LB808, § 32.

30-4523 Trust for care of animal.

(a) In this section:

(1) Animal trust means a trust or an interest in a trust created to provide for the care of one or more animals.

(2) Protector means a person appointed in an animal trust to enforce the trust on behalf of the animal or, if no such person is appointed in the trust, a person appointed by the court for that purpose.

(b) The decanting power may be exercised over an animal trust that has a protector to the extent the trust could be decanted under the Uniform Trust Decanting Act if each animal that benefits from the trust were an individual, if the protector consents in a signed record to the exercise of the power.

(c) A protector for an animal has the rights under the act of a qualified beneficiary.

(d) Notwithstanding any other provision of the act, if a first trust is an animal trust, in an exercise of the decanting power, the second trust must provide that trust property may be applied only to its intended purpose for the period the first trust benefited the animal.

Source: Laws 2020, LB808, § 33.

30-4524 Terms of second trust.

A reference in the Nebraska Uniform Trust Code to a trust instrument or terms of the trust includes a second-trust instrument and the terms of the second trust.

Source: Laws 2020, LB808, § 34.

Cross References

Nebraska Uniform Trust Code, see section 30-3801.

30-4525 Settlor.

(a) For purposes of law of this state other than the Uniform Trust Decanting Act and subject to subsection (b) of this section, a settlor of a first trust is deemed to be the settlor of the second trust with respect to the portion of the principal of the first trust subject to the exercise of the decanting power.

(b) In determining settlor intent with respect to a second trust, the intent of a settlor of the first trust, a settlor of the second trust, and the authorized fiduciary may be considered.

Source: Laws 2020, LB808, § 35.

30-4526 Later-discovered property.

(a) Except as otherwise provided in subsection (c) of this section, if exercise of the decanting power was intended to distribute all the principal of the first trust to one or more second trusts, later-discovered property belonging to the

first trust and property paid to or acquired by the first trust after the exercise of the power is part of the trust estate of the second trust or trusts.

(b) Except as otherwise provided in subsection (c) of this section, if exercise of the decanting power was intended to distribute less than all the principal of the first trust to one or more second trusts, later-discovered property belonging to the first trust or property paid to or acquired by the first trust after exercise of the power remains part of the trust estate of the first trust.

(c) An authorized fiduciary may provide in an exercise of the decanting power or by the terms of a second trust for disposition of later-discovered property belonging to the first trust or property paid to or acquired by the first trust after exercise of the power.

Source: Laws 2020, LB808, § 36.

30-4527 Obligations.

A debt, liability, or other obligation enforceable against property of a first trust is enforceable to the same extent against the property when held by the second trust after exercise of the decanting power.

Source: Laws 2020, LB808, § 37.

30-4528 Uniformity of application and construction.

In applying and construing the Uniform Trust Decanting Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Source: Laws 2020, LB808, § 38.

30-4529 Relation to federal Electronic Signatures in Global and National Commerce Act.

The Uniform Trust Decanting Act modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. 7003(b), as such sections existed on November 14, 2020.

Source: Laws 2020, LB808, § 39.

ARTICLE 46
UNIFORM POWERS OF APPOINTMENT ACT

PART 1
GENERAL PROVISIONS

PART 2
CREATION, REVOCATION, AND AMENDMENT OF POWER OF APPOINTMENT

PART 1

GENERAL PROVISIONS

30-4601 Short title.

Sections 30-4601 to 30-4638 shall be known and may be cited as the Uniform Powers of Appointment Act.

Source: Laws 2021, LB501, § 24.

30-4602 Definitions.

In the Uniform Powers of Appointment Act:

(1) Appointee means a person to which a powerholder makes an appointment of appointive property.

(2) Appointive property means the property or property interest subject to a power of appointment.

(3) Blanket exercise clause means a clause in an instrument which exercises a power of appointment and is not a specific exercise clause. The term includes a clause that:

(A) expressly uses the words ''any power'' in exercising any power of appointment the powerholder has;

(B) expressly uses the words ''any property'' in appointing any property over which the powerholder has a power of appointment; or

(C) disposes of all property subject to disposition by the powerholder.

(4) Donor means a person that creates a power of appointment.

(5) Exclusionary power of appointment means a power of appointment exercisable in favor of any one or more of the permissible appointees to the exclusion of the other permissible appointees.

(6) General power of appointment means a power of appointment exercisable in favor of the powerholder, the powerholder's estate, a creditor of the powerholder, or a creditor of the powerholder's estate.

(7) Gift in default clause means a clause identifying a taker in default of appointment.

(8) Impermissible appointee means a person that is not a permissible appointee.

(9) Instrument means a record.

(10) Nongeneral power of appointment means a power of appointment that is not a general power of appointment.

(11) Permissible appointee means a person in whose favor a powerholder may exercise a power of appointment.

(12) Person means an individual, estate, trust, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(13) Power of appointment means a power that enables a powerholder acting in a nonfiduciary capacity to designate a recipient of an ownership interest in or another power of appointment over the appointive property. The term does not include a power of attorney.

(14) Powerholder means a person in which a donor creates a power of appointment.

(15) Presently exercisable power of appointment means a power of appointment exercisable by the powerholder at the relevant time. The term:

(A) includes a power of appointment not exercisable until the occurrence of a specified event, the satisfaction of an ascertainable standard, or the passage of a specified time only after:

(i) the occurrence of the specified event;

(ii) the satisfaction of the ascertainable standard; or

(iii) the passage of the specified time; and

(B) does not include a power exercisable only at the powerholder's death.

(16) 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.

(17) Specific exercise clause means a clause in an instrument which specifically refers to and exercises a particular power of appointment.

(18) Taker in default of appointment means a person that takes all or part of the appointive property to the extent the powerholder does not effectively exercise the power of appointment.

(19) Terms of the instrument means the manifestation of the intent of the maker of the instrument regarding the instrument's provisions as expressed in the instrument or as may be established by other evidence that would be admissible in a legal proceeding.

Source: Laws 2021, LB501, § 25.

30-4603 Governing law.

Unless the terms of the instrument creating a power of appointment manifest a contrary intent:

(1) the creation, revocation, or amendment of the power is governed by the law of the donor's domicile at the relevant time; and

(2) the exercise, release, renunciation, or disclaimer of the power, or the revocation or amendment of the exercise, release, renunciation, or disclaimer of the power, is governed by the law of the powerholder's domicile at the relevant time.

Source: Laws 2021, LB501, § 26.

30-4604 Common law and principles of equity.

The common law and principles of equity supplement the Uniform Powers of Appointment Act except to the extent modified by the Uniform Powers of Appointment Act or law of this state other than the Uniform Powers of Appointment Act.

Source: Laws 2021, LB501, § 27.

PART 2

CREATION, REVOCATION, AND AMENDMENT OF POWER OF APPOINTMENT

30-4605 Creation of power of appointment.

(a) A power of appointment is created only if:

(1) the instrument creating the power:

(A) is valid under applicable law; and

(B) except as otherwise provided in subsection (b) of this section, transfers the appointive property; and

(2) the terms of the instrument creating the power manifest the donor's intent to create in a powerholder a power of appointment over the appointive property exercisable in favor of a permissible appointee.

(b) Subdivision (a)(1)(B) of this section does not apply to the creation of a power of appointment by the exercise of a power of appointment.

(c) A power of appointment may not be created in a deceased individual.

(d) Subject to an applicable rule against perpetuities, a power of appointment may be created in an unborn or unascertained powerholder.

Source: Laws 2021, LB501, § 28.

30-4606 Nontransferability.

A powerholder may not transfer a power of appointment. If a powerholder dies without exercising or releasing a power, the power lapses.

Source: Laws 2021, LB501, § 29.

30-4607 Presumption of unlimited authority.

Subject to section 30-4609, and unless the terms of the instrument creating a power of appointment manifest a contrary intent, the power is:

(1) presently exercisable;

(2) exclusionary; and

(3) except as otherwise provided in section 30-4609, general.

Source: Laws 2021, LB501, § 30.

30-4608 Exception to presumption of unlimited authority.

Unless the terms of the instrument creating a power of appointment manifest a contrary intent, the power is nongeneral if:

(1) the power is exercisable only at the powerholder's death; and

(2) the permissible appointees of the power are a defined and limited class that does not include the powerholder's estate, the powerholder's creditors, or the creditors of the powerholder's estate.

Source: Laws 2021, LB501, § 31.

30-4609 Rules of classification.

(a) In this section, adverse party means a person with a substantial beneficial interest in property which would be affected adversely by a powerholder's exercise or nonexercise of a power of appointment in favor of the powerholder, the powerholder's estate, a creditor of the powerholder, or a creditor of the powerholder's estate.

(b) If a powerholder may exercise a power of appointment only with the consent or joinder of an adverse party, the power is nongeneral.

(c) If the permissible appointees of a power of appointment are not defined and limited, the power is exclusionary.

Source: Laws 2021, LB501, § 32.

30-4610 Power to revoke or amend.

A donor may revoke or amend a power of appointment only to the extent that:

(1) the instrument creating the power is revocable by the donor; or

(2) the donor reserves a power of revocation or amendment in the instrument creating the power of appointment.

Source: Laws 2021, LB501, § 33.

PART 3

EXERCISE OF POWER OF APPOINTMENT

30-4611 Requisites for exercise of power of appointment.

A power of appointment is exercised only:

(1) if the instrument exercising the power is valid under applicable law;

(2) if the terms of the instrument exercising the power:

(A) manifest the powerholder's intent to exercise the power; and

(B) subject to section 30-4614, satisfy the requirements of exercise, if any, imposed by the donor; and

(3) to the extent the appointment is a permissible exercise of the power.

Source: Laws 2021, LB501, § 34.

30-4612 Intent to exercise: Determining intent from residuary clause.

(a) In this section:

(1) Residuary clause does not include a residuary clause containing a blanket exercise clause or a specific exercise clause.

(2) Will includes a codicil and a testamentary instrument that revises another will.

(b) A residuary clause in a powerholder's will, or a comparable clause in the powerholder's revocable trust, manifests the powerholder's intent to exercise a power of appointment only if:

(1) the terms of the instrument containing the residuary clause do not manifest a contrary intent;

(2) the power is a general power exercisable in favor of the powerholder's estate;

(3) there is no gift in default clause or the clause is ineffective; and

(4) the powerholder did not release the power.

Source: Laws 2021, LB501, § 35.

30-4613 Intent to exercise: After-acquired power.

Unless the terms of the instrument exercising a power of appointment manifest a contrary intent:

(1) except as otherwise provided in subdivision (2) of this section, a blanket exercise clause extends to a power acquired by the powerholder after executing the instrument containing the clause; and

(2) if the powerholder is also the donor of the power, the clause does not extend to the power unless there is no gift in default clause or the gift in default clause is ineffective.

Source: Laws 2021, LB501, § 36.

30-4614 Substantial compliance with donor-imposed formal requirement.

A powerholder's substantial compliance with a formal requirement of appointment imposed by the donor, including a requirement that the instrument exercising the power of appointment make reference or specific reference to the power, is sufficient if:

(1) the powerholder knows of and intends to exercise the power; and

(2) the powerholder's manner of attempted exercise of the power does not impair a material purpose of the donor in imposing the requirement.

Source: Laws 2021, LB501, § 37.

30-4615 Permissible appointment.

(a) A powerholder of a general power of appointment that permits appointment to the powerholder or the powerholder's estate may make any appointment, including an appointment in trust or creating a new power of appointment, that the powerholder could make in disposing of the powerholder's own property.

(b) A powerholder of a general power of appointment that permits appointment only to the creditors of the powerholder or of the powerholder's estate may appoint only to those creditors.

(c) Unless the terms of the instrument creating a power of appointment manifest a contrary intent, the powerholder of a nongeneral power may:

(1) make an appointment in any form, including an appointment in trust, in favor of a permissible appointee;

(2) create a general power in a permissible appointee;

(3) create a nongeneral power in any person to appoint to one or more of the permissible appointees of the original nongeneral power; or

(4) create a nongeneral power in a permissible appointee to appoint to one or more persons if the permissible appointees of the new nongeneral power include the permissible appointees of the original nongeneral power.

Source: Laws 2021, LB501, § 38.

30-4616 Appointment to deceased appointee or permissible appointee's descendant.

(a) Subject to section 30-2343, an appointment to a deceased appointee is ineffective.

(b) Unless the terms of the instrument creating a power of appointment manifest a contrary intent, a powerholder of a nongeneral power may exercise the power in favor of, or create a new power of appointment in, a descendant of a deceased permissible appointee whether or not the descendant is described by the donor as a permissible appointee.

Source: Laws 2021, LB501, § 39.

30-4617 Impermissible appointment.

(a) Except as otherwise provided in section 30-4616, an exercise of a power of appointment in favor of an impermissible appointee is ineffective.

(b) An exercise of a power of appointment in favor of a permissible appointee is ineffective to the extent the appointment is a fraud on the power.

Source: Laws 2021, LB501, § 40.

30-4618 Selective allocation doctrine.

If a powerholder exercises a power of appointment in a disposition that also disposes of property the powerholder owns, the owned property and the appointive property must be allocated in the permissible manner that best carries out the powerholder's intent.

Source: Laws 2021, LB501, § 41.

30-4619 Capture doctrine: Disposition of ineffectively appointed property under general power.

To the extent a powerholder of a general power of appointment, other than a power to withdraw property from, revoke, or amend a trust, makes an ineffective appointment:

(1) the gift in default clause controls the disposition of the ineffectively appointed property; or

(2) if there is no gift in default clause or to the extent the clause is ineffective, the ineffectively appointed property:

(A) passes to:

(i) the powerholder if the powerholder is a permissible appointee and living; or

(ii) if the powerholder is an impermissible appointee or deceased, the powerholder's estate if the estate is a permissible appointee; or

(B) if there is no taker under subdivision (A) of this subdivision, passes under a reversionary interest to the donor or the donor's transferee or successor in interest.

Source: Laws 2021, LB501, § 42.

30-4620 Disposition of unappointed property under released or unexercised general power.

To the extent a powerholder releases or fails to exercise a general power of appointment other than a power to withdraw property from, revoke, or amend a trust:

(1) the gift in default clause controls the disposition of the unappointed property; or

(2) if there is no gift in default clause or to the extent the clause is ineffective:

(A) except as otherwise provided in subdivision (B) of this subdivision, the unappointed property passes to:

(i) the powerholder if the powerholder is a permissible appointee and living; or

(ii) if the powerholder is an impermissible appointee or deceased, the powerholder's estate if the estate is a permissible appointee; or

(B) to the extent the powerholder released the power, or if there is no taker under subdivision (A) of this subdivision, the unappointed property passes under a reversionary interest to the donor or the donor's transferee or successor in interest.

Source: Laws 2021, LB501, § 43.

30-4621 Disposition of unappointed property under released or unexercised nongeneral power.

To the extent a powerholder releases, ineffectively exercises, or fails to exercise a nongeneral power of appointment:

(1) the gift in default clause controls the disposition of the unappointed property; or

(2) if there is no gift in default clause or to the extent the clause is ineffective, the unappointed property:

(A) passes to the permissible appointees if:

(i) the permissible appointees are defined and limited; and

(ii) the terms of the instrument creating the power do not manifest a contrary intent; or

(B) if there is no taker under subdivision (A) of this subdivision, passes under a reversionary interest to the donor or the donor's transferee or successor in interest.

Source: Laws 2021, LB501, § 44.

30-4622 Disposition of unappointed property if partial appointment to taker in default.

Unless the terms of the instrument creating or exercising a power of appointment manifest a contrary intent, if the powerholder makes a valid partial appointment to a taker in default of appointment, the taker in default of appointment may share fully in unappointed property.

Source: Laws 2021, LB501, § 45.

30-4623 Appointment to taker in default.

If a powerholder makes an appointment to a taker in default of appointment and the appointee would have taken the property under a gift in default clause had the property not been appointed, the power of appointment is deemed not to have been exercised and the appointee takes under the clause.

Source: Laws 2021, LB501, § 46.

30-4624 Powerholder's authority to revoke or amend exercise.

A powerholder may revoke or amend an exercise of a power of appointment only to the extent that:

(1) the powerholder reserves a power of revocation or amendment in the instrument exercising the power of appointment and, if the power is nongeneral, the terms of the instrument creating the power of appointment do not prohibit the reservation; or

(2) the terms of the instrument creating the power of appointment provide that the exercise is revocable or amendable.

Source: Laws 2021, LB501, § 47.

PART 4

DISCLAIMER OR RELEASE; CONTRACT TO APPOINT OR NOT TO APPOINT

30-4625 Disclaimer.

As provided by section 30-2352:

(1) A powerholder may renounce all or part of a power of appointment.

(2) A permissible appointee, appointee, or taker in default of appointment may renounce all or part of an interest in appointive property.

Source: Laws 2021, LB501, § 48.

30-4626 Authority to release.

A powerholder may release a power of appointment, in whole or in part, except to the extent the terms of the instrument creating the power prevent the release.

Source: Laws 2021, LB501, § 49.

30-4627 Method of release.

A powerholder of a releasable power of appointment may release the power in whole or in part:

(1) by substantial compliance with a method provided in the terms of the instrument creating the power; or

(2) if the terms of the instrument creating the power do not provide a method or the method provided in the terms of the instrument is not expressly made exclusive, by a record manifesting the powerholder's intent by clear and convincing evidence.

Source: Laws 2021, LB501, § 50.

30-4628 Revocation or amendment of release.

A powerholder may revoke or amend a release of a power of appointment only to the extent that:

(1) the instrument of release is revocable by the powerholder; or

(2) the powerholder reserves a power of revocation or amendment in the instrument of release.

Source: Laws 2021, LB501, § 51.

30-4629 Power to contract: Presently exercisable power of appointment.

A powerholder of a presently exercisable power of appointment may contract:

(1) not to exercise the power; or

(2) to exercise the power if the contract when made does not confer a benefit on an impermissible appointee.

Source: Laws 2021, LB501, § 52.

30-4630 Power to contract: Power of appointment not presently exercisable.

A powerholder of a power of appointment that is not presently exercisable may contract to exercise or not to exercise the power only if the powerholder:

(1) is also the donor of the power; and

(2) has reserved the power in a revocable trust.

Source: Laws 2021, LB501, § 53.

30-4631 Remedy for breach of contract to appoint or not to appoint.

The remedy for a powerholder's breach of a contract to appoint or not to appoint appointive property is limited to damages payable out of the appointive property or, if appropriate, specific performance of the contract.

Source: Laws 2021, LB501, § 54.

PART 5

RIGHTS OF POWERHOLDER'S CREDITORS IN APPOINTIVE PROPERTY

30-4632 Creditor claim: General power created by powerholder.

(a) In this section, power of appointment created by the powerholder includes a power of appointment created in a transfer by another person to the extent the powerholder contributed value to the transfer.

(b) Appointive property subject to a general power of appointment created by the powerholder is subject to a claim of a creditor of the powerholder or of the powerholder's estate to the extent provided in the Uniform Voidable Transactions Act.

(c) Subject to subsection (b) of this section, appointive property subject to a general power of appointment created by the powerholder is not subject to a claim of a creditor of the powerholder or the powerholder's estate to the extent the powerholder irrevocably appointed the property in favor of a person other than the powerholder or the powerholder's estate.

(d) Subject to subsections (b) and (c) of this section, and notwithstanding the presence of a spendthrift provision or whether the claim arose before or after the creation of the power of appointment, appointive property subject to a general power of appointment created by the powerholder is subject to a claim of a creditor of:

(1) the powerholder, to the same extent as if the powerholder owned the appointive property, if the power is presently exercisable; and

(2) the powerholder's estate, to the extent the estate is insufficient to satisfy the claim and subject to the right of a decedent to direct the source from which liabilities are paid, if the power is exercisable at the powerholder's death.

Source: Laws 2021, LB501, § 55.

Cross References

Uniform Voidable Transactions Act, see section 36-801.

30-4633 Creditor claim: General power not created by powerholder.

(a) Except as otherwise provided in subsection (b) of this section, appointive property subject to a general power of appointment created by a person other than the powerholder is subject to a claim of a creditor of:

(1) the powerholder, to the extent the powerholder's property is insufficient, if the power is presently exercisable; and

(2) the powerholder's estate, to the extent the estate is insufficient, subject to the right of a decedent to direct the source from which liabilities are paid.

(b) Subject to subsection (c) of section 30-4635, a power of appointment created by a person other than the powerholder which is subject to an ascertainable standard relating to an individual's health, education, support, or maintenance within the meaning of 26 U.S.C. 2041(b)(1)(A) or 26 U.S.C. 2514(c)(1), as such sections existed on January 1, 2021, is treated for purposes of the Uniform Powers of Appointment Act as a nongeneral power.

Source: Laws 2021, LB501, § 56.

30-4634 Power to withdraw.

(a) For purposes of the Uniform Powers of Appointment Act, and except as otherwise provided in subsection (b) of this section, a power to withdraw property from a trust is treated, during the time the power may be exercised, as a presently exercisable general power of appointment to the extent of the property subject to the power to withdraw.

(b) On the lapse, release, or waiver of a power to withdraw property from a trust, the power is treated as a presently exercisable general power of appointment only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greater of the amount specified in 26 U.S.C. 2041(b)(2) and 26 U.S.C. 2514(e) or the amount specified in 26 U.S.C. 2503(b), as such sections existed on January 1, 2021.

Source: Laws 2021, LB501, § 57.

30-4635 Creditor claim: Nongeneral power.

(a) Except as otherwise provided in subsections (b) and (c) of this section, appointive property subject to a nongeneral power of appointment is exempt from a claim of a creditor of the powerholder or the powerholder's estate.

(b) Appointive property subject to a nongeneral power of appointment is subject to a claim of a creditor of the powerholder or the powerholder's estate to the extent that the powerholder owned the property and, reserving the nongeneral power, transferred the property in violation of the Uniform Voidable Transactions Act.

(c) If the initial gift in default of appointment is to the powerholder or the powerholder's estate, a nongeneral power of appointment is treated for purposes of the Uniform Powers of Appointment Act as a general power.

Source: Laws 2021, LB501, § 58.

Cross References

Uniform Voidable Transactions Act, see section 36-801.

PART 6

MISCELLANEOUS PROVISIONS

30-4636 Uniformity of application and construction.

In applying and construing the Uniform Powers of Appointment 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 2021, LB501, § 59.

30-4637 Relation to Electronic Signatures in Global and National Commerce Act.

The Uniform Powers of Appointment Act modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. 7003(b).

Source: Laws 2021, LB501, § 60.

30-4638 Application to existing relationships.

(a) Except as otherwise provided in the Uniform Powers of Appointment Act, on and after August 28, 2021:

(1) the Uniform Powers of Appointment Act applies to a power of appointment created before, on, or after August 28, 2021;

(2) the Uniform Powers of Appointment Act applies to a judicial proceeding concerning a power of appointment commenced on or after August 28, 2021;

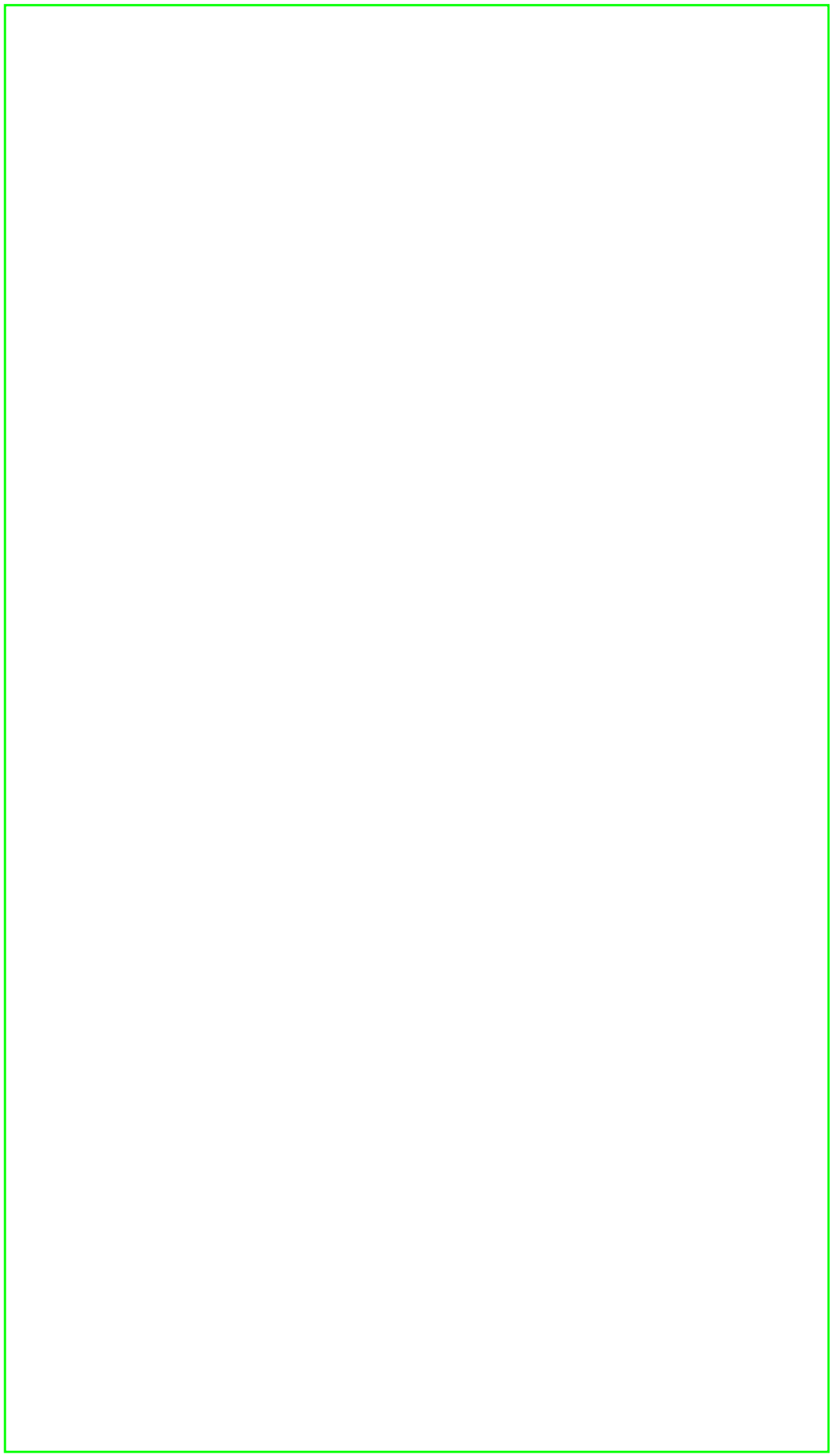
(3) the Uniform Powers of Appointment Act applies to a judicial proceeding concerning a power of appointment commenced before August 28, 2021, unless the court finds that application of a particular provision of the Uniform Powers of Appointment Act would interfere substantially with the effective conduct of the judicial proceeding or prejudice a right of a party, in which case the particular provision of the Uniform Powers of Appointment Act does not apply and the superseded law applies;

(4) a rule of construction or presumption provided in the Uniform Powers of Appointment Act applies to an instrument executed before August 28, 2021, unless there is a clear indication of a contrary intent in the terms of the instrument; and

(5) except as otherwise provided in subdivisions (1) through (4) of this subsection, an action done before August 28, 2021, is not affected by the Uniform Powers of Appointment Act.

(b) If a right is acquired, extinguished, or barred on the expiration of a prescribed period that commenced under law of this state other than the Uniform Powers of Appointment Act before August 28, 2021, the law continues to apply to the right.

Source: Laws 2021, LB501, § 61.



CHAPTER 31
DRAINAGE

Article.
3. Drainage Districts Organized by Proceedings in District Court. 31-320 to 31-333.
5. Sanitary Drainage Districts in Municipalities. 31-501 to 31-543.
7. Sanitary and Improvement Districts.
   (b) Districts Formed under Act of 1949. 31-727 to 31-749.
   (c) District Boundaries. 31-763 to 31-766.
   (f) Recall of Trustees. 31-787, 31-793.
9. County Drainage Act. 31-925.
10. Flood Plain Management. 31-1017.

ARTICLE 3
DRAINAGE DISTRICTS ORGANIZED BY PROCEEDINGS IN DISTRICT COURT

Section
31-320. Land outside of district; inclusion; conditions; procedure.
31-329. Engineer's report; objections; decision; appeal; bond; procedure.
31-333. Drainage tax; levy; certificate; form; extension on tax books; collection.

31-320 Land outside of district; inclusion; conditions; procedure.

If, upon the filing of the report of the engineer, together with the estimates as provided in section 31-311, it appears that lands, other than those incorporated by the court in the district, will be benefited by the drainage improvements of the district, the chairperson of the board of supervisors shall file a petition in the district court of the county where the district was originally organized, containing a description of the lands and the name or names of the owners as they appear on the tax duplicate of the county in which the lands are situated and their place or places of residence and alleging that such land will be benefited by the improvements and ought in justice bear its proportion of the expense and cost of such improvement and that such land was not incorporated within the limits of the drainage district as originally established by the court. If the names of the owners of any such tract or tracts of land are unknown, this fact shall be stated. The prayer of the petition shall be that such tract or tracts of land may be incorporated and made a part of the district. Upon the filing of such petition, duly verified, the clerk of the district court shall issue summons or notice to the parties interested as provided by section 31-303 with reference to the original petition for the establishment of the district, the same proceedings shall be had upon the petition and in the same court as upon the original petition for the establishment of the district, and the same provisions of law shall apply thereto insofar as the same are applicable. Upon the return day of such notice or summons, or at any other time to which the court shall adjourn the cause, the court shall have jurisdiction to try and determine such matter at chambers and to make all necessary orders, judgments, and decrees. The owners of such lands may by writing, duly verified, waive the issuance and service of all notice or process and consent that the court may at once upon the filing of the petition and waiver enter the necessary decree. Upon filing the

petition it shall be the duty of the clerk to record the cause as a proceeding in and part of the original cause for the establishment of the district. After entering of the decree of the court, the land and all of the parties so brought into the district shall be subject to the same provisions of law as would have applied to them had they been incorporated in the original petition and decree entered thereon. No land shall be included in such drainage district or be subject to taxation for the drainage except wet, submerged, and swamp lands or land within a district subject to overflow.

Source: Laws 1905, c. 161, § 11, p. 616; R.S.1913, § 1815; C.S.1922, § 1762; C.S.1929, § 31-419; R.S.1943, § 31-320; Laws 2018, LB193, § 67.

31-329 Engineer's report; objections; decision; appeal; bond; procedure.

Any person or corporation who has filed objections and had a hearing, feeling aggrieved by the decision and judgment of the board of supervisors, may appeal to the district court within and for the county in which the drainage district was originally established, upon giving a bond conditioned the same as in appeals to the district court as from civil actions in county court in this state and payable to the drainage district, and in addition thereto conditioned that the appellant will pay all damages which may accrue to the drainage district by reason of such appeal. The bond shall be approved by the secretary of the board of supervisors and filed with the secretary within ten days after the rendition of the decision appealed from. Within ten days after the filing of the bond the secretary shall make and file a transcript of the proceedings appealed from, together with all the documents relating thereto, with the clerk of the district court in which the matter has been appealed. Upon the filing of the transcript and bond, the district court shall have jurisdiction of the cause, and the same shall be filed as in appeals in other civil actions to such court. The court shall hear and determine all such objections in a summary manner as in a case in equity and shall increase or reduce the amount of benefit on any tract where the same may be required in order to make the apportionment equitable. All objections that may be filed shall be heard and determined by the court as one proceeding, and only one transcript of the final order of the board of supervisors, fixing the apportionments or benefits, shall be required. The clerk of the district court shall forthwith certify the decision of the court to the board of supervisors which shall take such action as may be rendered necessary by such decisions.

Source: Laws 1905, c. 161, § 17, p. 623; Laws 1909, c. 147, § 7, p. 515; R.S.1913, § 1824; C.S.1922, § 1771; C.S.1929, § 31-428; R.S.1943, § 31-329; Laws 1972, LB 1032, § 207; Laws 2018, LB193, § 68.

31-333 Drainage tax; levy; certificate; form; extension on tax books; collection.

The board of supervisors shall annually thereafter determine, order, and levy the amount of the installment of the tax hereinbefore named which shall become due and be collected during the year at the same time that county taxes are due and collected, and in case bonds are issued, the amount of the interest which will accrue on such bonds shall be included and added to the tax. The annual installment and levy shall be evidenced and certified by the board, on or

before September 30, to the county clerk of each county in which lands of the district are situated, which certificate shall be substantially in the following form:

State of Nebraska,)
) ss.
County of . . . . .)

To . . . . . county clerk of the county:

This is to certify that by virtue of the provisions of sections 31-330 to 31-333, the board of supervisors of . . . . . drainage district, including lands and property in the counties of . . . . . in the State of Nebraska, have determined to and do hereby levy the annual installment of the total tax, heretofore certified to you under the direction of such sections, on the lands and property situated in your county described in the following table in which are (1) the names of the owners of such lands and properties as they appeared in the decree of the district court organizing the district or as shown by the certificate heretofore filed showing the total assessment against the property, (2) the description of the lands and property opposite the names of owners, and (3) the amount of the annual installment and interest levied on each tract of land or piece of property: (Here insert table). The installments of tax shall be collectible and payable the present year at the same time that county taxes are due and collected. Witness the signature of the chairperson of the board of supervisors and attested by the seal of the district and the signature of the secretary of the board this . . . . . day of . . . . . A.D. 20. . . . .

. . . . . .
Secretary

. . . . . .
Chairperson

(Seal)

The certificate shall be filed in the office of the clerk, and the annual installment of the total tax so certified shall be extended by the county clerk on the tax books of the county against the real property, right-of-way, road, or property to be benefited, situated in such drainage district, in the same manner that other taxes are extended on the tax books of the county in a column under the heading of Drainage Tax, and the taxes shall be collected by the treasurer of the county in which the real property is situated on which the tax is levied at the same time and in the same manner that the county taxes on such property are collected. The county clerk shall be allowed the same fees as he or she receives for like services in other cases.

Source: Laws 1907, c. 152, § 3, p. 469; Laws 1909, c. 147, § 8, p. 518; R.S.1913, § 1828; C.S.1922, § 1775; C.S.1929, § 31-432; R.S. 1943, § 31-333; Laws 1961, c. 138, § 3, p. 397; Laws 1972, LB 1053, § 3; Laws 1992, LB 1063, § 24; Laws 1992, Second Spec. Sess., LB 1, § 24; Laws 1993, LB 734, § 35; Laws 1995, LB 452, § 8; Laws 1995, LB 589, § 7; Laws 2004, LB 813, § 14; Laws 2021, LB644, § 13.

ARTICLE 5
SANITARY DRAINAGE DISTRICTS IN MUNICIPALITIES

Section

31-501 Sanitary drainage district in municipality; organization; petition for election.

Whenever one or more municipalities may be situated upon or near a stream which is bordered by lands subject to overflow from natural causes, or which is obstructed by dams or artificial obstructions so that the natural flow of waters is impeded so that drainage or the improvement of the channel of the stream will conduce to the preservation of public health, such municipalities and the surrounding lands deleteriously affected by the conditions of the stream, may be incorporated as a sanitary drainage district under sections 31-501 to 31-523 in the manner following: Any one hundred legal voters, residents within the limits of such proposed sanitary drainage district, may petition the county board of the county wherein they reside to cause the question to be submitted to the legal voters within the limits of such proposed sanitary drainage district whether they will organize as a sanitary drainage district under such sections. In the case of municipalities of less than one thousand inhabitants, as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, two-thirds of the legal voters, residents within the limits of such proposed sanitary drainage district, may petition the county board of the county wherein they reside to cause the question to be submitted to the legal voters within the limits of such proposed sanitary drainage district whether they will organize as a sanitary drainage district under such sections, and if a majority of those voting on the question are in favor of the proposition the district shall be organized.

Source: Laws 1891, c. 36, § 1, p. 287; R.S.1913, § 1922; Laws 1919, c. 142, § 1, p. 320; C.S.1922, § 1863; C.S.1929, § 31-601; R.S.1943, § 31-501; Laws 2017, LB113, § 35.

31-505 Sanitary district trustees; election; organization; officers; corporate powers.

Upon the organization of any such sanitary district the county board shall call an election for the election of trustees, who shall hold their offices until their successors are elected and qualified. Where such sanitary district does not contain a city of more than forty thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count

by the United States Bureau of the Census, there shall be three trustees, and where such sanitary district contains a city of more than forty thousand inhabitants as so determined, there shall be five trustees. In districts having three trustees, at the first general state election held in November after the organization of the district, there shall be elected one trustee for a term of two years and two trustees for a term of four years, and thereafter their respective successors shall be elected for a term of four years at the general state election held in November immediately prior to the expiration of their respective terms. In districts having five trustees, at the first general state election held in November after the organization of the district, there shall be elected two trustees for a term of two years and three trustees for a term of four years, and thereafter their respective successors shall be elected for a term of four years at the general state election held in November immediately prior to the expiration of their respective terms. At the first meeting after election of one or more members, the board shall elect one of their number president and, in case they fail to elect, then the member who at his or her election received the highest number of votes shall be president of such board. Such district shall be a body corporate and politic by name of Sanitary District of ....., with power to sue, be sued, contract, acquire and hold property, and adopt a common seal.

Source: Laws 1891, c. 36, § 2, p. 288; R.S.1913, § 1926; C.S.1922, § 1867; C.S.1929, § 31-605; Laws 1943, c. 75, § 3, p. 259; R.S.1943, § 31-505; Laws 1949, c. 81, § 1, p. 214; Laws 2019, LB67, § 7.

31-508 Ditches constructed from cities of the primary class; improvement beyond the district; plan and estimate; duties of Department of Natural Resources.

If a sanitary drainage district has constructed one or more channels, drains, or ditches from a city of the primary class to or beyond the boundaries of the district downstream and there remains from the lower terminus of such improvement a portion or continuation of the watercourse unimproved, the Department of Natural Resources shall investigate the conditions of such watercourse, and if the department determines that further improvement in such watercourse downstream is for the interest of lands adjacent to such watercourse below the point of the improvement, the department shall file a plan of such improvement in the office of the county clerk of each of the counties in which any of the lands to be benefited are situated and in which any portion of the watercourse to be improved is located. Such plan shall describe the boundaries of the district to be benefited and shall contain an estimate of the benefits that would accrue to the sanitary district by reason of such improvement as well as the cost thereof and an estimate of the special benefits that would accrue to lands adjacent to the watercourse by reason of improved drainage, such estimate being detailed as to the various tracts of land under separate ownership as shown by the records of the county in which such lands are situated.

Source: Laws 1927, c. 144, § 1, p. 390; C.S.1929, § 31-607; R.S.1943, § 31-508; Laws 1949, c. 81, § 2, p. 214; Laws 1969, c. 248, § 1, p. 906; Laws 2000, LB 900, § 71; Laws 2017, LB113, § 36; Laws 2022, LB820, § 5.
Effective date July 21, 2022.

31-513 Annual tax levy; limit; certification to county clerk; collection; disbursement of funds.

(1) The board of trustees may levy and collect annually taxes for corporate purposes upon property within the limits of such sanitary district to the amount of not more than three and five-tenths cents on each one hundred dollars upon the taxable value of the taxable property of such district.

(2) The board of trustees shall, on or before September 30 of each year, certify the amount of tax to be levied to the county clerk who shall place the proper levy upon the county tax list, and the tax shall be collected by the county treasurer in the same manner as county taxes.

(3) The tax money collected by the levy shall be used exclusively for the purpose or purposes set forth in subsection (1) of this section. The county treasurer shall disburse the taxes on warrants of the board of trustees, and in respect to such fund, the county treasurer shall be ex officio treasurer of the sanitary district.

Source: Laws 1891, c. 36, § 9, p. 290; R.S.1913, § 1932; C.S.1922, § 1873; C.S.1929, § 31-611; Laws 1943, c. 73, § 1, p. 255; R.S.1943, § 31-513; Laws 1947, c. 113, § 1, p. 308; Laws 1951, c. 97, § 1, p. 266; Laws 1953, c. 287, § 51, p. 960; Laws 1955, c. 114, § 1, p. 305; Laws 1969, c. 248, § 2, p. 907; Laws 1969, c. 145, § 32, p. 692; Laws 1979, LB 187, § 136; Laws 1992, LB 1063, § 28; Laws 1992, Second Spec. Sess., LB 1, § 28; Laws 1993, LB 734, § 36; Laws 1995, LB 452, § 9; Laws 2021, LB644, § 14.

31-538 Sanitary district; activities; discontinuance; effect on powers of trustees and property rights.

(1) The result of such election shall be certified to the county board of the county in which such district is located, and if at such election a majority of the qualified electors actually voting in such sanitary district shall vote in favor of the discontinuance of the activities and work of the district, the trustees of such district shall thereupon cease the performance of their duties as such trustees, and the county board of the county in which such district is located shall thereupon act as trustees ex officio of the district and shall have all the powers, rights, and authority previously vested by law in the trustees of the district, but without additional compensation.

(2) Except as otherwise provided in section 31-543, all tangible property within the territorial limits of any city or village within such district, and any tangible property serving a particular city or village, such as a sanitary sewage treatment plant, and which could be operated and maintained by the particular city or village so served, shall be transferred and assigned to such city or village which shall, upon an acceptance of such transfer or assignment by its council or board of trustees or other local governing body, be thereafter wholly operated and maintained out of funds appropriated and levied by such city or village.

Source: Laws 1941, c. 56, § 3, p. 256; C.S.Supp.,1941, § 31-632; R.S. 1943, § 31-538; Laws 2022, LB800, § 332.
Operative date April 19, 2022.

31-539 Sanitary district; activities; discontinuance; effect on contract rights.

Except as otherwise provided in section 31-543, all lawful claims, rights, and demands against such a district, and all contractual obligations of such a district, existing in any person at the time of discontinuance of the activities and work of such district, shall continue to subsist in such person and shall remain the charge and obligation of the sanitary district, and all claims and demands in favor of such district at the time of the discontinuance of its activities and work shall subsist in its favor and may be collected in the same manner as might have been theretofore done by the district.

Source: Laws 1941, c. 56, § 4, p. 256; C.S.Supp.,1941, § 31-633; R.S. 1943, § 31-539; Laws 2022, LB800, § 333.
Operative date April 19, 2022.

31-540 Sanitary district; activities; discontinuance; effect on power to levy taxes.

Except as otherwise provided in section 31-543, for the purpose of discharging obligations of such district incurred prior to the discontinuance of its activities and work as provided in sections 31-501 to 31-534, such district shall continue to have the power to levy taxes as provided in such sections, and thereafter the district shall have the power to levy and collect general taxes in an amount not to exceed one and seven-tenths cents on each one hundred dollars upon the taxable value of all the taxable property in such district and shall have the power to levy special assessments in the manner and to the extent previously vested in such district.

Source: Laws 1941, c. 56, § 5, p. 256; C.S.Supp.,1941, § 31-634; R.S. 1943, § 31-540; Laws 1953, c. 287, § 52, p. 961; Laws 1979, LB 187, § 138; Laws 1992, LB 719A, § 125; Laws 2022, LB800, § 334.
Operative date April 19, 2022.

31-541 Sanitary district; activities; discontinuance; powers of county board; succession.

Except as otherwise provided in section 31-543, the county board of the county within which such district is located shall take possession of all rights and personal property, books, papers and records of such district, and shall discharge the duties within the territorial limits of such district imposed by law upon the district. For the discharge of such services the county board may employ such officers, servants and agents as may be necessary in the manner provided by law.

Source: Laws 1941, c. 56, § 6, p. 257; C.S.Supp.,1941, § 31-635; R.S. 1943, § 31-541; Laws 2022, LB800, § 335.
Operative date April 19, 2022.

31-543 Sanitary district; discontinuance; funds and property; city or riverfront development authority; rights and liability; conditions.

(1) For a discontinued sanitary district which lies solely within the zoning jurisdiction of a city, title to all funds and all other property and property rights of the discontinued district, and all taxes, assessments, and demands of every kind due or owing to the discontinued district, shall be vested in or paid to and collected by (a) such city or (b) except as specifically provided in subsection (3) of this section, the riverfront development authority established pursuant to

section 19-5305 if such city has elected to create a riverfront development district pursuant to section 19-5304.

(2) The city or riverfront development authority described in subsection (1) of this section shall also be liable for and recognize, assume, and carry out all valid contracts and obligations of that portion of the discontinued district assumed by such city or authority, including all outstanding bonds, warrants, or other debts and financial obligations.

(3) For any discontinuance of a district under subdivision (1)(b) of this section, the riverfront development authority shall only take title to and ownership of that property or those property rights of the discontinued sanitary district contained within the boundaries of the riverfront development district managed by the authority. The city shall take title to and ownership of any discontinued sanitary district property outside the boundaries of such riverfront development district. The city or authority shall thereafter maintain any drainway or drainage or sewage system of that portion of the discontinued district conveyed or transferred to the city or authority.

Source: Laws 2022, LB800, § 336.
Operative date April 19, 2022.

ARTICLE 7

SANITARY AND IMPROVEMENT DISTRICTS

(b) DISTRICTS FORMED UNDER ACT OF 1949

Section
31-727. Sanitary and improvement district; organized by proceedings in district court; purposes; powers; articles of association; contents; filing; real estate; conditions; terms, defined.
31-727.02. District; board of trustees; notice of meetings; minutes; clerk or administrator of district; duties.
31-728. District; summons; notice to landowners, counties, and cities affected; contents.
31-729. District; formation; objections.
31-735. District; trustees; election; procedure; term; notice; qualified voters; reduction in number of trustees; procedure.
31-739. District; bonds; interest; tax levies; restrictions; treasurer; duties; collection of charges other than taxes; disbursement of funds.
31-740. District; trustees or administrator; powers; plans or contracts; approval required; hearing; contracts authorized; audit; failure to perform audit; effect; connection with city sewerage system; rental or use charge; levy; special assessment.
31-744. District; trustees or administrator; improvements and facilities authorized; resolution; construction; acquisition; contracting; approval; cost; assessment.
31-749. Improvements; engineer; certificate of acceptance; cost; statement; special assessment; notices; hearing; appeal; hearing in district court.

(c) DISTRICT BOUNDARIES

31-763. Annexation of territory by a city or village; effect on certain contracts.
31-764. Annexation; trustees; administrator; accounting; effect; special assessments prohibited.
31-765. Annexation; when effective; trustees; administrator; duties; special assessments prohibited.
31-766. Annexation; obligations and assessments; agreement to divide; approval; special assessments prohibited; effect on certain contracts.

(f) RECALL OF TRUSTEES

31-787. Trustee; removal by recall; petition; procedure.

(b) DISTRICTS FORMED UNDER ACT OF 1949

31-727 Sanitary and improvement district; organized by proceedings in district court; purposes; powers; articles of association; contents; filing; real estate; conditions; terms, defined.

(1)(a) A majority of the owners having an interest in the real property within the limits of a proposed sanitary and improvement district, situated in one or more counties in this state, may form a sanitary and improvement district for the purposes of installing electric service lines and conduits, a sewer system, a water system, an emergency management warning system, a system of sidewalks, public roads, streets, and highways, public waterways, docks, or wharfs, and related appurtenances, contracting for water for fire protection and for resale to residents of the district, contracting for police protection and security services, contracting for solid waste collection services, contracting for access to the facilities and use of the services of the library system of one or more neighboring cities or villages, and contracting for gas and for electricity for street lighting for the public streets and highways within such proposed district, constructing and contracting for the construction of dikes and levees for flood protection for the district, acquiring, improving, and operating public parks, playgrounds, and recreational facilities, and acquiring, purchasing, leasing, owning, erecting, constructing, equipping, operating, or maintaining all or a portion of offstreet motor vehicle public parking facilities located in the district to serve business.

(b) The sanitary and improvement district may also contract with a county within which all or a portion of such sanitary and improvement district is located or a city within whose zoning jurisdiction such sanitary and improvement district is located for any public purpose specifically authorized in this section.

(c) Sanitary and improvement districts located in any county which has a city of the metropolitan class within its boundaries or in any adjacent county which has adopted a comprehensive plan may contract with other sanitary and improvement districts to acquire, build, improve, and operate public parks, playgrounds, and recreational facilities for the joint use of the residents of the contracting districts.

(d) Nothing in this section shall authorize districts to purchase electric service and resell the same.

(e) The district, in lieu of establishing its own water system, may contract with any utilities district, municipality, or corporation for the installation of a water system and for the provision of water service for fire protection and for the use of the residents of the district.

(f) For the purposes listed in this section, such majority of the owners may make and sign articles of association in which shall be stated (i) the name of the district, (ii) that the district will have perpetual existence, (iii) the limits of the district, (iv) the names and places of residence of the owners of the land in the proposed district, (v) the description of the several tracts of land situated in the district owned by those who may organize the district, (vi) the name or names and the description of the real estate owned by such owners as do not join in the organization of the district but who will be benefited thereby, and (vii)

whether the purpose of the corporation is installing gas and electric service lines and conduits, installing a sewer system, installing a water system, installing a system of public roads, streets, and highways, public waterways, docks, or wharfs, and related appurtenances, contracting for water for fire protection and for resale to residents of the district, contracting for police protection and security services, contracting for solid waste collection services, contracting for access to the facilities and use of the services of the library system of one or more neighboring cities or villages, contracting for street lighting for the public streets and highways within the proposed district, constructing or contracting for the construction of dikes and levees for flood protection of the proposed district, acquiring, improving, and operating public parks, playgrounds, and recreational facilities, acquiring, purchasing, leasing, owning, erecting, constructing, equipping, operating, or maintaining all or a portion of offstreet motor vehicle public parking facilities located in the district to serve business, or, when permitted by this section, contracting with other sanitary and improvement districts to acquire, build, improve, and operate public parks, playgrounds, and recreational facilities for the joint use of the residents of the contracting districts, contracting for any public purpose specifically authorized in this section, or combination of any one or more of such purposes, or all of such purposes. Such owners of real estate as are unknown may also be set out in the articles as such.

(g) No sanitary and improvement district may own or hold land in excess of ten acres, unless such land so owned and held by such district is actually used for a public purpose, as provided in this section, within three years of its acquisition. Any sanitary and improvement district which has acquired land in excess of ten acres in area and has not devoted the same to a public purpose, as set forth in this section, within three years of the date of its acquisition, shall devote the same to a use set forth in this section or shall divest itself of such land. When a district divests itself of land pursuant to this section, it shall do so by sale at public auction to the highest bidder after notice of such sale has been given by publication at least three times for three consecutive weeks prior to the date of sale in a legal newspaper of general circulation within the area of the district.

(2) The articles of association shall further state that the owners of real estate so forming the district for such purposes are willing and obligate themselves to pay the tax or taxes which may be levied against all the property in the district and special assessments against the real property benefited which may be assessed against them to pay the expenses that may be necessary to install a sewer or water system or both a sewer and water system, the cost of water for fire protection, the cost of grading, changing grade, paving, repairing, graveling, regraveling, widening, or narrowing sidewalks and roads, resurfacing or relaying existing pavement, or otherwise improving any public roads, streets, or highways within the district, including protecting existing sidewalks, streets, highways, and roads from floods or erosion which has moved within fifteen feet from the edge of such sidewalks, streets, highways, or roads, regardless of whether such flooding or erosion is of natural or artificial origin, the cost of constructing public waterways, docks, or wharfs, and related appurtenances, the cost of constructing or contracting for the construction of dikes and levees for flood protection for the district, the cost of contracting for water for fire protection and for resale to residents of the district, the cost of contracting for police protection and security services, the cost of contracting for solid waste

collection services, the cost of contracting for access to the facilities and use of the services of the library system of one or more neighboring cities or villages, the cost of electricity for street lighting for the public streets and highways within the district, the cost of installing gas and electric service lines and conduits, the cost of acquiring, improving, and operating public parks, playgrounds, and recreational facilities, the cost of acquiring, purchasing, leasing, owning, erecting, constructing, equipping, operating, or maintaining all or a portion of offstreet motor vehicle public parking facilities located in the district to serve business, and, when permitted by this section, the cost of contracting for building, acquiring, improving, and operating public parks, playgrounds, and recreational facilities, and the cost of contracting for any public purpose specifically authorized in this section, as provided by law.

(3) The articles shall propose the names of five or more trustees who are (a) owners of real estate located in the proposed district or (b) designees of the owners if the real estate is owned by a limited partnership, a general partnership, a limited liability company, a public, private, or municipal corporation, an estate, or a trust. These five trustees shall serve as a board of trustees until their successors are elected and qualified if such district is organized. No corporation formed or hereafter formed shall perform any new functions, other than those for which the corporation was formed, without amending its articles of association to include the new function or functions.

(4) After the articles are signed, the same shall be filed in the office of the clerk of the district court of the county in which such sanitary and improvement district is located or, if such sanitary and improvement district is composed of tracts or parcels of land in two or more different counties, in the office of the clerk of the district court for the county in which the greater portion of such proposed sanitary and improvement district is located, together with a petition praying that the same may be declared a sanitary and improvement district under sections 31-727 to 31-762.

(5) Notwithstanding the repeal of sections 31-701 to 31-726.01 by Laws 1996, LB 1321:

(a) Any sanitary and improvement district organized pursuant to such sections and in existence on July 19, 1996, shall, after August 31, 2003, be treated for all purposes as if formed and organized pursuant to sections 31-727 to 31-762;

(b) Any act or proceeding performed or conducted by a sanitary and improvement district organized pursuant to such repealed sections shall be deemed lawful and within the authority of such sanitary and improvement district to perform or conduct after August 31, 2003; and

(c) Any trustees of a sanitary and improvement district organized pursuant to such repealed sections and lawfully elected pursuant to such repealed sections or in conformity with the provisions of sections 31-727 to 31-762 shall be deemed for all purposes, on and after August 31, 2003, to be lawful trustees of such sanitary and improvement district for the term provided by such sections. Upon the expiration of the term of office of a trustee or at such time as there is a vacancy in the office of any such trustee prior to the expiration of his or her term, his or her successors or replacement shall be elected pursuant to sections 31-727 to 31-762.

(6)(a) A sanitary and improvement district that meets the requirements of this subsection shall have the additional powers provided for in subdivision (b) of

this subsection, subject to the approval and restrictions established by the city council or village board within whose zoning jurisdiction the sanitary and improvement district is located and the county board in which a majority of the sanitary and improvement district is located. The sanitary and improvement district shall be (i) located in a county with a population less than one hundred thousand inhabitants, (ii) located predominately in a county different from the county of the municipality within whose zoning jurisdiction such sanitary and improvement district is located, (iii) unable to incorporate due to its close proximity to a municipality, and (iv) unable to be annexed by a municipality with zoning jurisdiction because the sanitary and improvement district is not adjacent or contiguous to such municipality.

(b) Any sanitary and improvement district that meets the requirements of subdivision (6)(a) of this section shall have only the following additional powers, subject to the approval and restrictions of the city council or village board within whose zoning jurisdiction such sanitary and improvement district is located and the county board in which a majority of the sanitary and improvement district is located. Such sanitary and improvement district shall have the power to (i) regulate and license dogs and other animals, (ii) regulate and provide for streets and sidewalks, including the removal of obstructions and encroachments, (iii) regulate parking on public roads and rights-of-way relating to snow removal and access by emergency vehicles, and (iv) regulate the parking of abandoned motor vehicles.

(7) For the purposes of sections 31-727 to 31-762 and 31-771 to 31-780, unless the context otherwise requires:

(a) Public waterways means artificially created boat channels dedicated to public use and providing access to navigable rivers or streams;

(b) Operation and maintenance expenses means and includes, but is not limited to, salaries, cost of materials and supplies for operation and maintenance of the district's facilities, cost of ordinary repairs, replacements, and alterations, cost of surety bonds and insurance, cost of audits and other fees, and taxes;

(c) Capital outlay means expenditures for construction or reconstruction of major permanent facilities having an expected long life, including, but not limited to, street paving and curbs, storm and sanitary sewers, and other utilities;

(d) Warrant means an investment security under article 8, Uniform Commercial Code, in the form of a short-term, interest-bearing order payable on a specified date issued by the board of trustees or administrator of a sanitary and improvement district to be paid from funds expected to be received in the future, and includes, but is not limited to, property tax collections, special assessment collections, and proceeds of sale of general obligation bonds;

(e) General obligation bond means an investment security under article 8, Uniform Commercial Code, in the form of a long-term, written promise to pay a specified sum of money, referred to as the face value or principal amount, at a specified maturity date or dates in the future, plus periodic interest at a specified rate; and

(f) Administrator means the person appointed by the Auditor of Public Accounts pursuant to section 31-771 to manage the affairs of a sanitary and improvement district and to exercise the powers of the board of trustees during

the period of the appointment to the extent prescribed in sections 31-727 to 31-780.

Source: Laws 1949, c. 78, § 1, p. 194; Laws 1955, c. 117, § 1, p. 310; Laws 1961, c. 142, § 1, p. 409; Laws 1967, c. 189, § 1, p. 518; Laws 1969, c. 250, § 1, p. 909; Laws 1969, c. 251, § 1, p. 918; Laws 1973, LB 245, § 1; Laws 1974, LB 757, § 7; Laws 1976, LB 313, § 1; Laws 1977, LB 228, § 1; Laws 1982, LB 868, § 1; Laws 1985, LB 207, § 1; Laws 1994, LB 501, § 1; Laws 1996, LB 43, § 5; Laws 2003, LB 721, § 1; Laws 2008, LB768, § 1; Laws 2015, LB324, § 1; Laws 2021, LB81, § 1.

31-727.02 District; board of trustees; notice of meetings; minutes; clerk or administrator of district; duties.

(1) Except as provided in subsection (5) of section 84-1411, the clerk or administrator of each sanitary and improvement district shall notify any municipality or county within whose zoning jurisdiction such district is located of all meetings of the district board of trustees or called by the administrator by sending a notice of such meeting to the clerk of the municipality or county not less than seven days prior to the date set for any meeting. In the case of meetings called by the administrator, notice shall be provided to the clerk of the district not less than seven days prior to the date set for any meeting.

(2) Except as provided in subsection (5) of section 84-1411, within thirty days after any meeting of a sanitary and improvement district board of trustees or called by the administrator, the clerk or administrator of the district shall transmit to the municipality or county within whose zoning jurisdiction the sanitary and improvement district is located a copy of the minutes of such meeting.

Source: Laws 1976, LB 313, § 11; Laws 1982, LB 868, § 2; Laws 2021, LB83, § 3.

31-728 District; summons; notice to landowners, counties, and cities affected; contents.

Immediately after the petition and articles of association shall have been filed, as provided for by subsection (4) of section 31-727, the clerk of the district court for the county where same are filed shall issue a summons, as now provided by law, returnable as any other summons in a civil action filed in said court, and directed to the several owners of real estate in the proposed district who may be alleged in such petition to be benefited thereby, but who have not signed the articles of association, which shall be served as summonses in civil cases. In case any owner or owners of real estate in the proposed district are unknown, or are nonresidents, they shall be notified in the same manner as nonresident defendants are now notified according to law in actions in the district courts of this state, setting forth in such notice (1) that the articles of association have been filed, (2) the purpose thereof, (3) that the real estate of such owner or owners situated in the district, describing the same, will be affected thereby and rendered liable to taxation and special assessment in accordance with law for the purpose of installing and maintaining such sewer or water system, or both, and maintaining the district, for constructing and maintaining a system of sidewalks, public roads, streets, and highways, public waterways, docks or wharfs, and related appurtenances, for the furnishing of

water for fire protection, for contracting for gas and for electricity for street lighting for the public streets and highways within the district, for constructing or contracting for the construction of dikes and levees for flood protection for the district, for installing electric service lines and conduits, for the acquisition, improvement, and operation of public parks, playgrounds, and recreational facilities, for acquiring, purchasing, leasing, owning, erecting, constructing, equipping, operating, or maintaining all or a portion of offstreet motor vehicle public parking facilities located in the district to serve business, and, where permitted by section 31-727, for the contracting with other sanitary and improvement districts for acquiring, building, improving, and operating public parks, playgrounds, and recreational facilities for the joint use of the residents of the contracting districts, (4) the names of the proposed trustees, and (5) that a petition has been made to have the district declared a sanitary and improvement district.

Within five days after the filing of the petition the clerk of the district court shall send notice of such petition to each county in which all or a portion of the proposed district lies and to each city in whose zoning jurisdiction all or a portion of the proposed district lies.

Source: Laws 1949, c. 78, § 2, p. 196; Laws 1955, c. 117, § 2, p. 312; Laws 1961, c. 142, § 2, p. 411; Laws 1967, c. 189, § 2, p. 520; Laws 1969, c. 250, § 2, p. 911; Laws 1973, LB 245, § 2; Laws 1974, LB 757, § 8; Laws 1980, LB 933, § 26; Laws 2021, LB81, § 2.

Cross References

Methods of service, see sections 25-505.01, 25-506.01, and 25-540.
Return date of summons, see section 25-507.01.
Service on unknown defendants, see section 25-321.

31-729 District; formation; objections.

All owners of real estate situated in the proposed district who have not signed the articles of association and who may object to the organization of the district or to any one or more of the proposed trustees shall, on or before the time in which they are required to answer, file any such objection in writing, stating (1) why such sanitary and improvement district should not be organized and declared a public corporation in this state, (2) why their land will not be benefited by the installation of a sewer or water system, or both a sewer and water system, a system of sidewalks, public roads, streets, and highways, public waterways, docks or wharfs, and related appurtenances, and gas and electricity for street lighting for the public streets and highways within the district, by the contracting for solid waste collection services, by the construction or contracting for the construction of dikes and levees for flood protection for the district, gas or electric service lines and conduits, and water for fire protection and the health and property of the owners protected, by the acquisition, improvement and operation of public parks, playgrounds, and recreational facilities, by acquiring, purchasing, leasing, owning, erecting, constructing, equipping, operating, or maintaining all or a portion of offstreet motor vehicle public parking facilities located in the district to serve business, and, where permitted by section 31-727, by the contracting with other sanitary and improvement districts for the building, acquisition, improvement, and operation of public parks, playgrounds, and recreational facilities for the joint use of the residents of the contracting districts, (3) why their land should not be embraced in the limits of

such district, and (4) their objections if any to any one or more of the proposed trustees.

Source: Laws 1949, c. 78, § 3, p. 196; Laws 1955, c. 117, § 3, p. 312; Laws 1961, c. 142, § 3, p. 412; Laws 1967, c. 189, § 3, p. 521; Laws 1969, c. 250, § 3, p. 912; Laws 1973, LB 245, § 3; Laws 1974, LB 757, § 9; Laws 2015, LB324, § 3; Laws 2021, LB81, § 3.

31-735 District; trustees; election; procedure; term; notice; qualified voters; reduction in number of trustees; procedure.

(1) On the first Tuesday after the second Monday in September which is at least fifteen months after the judgment of the district court creating a sanitary and improvement district and on the first Tuesday after the second Monday in September each two years thereafter, the board of trustees shall cause a special election to be held, at which election a board of trustees shall be elected. The board of trustees shall have five members except as provided in subsection (2) of this section. Each member elected to the board of trustees shall be elected to a term of two years and shall hold office until such member's successor is elected and qualified. Any person desiring to file for the office of trustee may file for such office with the election commissioner, or county clerk in counties having no election commissioner, of the county in which the greater proportion in area of the district is located not later than fifty days before the election. If such person will serve on the board of trustees as a designated representative of a limited partnership, general partnership, limited liability company, public, private, or municipal corporation, estate, or trust which owns real estate in the district, the filing shall indicate that fact and shall include appropriate documentation evidencing such fact. No filing fee shall be required. A person filing for the office of trustee to be elected at the election held four years after the first election of trustees and each election thereafter shall designate whether such person is a candidate for election by the resident owners of such district or a candidate for election by all of the owners of real estate located in the district. If a person filing for the office of trustee is a designated representative of a limited partnership, a general partnership, a limited liability company, a public, private, or municipal corporation, an estate, or a trust which owns real estate in the district, the name of such entity shall accompany the name of the candidate on the ballot in the following form: (Name of candidate) to represent (name of entity) as a member of the board. The name of each candidate shall appear on only one ballot.

The name of a person may be written in and voted for as a candidate for the office of trustee, and such write-in candidate may be elected to the office of trustee. A write-in candidate for the office of trustee who will serve as a designated representative of a limited partnership, a general partnership, a limited liability company, a public, private, or municipal corporation, an estate, or a trust which owns real estate in the district shall not be elected to the office of trustee unless (a) each vote is accompanied by the name of the entity which the candidate will represent and (b) within ten days after the date of the election the candidate provides the election commissioner or county clerk with appropriate documentation evidencing the candidate's representation of the entity. Votes cast which do not carry such accompanying designation shall not be counted.

A trustee shall be an owner of real estate located in the district or shall be a person designated to serve as a representative on the board of trustees if the real estate is owned by a limited partnership, a general partnership, a limited liability company, a public, private, or municipal corporation, an estate, or a trust. Notice of the date of the election shall be mailed by the clerk of the district not later than sixty-five days prior to the election to each person who is entitled to vote at the election for trustees whose property ownership or lease giving a right to vote is of record on the records of the register of deeds as of a date designated by the election commissioner or county clerk, which date shall be not more than eighty days prior to the election.

(2)(a) For any sanitary and improvement district, a person whose ownership or right to vote becomes of record or is received after the date specified pursuant to subsection (1) of this section may vote when such person establishes the right to vote to the satisfaction of the election board. At the first election and at the election held two years after the first election, any person may cast one vote for each trustee for each acre of unplatted land or fraction thereof and one vote for each platted lot which such person may own in the district.

(b) This subdivision applies to a district until the board of trustees amends its articles of association pursuant to subdivision (2)(d) of this section. At the election held four years after the first election of trustees, two members of the board of trustees shall be elected by the legal property owners resident within such sanitary and improvement district and three members shall be elected by all of the owners of real estate located in the district pursuant to this section. Every resident property owner may cast one vote for a candidate for each office of trustee to be filled by election of resident property owners only. Such resident property owners may also each cast one vote for each acre of unplatted land or fraction thereof and for each platted lot owned within the district for a candidate for each office of trustee to be filled by election of all property owners. For each office of trustee to be filled by election of all property owners of the district, every legal property owner not resident within such sanitary and improvement district may cast one vote for each acre of unplatted land or fraction thereof and one vote for each platted lot which such legal property owner owns in the district. At the election held six years after the first election of trustees and at each election thereafter, three members of the board of trustees shall be elected by the legal property owners resident within such sanitary and improvement district and two members shall be elected by all of the owners of real estate located in the district pursuant to this section. If there are not any legal property owners resident within such district or if not less than ninety percent of the area of the district is owned for other than residential uses, the five members shall be elected by the legal property owners of all property within such district as provided in this section.

(c) Any public, private, or municipal corporation owning any land or lot in the district may vote at an election the same as an individual. If more than fifty percent of the homes in any sanitary and improvement district are used as a second, seasonal, or recreational residence, the owners of such property shall be considered legal property owners resident within such district for purposes of electing trustees. For purposes of voting for trustees, each condominium apartment under a condominium property regime established prior to January 1, 1984, under the Condominium Property Act or established after January 1, 1984, under the Nebraska Condominium Act shall be deemed to be a platted lot

and the lessee or the owner of the lessee's interest, under any lease for an initial term of not less than twenty years which requires the lessee to pay taxes and special assessments levied on the leased property, shall be deemed to be the owner of the property so leased and entitled to cast the vote of such property. When ownership of a platted lot or unplatted land is held jointly by two or more persons, whether as joint tenants, tenants in common, limited partners, members of a limited liability company, or any other form of joint ownership, only one person shall be entitled to cast the vote of such property. The executor, administrator, guardian, or trustee of any person or estate interested shall have the right to vote. No corporation, estate, or irrevocable trust shall be deemed to be a resident owner for purposes of voting for trustees. Should two or more persons or officials claim the right to vote on the same tract, the election board shall determine the party entitled to vote. Such board shall select one of their number chairperson and one of their number clerk. In case of a vacancy on such board, the remaining trustees shall fill the vacancy on such board until the next election.

(d) For any sanitary and improvement district which has been in existence for at least ten years, which has less than seventy property owners entitled to vote for trustees, which has at least two resident property owners, and in which less than ten percent of the area of the district is owned for other than residential uses, the board of trustees may amend its articles of association as provided in section 31-740.01 to provide for a reduction in the number of trustees on the board from five members to three members to be effective at the beginning of the term of office for the board of trustees elected at the next election. At the next election and at each election thereafter, two members of the board of trustees shall be elected by the legal property owners resident within such sanitary and improvement district and one member shall be elected by all of the owners of real estate located in the district pursuant to this section. Every resident property owner may cast one vote for a candidate for each office of trustee to be filled by election of resident property owners only. Such resident property owners may also each cast one vote for each acre of unplatted land or fraction thereof and for each platted lot owned within the district for a candidate for the office of trustee to be filled by election of all property owners. For the office of trustee to be filled by election of all property owners of the district, every legal property owner not resident within such sanitary and improvement district may cast one vote for each acre of unplatted land or fraction thereof and one vote for each platted lot which such legal property owner owns in the district.

(3) The election commissioner or county clerk shall hold any election required by subsection (1) of this section by sealed mail ballot by notifying the board of trustees on or before July 1 of a given year. The election commissioner or county clerk shall, at least twenty days prior to the election, mail a ballot and return envelope to each person who is entitled to vote at the election and whose property ownership or lease giving a right to vote is of record with the register of deeds as of the date designated by the election commissioner or county clerk, which date shall not be more than eighty days prior to the election. The ballot and return envelope shall include: (a) The names and addresses of the candidates; (b) room for write-in candidates; and (c) instructions on how to vote and return the ballot. Such ballots shall be returned in the return envelope to the election commissioner or county clerk no later than 5 p.m. on the date set for the election. If the ballot is not returned in the return envelope, such ballot

shall not be counted. If more than one ballot is included in the same return envelope, such ballots shall not be counted and shall be reinserted into the return envelope which shall be resealed and marked rejected.

Source: Laws 1949, c. 78, § 9, p. 198; Laws 1971, LB 188, § 3; Laws 1974, LB 757, § 10; Laws 1976, LB 313, § 14; Laws 1977, LB 228, § 2; Laws 1981, LB 37, § 1; Laws 1982, LB 359, § 1; Laws 1983, LB 433, § 71; Laws 1984, LB 1105, § 1; Laws 1986, LB 483, § 1; Laws 1987, LB 587, § 1; Laws 1987, LB 652, § 4; Laws 1992, LB 764, § 2; Laws 1993, LB 121, § 195; Laws 1997, LB 874, § 9; Laws 1999, LB 740, § 1; Laws 2005, LB 401, § 1; Laws 2009, LB412, § 1; Laws 2015, LB116, § 1; Laws 2015, LB149, § 1; Laws 2016, LB695, § 1; Laws 2022, LB800, § 337.
Operative date July 21, 2022.

Cross References

Condominium Property Act, see section 76-801.
Nebraska Condominium Act, see section 76-825.

31-739 District; bonds; interest; tax levies; restrictions; treasurer; duties; collection of charges other than taxes; disbursement of funds.

(1) The district may borrow money for corporate purposes and issue its general obligation bonds therefor and shall annually levy a tax on the taxable value of the taxable property in the district sufficient to pay the interest and principal on the bonds. Such levy shall be known as the bond tax levy of the district. The district shall also annually levy a tax on the taxable value of the taxable property in the district for the purpose of creating a sinking fund for the maintenance and repairing of any sewer or water system or electric lines and conduits in the district, for the payment of any hydrant rentals, for the maintenance and repairing of any sidewalks, public roads, streets, and highways, public waterways, docks, or wharfs, and related appurtenances in the district, for the cost of operating any street lighting system for the public streets and highways within the district, for the building, construction, improvement, or replacement of facilities or systems when necessary to remove or alleviate an existing threat to public health and safety affecting no more than one hundred existing homes, for the cost of building, acquiring, maintaining, and operating public parks, playgrounds, and recreational facilities, for the cost of acquiring, purchasing, leasing, owning, erecting, constructing, equipping, operating, or maintaining all or a portion of offstreet motor vehicle public parking facilities located in the district to serve business, or, when permitted by section 31-727, for contracting with other sanitary and improvement districts for building, acquiring, maintaining, and operating public parks, playgrounds, and recreational facilities for the joint use of the residents of the contracting districts, or for the cost of any other services for which the district has contracted or to make up any deficiencies caused by the nonpayment of any special assessments. Such levy shall be known as the operating levy of the district. On or before September 30 of each year, the clerk of the board shall certify the tax to the county clerk of the counties in which such district is located in order that the tax may be extended upon the county tax list. Nothing contained in this section shall authorize any district which has been annexed by a city or village to levy any taxes within or upon the annexed area after the effective date of the annexation if the effective date of the annexation is prior to such levy certification date of the district for the year in which such annexation occurs.

(2) The county treasurer of the county in which the greater portion of the area of the district is located shall be ex officio treasurer of the sanitary and improvement district and shall be responsible for all funds of the district coming into his or her hands. He or she shall collect all taxes and special assessments levied by the district and deposit the same in a bond sinking fund for the payment of principal and interest on any bonds outstanding.

(3) Except as provided in subsection (5) of this section, the trustees or administrator of the district may authorize the clerk or appoint an independent agent to collect service charges and all items other than taxes, connection charges, special assessments, and funds from sale of bonds and warrants, but all funds so collected shall, at least once each month, be remitted to the treasurer to be held in a fund, separate from the general fund or construction fund of the district, which shall be known as the service fee fund of the district. The trustees or administrator may direct the district's treasurer to disburse funds held in the service fee fund to maintain and operate any service for which the funds have been collected or to deposit such funds into the general fund of the district.

(4) The treasurer of the district shall not be responsible for such funds until they are received by him or her. The treasurer shall disburse the funds of the district only on warrants authorized by the trustees or the administrator and signed by the chairperson and clerk or the administrator.

(5) If the average weekly balance in the service fee fund of a district for a full budget year does not exceed five thousand dollars, the trustees or administrator of the district may authorize the clerk to establish an interest-bearing checking account in the name of the district to be maintained as the district service fee fund and the district's treasurer shall disburse the balance of funds held in the service fee fund of the district to the clerk for deposit into the district service fee fund. Following the creation of the district service fee fund, all funds required to be deposited into the service fee fund shall be deposited into the district service fee fund and all disbursements which may lawfully be made from the service fee fund may be made from the district service fee fund as directed or approved by the trustees or the administrator.

Source: Laws 1949, c. 78, § 13, p. 200; Laws 1955, c. 117, § 4, p. 313; Laws 1961, c. 142, § 4, p. 412; Laws 1967, c. 189, § 4, p. 521; Laws 1969, c. 252, § 1, p. 921; Laws 1969, c. 250, § 4, p. 913; Laws 1969, c. 51, § 98, p. 334; Laws 1973, LB 245, § 4; Laws 1974, LB 757, § 11; Laws 1979, LB 187, § 143; Laws 1982, LB 868, § 7; Laws 1985, LB 207, § 2; Laws 1992, LB 1063, § 30; Laws 1992, Second Spec. Sess., LB 1, § 30; Laws 1993, LB 734, § 38; Laws 1995, LB 452, § 11; Laws 1996, LB 1362, § 5; Laws 1997, LB 531, § 1; Laws 2003, LB 721, § 3; Laws 2021, LB81, § 4; Laws 2021, LB644, § 15.

31-740 District; trustees or administrator; powers; plans or contracts; approval required; hearing; contracts authorized; audit; failure to perform audit; effect; connection with city sewerage system; rental or use charge; levy; special assessment.

(1) The board of trustees or the administrator of any district organized under sections 31-727 to 31-762 shall have power to provide for establishing, maintaining, and constructing gas and electric service lines and conduits, an

emergency management warning system, water mains, sewers, and disposal plants and disposing of drainage, waste, and sewage of such district in a satisfactory manner; for establishing, maintaining, and constructing sidewalks, public roads, streets, and highways, including grading, changing grade, paving, repaving, graveling, regraveling, widening, or narrowing roads, resurfacing or relaying existing pavement, or otherwise improving any road, street, or highway within the district, including protecting existing sidewalks, streets, highways, and roads from floods or erosion which has moved within fifteen feet from the edge of such sidewalks, streets, highways, or roads, regardless of whether such flooding or erosion is of natural or artificial origin; for establishing, maintaining, and constructing public waterways, docks, or wharfs, and related appurtenances; and for constructing and contracting for the construction of dikes and levees for flood protection for the district.

(2) The board of trustees or the administrator of any district may contract for access to the facilities and use of the services of the library system of one or more neighboring cities or villages, for solid waste collection services, and for electricity for street lighting for the public streets and highways within the district and shall have power to provide for building, acquisition, improvement, maintenance, and operation of public parks, playgrounds, and recreational facilities, for acquiring, purchasing, leasing, owning, erecting, constructing, equipping, operating, or maintaining all or a portion of offstreet motor vehicle public parking facilities located in the district to serve business, and, when permitted by section 31-727, for contracting with other sanitary and improvement districts for the building, acquisition, improvement, maintenance, and operation of public parks, playgrounds, and recreational facilities for the joint use of the residents of the contracting districts, and for contracting for any public purpose specifically authorized in this section. Power to construct clubhouses and similar facilities for the giving of private parties within the zoning jurisdiction of any city or village is not included in the powers granted in this section. Any sewer system established shall be approved by the Department of Health and Human Services. Any contract entered into on or after August 30, 2015, for solid waste collection services shall include a provision that, in the event the district is annexed in whole or in part by a city or village, the contract shall be canceled and voided upon such annexation as to the annexed areas.

(3) Prior to the installation of any of the improvements or services provided for in this section, the plans or contracts for such improvements or services, other than for public parks, playgrounds, and recreational facilities, whether a district acts separately or jointly with other districts as permitted by section 31-727, shall be approved by the public works department of any municipality when such improvements or any part thereof or services are within the area of the zoning jurisdiction of such municipality. If such improvements or services are without the area of the zoning jurisdiction of any municipality, plans for such improvements shall be approved by the county board of the county in which such improvements are located. Plans and exact costs for public parks, playgrounds, and recreational facilities shall be approved by resolution of the governing body of such municipality or county after a public hearing. Purchases of public parks, playgrounds, and recreational facilities so approved may be completed and shall be valid notwithstanding any interest of any trustee of the district in the transaction. Such approval shall relate to conformity with the master plan and the construction specifications and standards established by

such municipality or county. When no master plan and construction specifications and standards have been established, such approval shall not be required. When such improvements are within the area of the zoning jurisdiction of more than one municipality, such approval shall be required only from the most populous municipality, except that when such improvements are furnished to the district by contract with a particular municipality, the necessary approval shall in all cases be given by such municipality. The municipality or county shall be required to approve plans for such improvements and shall enforce compliance with such plans by action in equity.

(4) The district may construct its sewage disposal plant and other sewerage or water improvements, or both, in whole or in part, inside or outside the boundaries of the district and may contract with corporations or municipalities for disposal of sewage and use of existing sewerage improvements and for a supply of water for fire protection and for resale to residents of the district. It may also contract with any company, public power district, electric membership or cooperative association, or municipality for access to the facilities and use of the services of the library system of one or more neighboring cities or villages, for solid waste collection services, for the installation, maintenance, and cost of operating a system of street lighting upon the public streets and highways within the district, for installation, maintenance, and operation of a water system, for the installation, maintenance, and operation of electric service lines and conduits, or for the acquisition, purchase, lease, ownership, erection, construction, equipping, operation, or maintenance of all or a portion of offstreet motor vehicle public parking facilities located in the district to serve business, and to provide water service for fire protection and use by the residents of the district. It may also contract with any company, municipality, or other sanitary and improvement district, as permitted by section 31-727, for building, acquiring, improving, and operating public parks, playgrounds, and recreational facilities for the joint use of the residents of the contracting parties. It may also contract with a county within which all or a portion of such sanitary and improvement district is located or a city within whose zoning jurisdiction the sanitary and improvement district is located for intersection and traffic control improvements, which improvements serve or benefit the district and which may be within or without the corporate boundaries of the district, and for any public purpose specifically authorized in this section.

(5) Each sanitary and improvement district shall have the books of account kept by the board of trustees of the district examined and audited by a certified public accountant or a public accountant for the year ending June 30 and shall file a copy of the audit with the office of the Auditor of Public Accounts by December 31 of the same year. Such audits may be waived by the Auditor of Public Accounts upon proper showing by the district that the audit is unnecessary. Such examination and audit shall show (a) the gross income of the district from all sources for the previous year, (b) the amount spent for access to the facilities and use of the services of the library system of one or more neighboring cities or villages, (c) the amount spent for solid waste collection services, (d) the amount spent for sewage disposal, (e) the amount expended on water mains, (f) the gross amount of sewage processed in the district, (g) the cost per thousand gallons of processing sewage, (h) the amount expended each year for (i) maintenance and repairs, (ii) new equipment, (iii) new construction work, and (iv) property purchased, (i) a detailed statement of all items of expense, (j) the number of employees, (k) the salaries and fees paid employees, (l) the total

amount of taxes levied upon the property within the district, and (m) all other facts necessary to give an accurate and comprehensive view of the cost of carrying on the activities and work of such sanitary and improvement district. The reports of all audits provided for in this section shall be and remain a part of the public records in the office of the Auditor of Public Accounts. The expense of such audits shall be paid out of the funds of the district. The Auditor of Public Accounts shall be given access to all books and papers, contracts, minutes, bonds, and other documents and memoranda of every kind and character of such district and be furnished all additional information possessed by any present or past officer or employee of any such district, or by any other person, that is essential to the making of a comprehensive and correct audit.

(6) If any sanitary and improvement district fails or refuses to cause such annual audit to be made of all of its functions, activities, and transactions for the fiscal year within a period of six months following the close of such fiscal year, unless such audit has been waived, the Auditor of Public Accounts shall, after due notice and a hearing to show cause by such district, appoint a certified public accountant or public accountant to conduct the annual audit of the district and the fee for such audit shall become a lien against the district.

(7) Whenever the sanitary sewer system or any part thereof of a sanitary and improvement district is directly or indirectly connected to the sewerage system of any city, such city, without enacting an ordinance or adopting any resolution for such purpose, may collect such city's applicable rental or use charge from the users in the sanitary and improvement district and from the owners of the property served within the sanitary and improvement district. The charges of such city shall be charged to each property served by the city sewerage system, shall be a lien upon the property served, and may be collected from the owner or the person, firm, or corporation using the service. If the city's applicable rental or service charge is not paid when due, such sum may be recovered by the municipality in a civil action or it may be assessed against the premises served as a special assessment and may be assessed by such city and collected and returned in the same manner as other municipal special assessments are enforced and collected. When any such assessment is levied, it shall be the duty of the city clerk to deliver a certified copy of the ordinance to the county treasurer of the county in which the premises assessed are located and such county treasurer shall collect the assessment as provided by law and return the assessment to the city treasurer. Funds of such city raised from such charges shall be used by it in accordance with laws applicable to its sewer service rental or charges. The governing body of any city may make all necessary rules and regulations governing the direct or indirect use of its sewerage system by any user and premises within any sanitary and improvement district and may establish just and equitable rates or charges to be paid to such city for use of any of its disposal plants and sewerage system. The board of trustees may, in connection with the issuance of any warrants or bonds of the district, agree to make a specified minimum levy on taxable property in the district to pay, or to provide a sinking fund to pay, principal and interest on warrants and bonds of the district for such number of years as the board may establish at the time of making such agreement and may agree to enforce, by foreclosure or otherwise as permitted by applicable laws, the collection of special assessments levied by the district. Such agreements may contain provisions granting to creditors and others the right to enforce and carry out the agreements on behalf of the district and its creditors.

(8) The board of trustees or administrator shall have power to sell and convey real and personal property of the district on such terms as it or he or she shall determine, except that real estate shall be sold to the highest bidder at public auction after notice of the time and place of the sale has been published for three consecutive weeks prior to the sale in a newspaper of general circulation in the county. The board of trustees or administrator may reject such bids and negotiate a sale at a price higher than the highest bid at the public auction at such terms as may be agreed.

Source: Laws 1949, c. 78, § 14, p. 200; Laws 1955, c. 117, § 5, p. 314; Laws 1961, c. 142, § 5, p. 413; Laws 1963, c. 170, § 1, p. 585; Laws 1965, c. 158, § 1, p. 507; Laws 1967, c. 188, § 2, p. 515; Laws 1971, LB 188, § 4; Laws 1972, LB 1387, § 2; Laws 1973, LB 245, § 5; Laws 1974, LB 629, § 1; Laws 1974, LB 757, § 12; Laws 1976, LB 313, § 3; Laws 1979, LB 187, § 144; Laws 1982, LB 868, § 8; Laws 1985, LB 207, § 3; Laws 1994, LB 501, § 3; Laws 1996, LB 43, § 6; Laws 1996, LB 1044, § 92; Laws 1997, LB 589, § 1; Laws 1997, LB 874, § 10; Laws 2002, LB 176, § 2; Laws 2007, LB296, § 50; Laws 2008, LB768, § 2; Laws 2015, LB324, § 4; Laws 2015, LB361, § 52; Laws 2021, LB81, § 5.

31-744 District; trustees or administrator; improvements and facilities authorized; resolution; construction; acquisition; contracting; approval; cost; assessment.

Whenever the board of trustees or the administrator deems it advisable or necessary (1) to build, reconstruct, purchase, or otherwise acquire a water system, an emergency management warning system, a sanitary sewer system, a sanitary and storm sewer or sewage disposal plant, pumping stations, sewer outlets, gas or electric service lines and conduits constructed or to be constructed in whole or in part inside or outside of the district, a system of sidewalks, public roads, streets, and highways wholly within the district, public waterways, docks, or wharfs, and related appurtenances, wholly within the district, or a public park or parks, playgrounds, and recreational facilities wholly within the district, (2) to acquire, purchase, lease, own, erect, construct, equip, operate, or maintain all or a portion of offstreet motor vehicle public parking facilities located in the district to serve business, (3) to contract as permitted by section 31-740 with the county or city within whose zoning jurisdiction the sanitary and improvement district is located for intersection and traffic control improvements which serve or benefit the district and are located within or without the corporate boundaries of the district, (4) to contract, as permitted by section 31-727, with other sanitary and improvement districts for acquiring, building, improving, and operating public parks, playgrounds, and recreational facilities for the joint use of the residents of the contracting districts, or (5) to contract for the installation and operation of a water system, the board of trustees shall declare the advisability and necessity therefor in a proposed resolution, which resolution, in the case of pipe sewer construction, shall state the kinds of pipe proposed to be used, shall include cement concrete pipe and vitrified clay pipe and any other material deemed suitable, shall state the size or sizes and kinds of sewers proposed to be constructed, and shall designate the location and terminal points thereof. If it is proposed to construct a water system, disposal plants, pumping stations, outlet sewers, gas or electric service lines and conduits, or a system of sidewalks, public roads, streets, or highways

or public waterways, docks, or wharfs, to construct or contract for the construction of dikes and levees for flood protection for the district, to construct or contract for the construction of public parks, playgrounds, or recreational facilities, to construct or contract for the construction of all or a portion of offstreet motor vehicle public parking facilities located in the district to serve business, or to contract, as permitted by section 31-727, with other sanitary and improvement districts for acquiring, building, improving, and operating public parks, playgrounds, and recreational facilities for the joint use of the residents of the contracting districts, the resolution shall refer to the plans and specifications thereof which have been made and filed before the publication of such resolution by the engineer employed for such purpose. If it is proposed to purchase or otherwise acquire a water system, a sanitary sewer system, a sanitary or storm water sewer, sewers, sewage disposal plant, pumping stations, sewer outlets, gas or electric service lines and conduits, public parks, playgrounds, or recreational facilities, offstreet motor vehicle public parking facilities as described in this section, or to contract, as permitted by section 31-727, with other sanitary and improvement districts for acquiring, building, improving, and operating public parks, playgrounds, and recreational facilities for the joint use of the residents of the contracting districts, the resolution shall state the price and conditions of the purchase or how such facility is being acquired. If it is proposed to contract for the installation and operation of a water system for fire protection and for the use of the residents of the district, to contract for the construction of dikes and levees for flood protection for the district or gas or electric service lines and conduits, to contract with a county within which all or a portion of such sanitary and improvement district is located or a city within whose zoning jurisdiction the sanitary and improvement district is located for any public purpose specifically authorized in this section, or to contract, as permitted by section 31-727, with other sanitary and improvement districts for acquiring, building, improving, and operating public parks, playgrounds, and recreational facilities for the joint use of the residents of the contracting districts, the resolution shall state the principal terms of the proposed agreement and how the cost thereof is to be paid. When gas or electric service lines and conduits are among the improvements that are proposed to be constructed, purchased, or otherwise acquired or contracted for, and no construction specifications and standards therefor have been established by the municipality having zoning jurisdiction over the area where such improvements are to be located, or when such service lines and conduits are not to be located within any municipality's area of zoning jurisdiction, the plans and specifications for and the method of construction of such service lines and conduits shall be approved by the supplier of gas or electricity within whose service or customer area they are to be located. The engineer shall also make and file, prior to the publication of such resolution, an estimate of the total cost of the proposed improvement. The proposed resolution shall state the amount of such estimated cost.

The board of trustees or the administrator shall assess, to the extent of special benefits, the cost of such improvements upon properties specially benefited thereby, except that if the improvement consists of the replacement of an existing facility, system, or improvement that poses an existing threat to public health and safety affecting no more than one hundred existing homes, the cost of such improvements may be paid for by an issue of general obligation bonds

under section 31-755. The resolution shall state the outer boundaries of the district or districts in which it is proposed to make special assessments.

Source: Laws 1949, c. 78, § 18, p. 202; Laws 1955, c. 117, § 7, p. 315; Laws 1961, c. 142, § 6, p. 414; Laws 1967, c. 189, § 5, p. 522; Laws 1969, c. 250, § 5, p. 914; Laws 1973, LB 245, § 6; Laws 1974, LB 757, § 13; Laws 1976, LB 313, § 4; Laws 1982, LB 868, § 12; Laws 1985, LB 207, § 4; Laws 1994, LB 501, § 4; Laws 1996, LB 43, § 7; Laws 1997, LB 531, § 2; Laws 1997, LB 589, § 2; Laws 1997, LB 874, § 11; Laws 2021, LB81, § 6.

31-749 Improvements; engineer; certificate of acceptance; cost; statement; special assessment; notices; hearing; appeal; hearing in district court.

After (1) the completion of any work or purchase, (2) acquiring a sewer or water system, or both, or public parks, playgrounds, or recreational facilities, (3) completing, acquiring, purchasing, erecting, constructing, or equipping all or a portion of offstreet motor vehicle public parking facilities located in the district to serve business, (4) contracting, as permitted by section 31-727, with other sanitary and improvement districts to acquire public parks, playgrounds, and recreational facilities for the joint use of the residents of the contracting districts, or gas or electric service lines or conduits, or (5) completion of the work on (a) a system of sidewalks, public roads, streets, highways, public waterways, docks, or wharfs and related appurtenances or (b) levees for flood protection for the district, the engineer shall file with the clerk of the district a certificate of acceptance which shall be approved by the board of trustees or the administrator by resolution. The board of trustees or administrator shall then require the engineer to make a complete statement of all the costs of any such improvements, a plat of the property in the district, and a schedule of the amount proposed to be assessed against each separate piece of property in such district. The statement, plat, and schedule shall be filed with the clerk of the district within sixty days after the date of acceptance of: The work, purchase, or acquisition of a sewer or water system, or both; the work on a system of sidewalks, public roads, streets, highways, public waterways, docks, or wharfs and related appurtenances, or dikes and levees for flood protection for the district; the acquisition, purchase, erection, construction, or equipping of all or a portion of offstreet motor vehicle public parking facilities located in the district to serve business; or as permitted by section 31-727, the acquisition of public parks, playgrounds, and recreational facilities whether acquired separately or jointly with other districts. The board of trustees or administrator shall then order the clerk to give notice that such statement, plat, and schedules are on file in his or her office and that all objections thereto or to prior proceedings on account of errors, irregularities, or inequalities not made in writing and filed with the clerk of the district within twenty days after the first publication of such notice shall be deemed to have been waived. Such notice shall be given by publication the same day each week two consecutive weeks in a newspaper of general circulation published in the county where the district was organized and by handbills posted along the line of the work. Such notice shall state the time and place where any objections, filed as provided in this section, shall be considered by the board of trustees or administrator. The cost of such improvements in the district which are within the area of the zoning jurisdiction of any municipality shall be levied as special assessments to the extent of special benefits to the property and to the extent the costs of such improvements are

assessed in such municipality. The complete statement of costs and the schedule of proposed special assessments for such improvements which are within the zoning jurisdiction of such municipality against each separate piece of property in districts located within the zoning jurisdiction of such municipality shall be given to such municipality within seven days after the first publication of notice of statement, plat, and schedules. When such improvements are within the area of the zoning jurisdiction of more than one municipality, such proposed special assessments schedule and statement need be given only to the most populous municipality. Such municipality shall have the right to be heard, and it shall have the right of appeal from a final determination by the board of trustees or administrator against objections which such city has filed. Notice of the proposed special assessments for such improvements against each separate piece of property shall be given to each owner of record thereof within five days after the first publication of notice of statement, plat, and schedules and, within five days after the first publication of such notice, a copy thereof, along with statements of costs and schedules of proposed special assessments, shall be given to each person or company who, pursuant to written contract with the district, has acted as underwriter or fiscal agent for the district in connection with the sale or placement of warrants or bonds issued by the district. Each owner shall have the right to be heard, and shall have the right of appeal from the final determination made by the board of trustees or administrator. Any person or any such municipality feeling aggrieved may appeal to the district court by petition within twenty days after such a final determination. The court shall hear and determine such appeal in a summary manner as in a case in equity and without a jury and shall increase or reduce the special assessments as the same may be required to provide that the special assessments shall be to the full extent of special benefits, and to make the apportionment of benefits equitable.

Source: Laws 1949, c. 78, § 23, p. 204; Laws 1955, c. 117, § 9, p. 317; Laws 1961, c. 142, § 7, p. 415; Laws 1965, c. 157, § 1, p. 504; Laws 1967, c. 190, § 1, p. 524; Laws 1971, LB 188, § 5; Laws 1973, LB 245, § 7; Laws 1974, LB 757, § 14; Laws 1976, LB 313, § 5; Laws 1979, LB 252, § 4; Laws 1982, LB 868, § 17; Laws 2015, LB361, § 53; Laws 2021, LB81, § 7.

(c) DISTRICT BOUNDARIES

31-763 Annexation of territory by a city or village; effect on certain contracts.

(1) Whenever any city or village annexes all the territory within the boundaries of any sanitary and improvement district organized under the provisions of sections 31-701 to 31-726.01 as such sections existed prior to July 19, 1996, or under sections 31-727 to 31-762, the district shall merge with the city or village and the city or village shall succeed to all the property and property rights of every kind, contracts, obligations, and choses in action of every kind, held by or belonging to the district, and the city or village shall be liable for and recognize, assume, and carry out all valid contracts and obligations of the district. All taxes, assessments, claims, and demands of every kind due or owing to the district shall be paid to and collected by the city or village. Any special assessments which the district was authorized to levy, assess, relevy, or reassess, but which were not levied, assessed, relevied, or reassessed, at the time of the merger, for improvements made by it or in the process of construction or

contracted for may be levied, assessed, relevied, or reassessed by the annexing city or village to the same extent as the district may have levied or assessed but for the merger. Nothing in this section shall authorize the annexing city or village to revoke any resolution, order, or finding made by the district in regard to special benefits or increase any assessments made by the district, but such city or village shall be bound by all such findings or orders and assessments to the same extent as the district would be bound. No district so annexed shall have power to levy any special assessments after the effective date of such annexation.

(2) Any contract entered into on or after August 30, 2015, by a sanitary and improvement district for solid waste collection services shall, upon annexation of such district by a city or village, be canceled and voided.

Source: Laws 1959, c. 130, § 1, p. 467; Laws 1969, c. 255, § 1, p. 925; Laws 2015, LB324, § 5; Laws 2018, LB130, § 1.

31-764 Annexation; trustees; administrator; accounting; effect; special assessments prohibited.

The trustees or administrator of a sanitary and improvement district shall, within thirty days after the effective date of the merger, submit to the city or village a written accounting of all assets and liabilities, contingent or fixed, of the district. Unless the city or village within six months thereafter brings an action against the trustees or administrator of the district for an accounting or for damages for breach of duty, the trustees or administrator shall be discharged of all further duties and liabilities and their bonds exonerated. If the city or village brings such an action and does not recover judgment in its favor, the taxable costs may include reasonable expenses incurred by the trustees or administrator in connection with such suit and a reasonable attorney's fee for the trustees' or administrator's attorney. The city or village shall represent the district and all parties who might be interested in such an action. The city or village and such trustees or administrator shall be the only necessary parties to such action. Nothing contained in this section shall authorize the trustees or administrator to levy any special assessments after the effective date of the merger.

Source: Laws 1959, c. 130, § 2, p. 468; Laws 1969, c. 255, § 2, p. 926; Laws 1976, LB 313, § 9; Laws 1982, LB 868, § 26; Laws 2018, LB130, § 2.

31-765 Annexation; when effective; trustees; administrator; duties; special assessments prohibited.

The merger shall be effective thirty days after the effective date of the ordinance annexing the territory within the sanitary and improvement district. If the validity of the ordinance annexing the territory is challenged by a proceeding in a court of competent jurisdiction, the effective date of the merger shall be thirty days after the final determination of the validity of the ordinance. The trustees or administrator of the sanitary and improvement district shall continue in possession and conduct the affairs of the district until the effective date of the merger, but shall not during such period levy any special assessments after the effective date of annexation.

Source: Laws 1959, c. 130, § 3, p. 468; Laws 1969, c. 255, § 3, p. 926; Laws 1982, LB 868, § 27; Laws 2018, LB130, § 3.

31-766 Annexation; obligations and assessments; agreement to divide; approval; special assessments prohibited; effect on certain contracts.

(1) If only a part of the territory within any sanitary and improvement district is annexed by a city or village, the sanitary and improvement district acting through its trustees or administrator and the city or village acting through its governing body may agree between themselves as to the division of the assets, liabilities, maintenance, contracts, or other obligations of the district for a change in the boundaries of the district so as to exclude the portion annexed by the city or village or may agree upon a merger of the district with the city or village. The division of assets, liabilities, maintenance, contracts, or other obligations of the district shall be equitable, shall be proportionate to the valuation of the portion of the district annexed and to the valuation of the portion of the district remaining following annexation, and shall, to the greatest extent feasible, reflect the actual impact of the annexation on the ability of the district to perform its duties and responsibilities within its new boundaries following annexation. In the event a merger is agreed upon, the city or village shall have all the rights, privileges, duties, and obligations as provided in sections 31-763 to 31-765 when the city or village annexes the entire territory within the district, and the trustees or administrator shall be relieved of all further duties and liabilities and their bonds exonerated as provided in section 31-764. No agreement between the district and the city or village shall be effective until submitted to and approved by the district court of the county in which the major portion of the district is located. No agreement shall be approved which may prejudice the rights of any bondholder or creditor of the district or employee under contract to the district. The court may authorize or direct amendments to the agreement before approving the same. If the district and city or village do not agree upon the proper adjustment of all matters growing out of the annexation of a part of the territory located within the district, the district, the annexing city or village, any bondholder or creditor of the district, or any employee under contract to the district may apply to the district court of the county where the major portion of the district is located for an adjustment of all matters growing out of or in any way connected with the annexation of such territory, and after a hearing thereon the court may enter an order or decree fixing the rights, duties, and obligations of the parties. In every case such decree or order shall require a change of the district boundaries so as to exclude from the district that portion of the territory of the district which has been annexed. Such change of boundaries shall become effective on the date of entry of such decree. Only the district and the city or village shall be necessary parties to such an action. Any bondholder or creditor of the district or any employee under contract to the district whose interests may be adversely affected by the annexation may intervene in the action pursuant to section 25-328. The decree when entered shall be binding on the parties the same as though the parties had voluntarily agreed thereto. Nothing contained in this section shall authorize any district to levy any special assessments within the annexed area after the effective date of annexation.

(2) Any contract entered into on or after August 30, 2015, by a sanitary and improvement district for solid waste collection services shall, upon annexation of all or part of such district by a city or village, be canceled and voided as to the annexed areas.

Source: Laws 1959, c. 130, § 4, p. 469; Laws 1969, c. 255, § 4, p. 927; Laws 1982, LB 868, § 28; Laws 1994, LB 630, § 6; Laws 2015, LB324, § 6; Laws 2018, LB130, § 4.

(f) RECALL OF TRUSTEES

31-787 Trustee; removal by recall; petition; procedure.

(1) A trustee of a sanitary and improvement district may be removed from office by recall pursuant to sections 31-786 to 31-793. A petition for an election to recall a trustee shall be sufficient if it complies with the requirements of this section.

(2) The signers of the petition shall be persons who were, on the date the initial petition papers are issued under subsection (7) of this section, eligible to vote in a district election as provided in section 31-735. A person's eligibility to sign a petition shall be the same as the person's eligibility to cast one or more votes at a district election under section 31-735. Only one person shall be allowed to sign on behalf of joint owners of property in the district or on behalf of a public, private, or municipal corporation that owns property in the district. If the trustee whose recall is sought was elected by vote of resident owners only, then only resident owners shall be allowed to sign the petition. If the trustee whose recall is sought was elected by vote of all owners of property, then all owners shall be allowed to sign the petition. Resident owner means qualified resident voter. All owners means all qualified resident voters and all qualified property owning voters.

(3) The filing clerk shall assign to each signature a count equal to the number of votes that the signer was eligible to cast on the date he or she signed. The number of votes that a signer was eligible to cast shall be based on section 31-735. If the signature was made by or for an owner of more than one parcel of property, the signature made by or on behalf of such owner shall be assigned a count equal to the total number of votes which the owner was eligible to cast.

(4) The filing clerk shall total the count assigned to the signatures on the petition. The petition shall be sufficient if the total is at least equal to thirty-five percent of the highest number of votes that were cast for a candidate at the previous district election for the trustee positions in the same category as the trustee whose recall is sought by the petition. The categories of trustees shall be the same as provided in section 31-735.

(5) The signatures shall be affixed to petition papers and shall be considered part of the petition.

(6) The petition papers shall be procured from the filing clerk. Prior to the issuance of such petition papers, a recall petition filing form shall be signed and filed with the filing clerk by at least one qualified resident voter of the district, if the trustee whose recall is being sought was elected solely by qualified resident voters, or at least one qualified resident voter or qualified property owning voter, if the trustee whose recall is being sought was elected by other qualified resident voters and qualified property owning voters. Such voter or voters shall be deemed to be the principal circulator or circulators of the recall petition. The filing form shall state the name of the trustee sought to be removed and whether qualified property owning voters participated in the election of the trustee and shall request that the filing clerk issue initial petition papers to the principal circulator for circulation. The filing clerk shall notify the principal circulator or circulators that the necessary signatures must be gathered within thirty days after the date of issuing the petitions.

(7) The filing clerk, upon issuing the initial petition papers or any subsequent petition papers, shall enter in a record, to be kept in his or her office, the name

of the principal circulator or circulators to whom the papers were issued, the date of issuance, the number of papers issued, and whether qualified property owning voters may participate in signing the petitions. The filing clerk shall certify on the papers the name of the principal circulator or circulators to whom the papers were issued, the date they were issued, and whether qualified property owning voters may participate in signing the petitions. No petition paper shall be accepted as part of the petition unless it bears such certificate. The principal circulator or circulators who check out petitions from the filing clerk may distribute such petitions to persons who may act as circulators of such petitions.

Source: Laws 1997, LB 874, § 2; Laws 2002, LB 176, § 5; Laws 2003, LB 444, § 2; Laws 2012, LB1121, § 1; Laws 2019, LB411, § 27.

31-793 Recall petition filing form; filing limitation.

No recall petition filing form shall be filed against a trustee under section 31-787 within twelve months after a recall election has failed to remove him or her from office or within six months after the beginning of his or her term of office or within six months prior to the incumbent filing deadline for the office.

Source: Laws 1997, LB 874, § 8; Laws 2019, LB411, § 28.

ARTICLE 9

COUNTY DRAINAGE ACT

Section
31-925. Cleaning project; ditch or watercourse; state highway; contract with Department of Transportation.

31-925 Cleaning project; ditch or watercourse; state highway; contract with Department of Transportation.

Where the cleaning of a ditch or watercourse involves a state highway, the county board is authorized to make any contract with the Department of Transportation with reference to bridges or culverts or, if unable to agree therein, to bring any action necessary to force the state to participate in such improvement.

Source: Laws 1959, c. 132, § 25, p. 492; Laws 2017, LB339, § 82.

ARTICLE 10

FLOOD PLAIN MANAGEMENT

Section
31-1017. Department; flood plain management; powers and duties.

31-1017 Department; flood plain management; powers and duties.

The department shall be the official state agency for all matters pertaining to flood plain management. In carrying out that function, the department shall have the power and authority to:

(1) Coordinate flood plain management activities of local, state, and federal agencies;

(2) Receive federal funds intended to accomplish flood plain management objectives;

(3) Prepare and distribute information and conduct educational activities which will aid the public and local units of government in complying with the purposes of sections 31-1001 to 31-1023;

(4) Provide local governments having jurisdiction over flood-prone lands with technical data and maps adequate to develop or support reasonable flood plain management regulation;

(5) Adopt and promulgate rules and regulations establishing minimum standards for local flood plain management regulation. In addition to the public notice requirement in the Administrative Procedure Act, the department shall, at least twenty days in advance, notify the clerks of all cities, villages, and counties which might be affected of any hearing to consider the adoption, amendment, or repeal of such minimum standards. Such minimum standards shall be designed to protect human life, health, and property and to preserve the capacity of the flood plain to discharge the waters of the base flood and shall take into consideration (a) the danger to life and property by water which may be backed up or diverted by proposed obstructions and land uses, (b) the danger that proposed obstructions or land uses will be swept downstream to the injury of others, (c) the availability of alternate locations for proposed obstructions and land uses, (d) the opportunities for construction or alteration of proposed obstructions in such a manner as to lessen the danger, (e) the permanence of proposed obstructions or land uses, (f) the anticipated development in the foreseeable future of areas which may be affected by proposed obstructions or land uses, (g) hardship factors which may result from approval or denial of proposed obstructions or land uses, and (h) such other factors as are in harmony with the purposes of sections 31-1001 to 31-1023. Such minimum standards may, when required by law, distinguish between farm and nonfarm activities and shall provide for anticipated developments and gradations in flood hazards. If deemed necessary by the department to adequately accomplish the purposes of such sections, such standards may be more restrictive than those contained in the national flood insurance program standards, except that the department shall not adopt standards which conflict with those of the national flood insurance program in such a way that compliance with both sets of standards is not possible;

(6) Provide local governments and other state and local agencies with technical assistance, engineering assistance, model ordinances, assistance in evaluating permit applications and possible violations of flood plain management regulations, assistance in personnel training, and assistance in monitoring administration and enforcement activities;

(7) Serve as a repository for all known flood data within the state;

(8) Assist federal, state, or local agencies in the planning and implementation of flood plain management activities, such as flood warning systems, land acquisition programs, and relocation programs;

(9) Enter upon any lands and waters in the state for the purpose of making any investigation or survey or as otherwise necessary to carry out the purposes of such sections. Such right of entry shall extend to all employees, surveyors, or other agents of the department in the official performance of their duties, and such persons shall not be liable to prosecution for trespass when performing their official duties;

(10) Enter into contracts or other arrangements with any state or federal agency or person as defined in section 49-801 as necessary to carry out the purposes of sections 31-1001 to 31-1023; and

(11) Adopt and enforce such rules and regulations as are necessary to carry out the duties and responsibilities of such sections.

Source: Laws 1983, LB 35, § 17; Laws 1993, LB 626, § 4; Laws 2000, LB 900, § 78; Laws 2019, LB319, § 1.

Cross References

Administrative Procedure Act, see section 84-920.

CHAPTER 32
ELECTIONS

Article.
1. General Provisions and Definitions. 32-101 to 32-119.01.
2. Election Officials.
   (a) Secretary of State. 32-202 to 32-206.
   (b) County Election Officials. 32-207 to 32-217.
   (c) Counties with Election Commissioners. 32-221, 32-223.
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3. Registration of Voters. 32-301 to 32-331.
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8. Notice, Publication, and Printing of Ballots. 32-802 to 32-816.
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10. Counting and Canvassing Ballots. 32-1002 to 32-1049.
11. Contest of Elections and Recounts. 32-1101 to 32-1121.
12. Election Costs. 32-1201.01, 32-1203.
13. Recall. 32-1303 to 32-1310.
14. Initiatives, Referendums, and Advisory Votes. 32-1405 to 32-1412.
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ARTICLE 1
GENERAL PROVISIONS AND DEFINITIONS

Section
32-101. Act, how cited.
32-103. Definitions, where found.
32-110.03. Emergency response provider, defined.
32-112.01. Poll watcher, defined.
32-112.02. Political subdivision, defined.
32-116. Residence, defined.
32-118. Signature, defined; person unable to write; assistance.
32-119.01. Voting system, defined.

32-101 Act, how cited.

Sections 32-101 to 32-1551 shall be known and may be cited as the Election Act.

Source: Laws 1994, LB 76, § 1; Laws 1995, LB 337, § 1; Laws 1995, LB 514, § 1; Laws 1996, LB 964, § 1; Laws 1997, LB 764, § 8; Laws 2001, LB 768, § 1; Laws 2002, LB 1054, § 7; Laws 2003, LB 181, § 1; Laws 2003, LB 358, § 1; Laws 2003, LB 359, § 1; Laws 2003, LB 521, § 3; Laws 2005, LB 401, § 2; Laws 2005, LB 566, § 1; Laws 2010, LB951, § 1; Laws 2013, LB299, § 1; Laws 2013, LB349, § 1; Laws 2014, LB661, § 1; Laws 2014, LB946, § 3; Laws 2015, LB575, § 5; Laws 2018, LB1065, § 1; Laws 2019, LB492, § 35; Laws 2020, LB1055, § 2; Laws 2022, LB843, § 2. Effective date July 21, 2022.

32-103 Definitions, where found.

For purposes of the Election Act, the definitions found in sections 32-104 to 32-120 shall be used.

Source: Laws 1994, LB 76, § 3; Laws 1997, LB 764, § 9; Laws 2003, LB 358, § 2; Laws 2005, LB 566, § 2; Laws 2020, LB1055, § 3; Laws 2022, LB843, § 3.
Effective date July 21, 2022.

32-110.03 Emergency response provider, defined.

Emergency response provider shall mean a person responding to a mutual aid agreement or a state of emergency proclamation issued by the Governor or the President of the United States who is temporarily assigned by a governmental or nongovernmental relief agency or employer to provide support to victims of an emergency or a natural disaster or to rebuild the infrastructure of an area affected by such emergency or natural disaster.

Source: Laws 2022, LB843, § 4.
Effective date July 21, 2022.

32-112.01 Poll watcher, defined.

Poll watcher means an individual appointed pursuant to section 32-961 who is legally in a polling place to observe the conduct of the election.

Source: Laws 2020, LB1055, § 4.

32-112.02 Political subdivision, defined.

Political subdivision shall include a county, city, village, township, school district, public power district, sanitary and improvement district, metropolitan utilities district, rural or suburban fire protection district, natural resources district, regional metropolitan transit authority, community college, learning community coordinating council, educational service unit, hospital district, reclamation district, library board, airport authority, and any other unit of local government of the State of Nebraska.

Source: Laws 2022, LB843, § 5.
Effective date July 21, 2022.

32-116 Residence, defined.

Residence shall mean (1) that place in Nebraska in which a person is actually domiciled, which is the residence of an individual or family, with which a person has a settled connection for the determination of his or her civil status or other legal purposes because it is actually or legally his or her permanent and principal home, and to which, whenever he or she is absent, he or she has the intention of returning, (2) the place in Nebraska where a person has his or her family domiciled even if he or she does business in another place, and (3) if a person is homeless, the county in Nebraska in which the person is living. No person serving in the armed forces of the United States shall be deemed to have a residence in Nebraska because of being stationed in Nebraska.

Source: Laws 1994, LB 76, § 16; Laws 2019, LB411, § 29.

32-118 Signature, defined; person unable to write; assistance.

(1) Signature shall mean the name or symbol of a person written with his or her own hand.

(2) A person with a disability who by reason of that disability is unable to write his or her name or symbol may substitute either:

(a) A mark if the person's name is written by some other person and the mark is made near the name by the person unable to write his or her name or symbol; or

(b) An impression made using a signature stamp. A signature stamp shall be used only by that person or another person upon the request and in the presence of the person unable to write his or her name or symbol.

(3) Any person rendering assistance to a person unable to write his or her name or symbol shall write, next to such person's mark or impression, the name and address of the person rendering assistance.

Source: Laws 1994, LB 76, § 18; Laws 2022, LB843, § 6.
Effective date July 21, 2022.

32-119.01 Voting system, defined.

Voting system means the process of creating, casting, and counting ballots and includes any software or service used in such process.

Source: Laws 2003, LB 358, § 4; Laws 2022, LB843, § 7.
Effective date July 21, 2022.

ARTICLE 2

ELECTION OFFICIALS

(a) SECRETARY OF STATE

Section
32-202. Secretary of State; duties.
32-203. Secretary of State; powers.
32-204. Election Administration Fund; created; use; investment.
32-206. Official election calendar; publish; contents; delivery of copy; filing or other acts; time.

(b) COUNTY ELECTION OFFICIALS

32-207. Election commissioner; counties having over 100,000 inhabitants; appointment; term; vacancy; duties; oversight.
32-208. Election commissioner; qualifications; appointment to elective office; effect.
32-217. Election commissioner, chief deputy election commissioner, and employees; county employees; salaries; how paid.

(c) COUNTIES WITH ELECTION COMMISSIONERS

32-221. Inspectors and judges and clerks of election; appointment; term; qualifications; vacancy; failure to appear; removal.
32-223. Receiving board; members; inspectors; requirements; appointment.

(d) COUNTIES WITHOUT ELECTION COMMISSIONERS

32-230. Receiving board; members; appointment; procedure; qualification; vacancy; inspectors; appointment.
32-231. Judge and clerk of election; qualifications; term; district inspectors; duties.
32-235. Election worker; notice of appointment.
32-236. Judge and clerk of election; district inspector; service required; violation; penalty.

(a) SECRETARY OF STATE

32-202 Secretary of State; duties.

In addition to any other duties prescribed by law, the Secretary of State shall:

(1) Supervise the conduct of primary and general elections in this state;

(2) Provide training and support for election commissioners, county clerks, and other election officials in providing for day-to-day operations of the office, registration of voters, and the conduct of elections;

(3) Enforce the Election Act;

(4) With the assistance and advice of the Attorney General, make uniform interpretations of the act;

(5) Provide periodic training for the agencies and their agents and contractors in carrying out their duties under sections 32-308 to 32-310;

(6) Develop and print forms for use as required by sections 32-308, 32-310, 32-320, 32-329, 32-947, 32-956, and 32-958;

(7) Contract with the Department of Administrative Services for storage and distribution of the forms;

(8) Require reporting to ensure compliance with sections 32-308 to 32-310;

(9) Prepare and transmit reports as required by the National Voter Registration Act of 1993, 52 U.S.C. 20501 et seq.;

(10) Develop and print a manual describing the requirements of the initiative and referendum process and distribute the manual to election commissioners and county clerks for distribution to the public upon request;

(11) Develop and print pamphlets described in section 32-1405.01;

(12) Adopt and promulgate rules and regulations as necessary for elections conducted under sections 32-952 to 32-959; and

(13) Establish a free access system, such as a toll-free telephone number or an Internet website, that any voter who casts a provisional ballot may access to discover whether the vote of that voter was counted and, if the vote was not counted, the reason that the vote was not counted. The Secretary of State shall establish and maintain reasonable procedures necessary to protect the security, confidentiality, and integrity of personal information collected, stored, or otherwise used by the free access system. Access to information about an individual provisional ballot shall be restricted to the individual who cast the ballot.

Source: Laws 1994, LB 76, § 22; Laws 1995, LB 337, § 2; Laws 1996, LB 964, § 2; Laws 2003, LB 358, § 5; Laws 2008, LB838, § 1; Laws 2019, LB411, § 30; Laws 2022, LB843, § 8.
Effective date July 21, 2022.

32-203 Secretary of State; powers.

In addition to any other powers prescribed by law, the Secretary of State may:

(1) Inspect, with or without the filing of a complaint by any person, and review the practices and procedures of election commissioners, county clerks, their employees, and other election officials in the day-to-day operations of the office, the conduct of primary and general elections, and the registration of qualified electors;

(2) Employ such personnel as necessary to efficiently carry out his or her powers and duties as prescribed in the Election Act;

(3) Adopt and promulgate rules and regulations in regard to the registration of voters and the conduct of elections; and

(4) Enforce the act by injunctive action brought by the Attorney General in the district court for the county in which any violation of the act occurs.

Source: Laws 1994, LB 76, § 23; Laws 2005, LB 566, § 4; Laws 2022, LB843, § 9.
Effective date July 21, 2022.

32-204 Election Administration Fund; created; use; investment.

The Election Administration Fund is hereby created. The fund shall consist of federal funds, state funds, gifts, and grants appropriated for the administration of elections. The Secretary of State shall use the fund for voting systems, provisional voting, computerized statewide voter registration lists, voter registration, training or informational materials related to elections, and any other costs related to elections. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. The State Treasurer shall transfer any funds in the Carbon Sequestration Assessment Cash Fund on August 24, 2017, to the Election Administration Fund.

Source: Laws 1994, LB 76, § 24; Laws 1995, LB 7, § 29; Laws 1997, LB 764, § 13; Laws 2003, LB 14, § 1; Laws 2014, LB661, § 2; Laws 2017, LB644, § 3.

Cross References

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

32-206 Official election calendar; publish; contents; delivery of copy; filing or other acts; time.

(1) The Secretary of State shall publish an official election calendar by November 1 prior to the statewide primary election. Such calendar, to be approved as to form by the Attorney General, shall set forth the various election deadline dates and other pertinent data as determined by the Secretary of State. The official election calendar shall be merely a guideline and shall in no way legally bind the Secretary of State or the Attorney General.

(2) The Secretary of State shall deliver a copy of the official election calendar to the state party headquarters of each recognized political party within ten days after publication under subsection (1) of this section.

(3) Except as provided in sections 32-302, 32-304, and 32-306, any filing or other act required to be performed by a specified day shall be performed by 5 p.m. of such day, except that if such day falls upon a Saturday, Sunday, or legal holiday, performance shall be required on the next business day.

Source: Laws 1994, LB 76, § 26; Laws 2012, LB878, § 1; Laws 2014, LB1048, § 1; Laws 2018, LB1038, § 1.

(b) COUNTY ELECTION OFFICIALS

32-207 Election commissioner; counties having over 100,000 inhabitants; appointment; term; vacancy; duties; oversight.

The office of election commissioner shall be created for each county having a population of more than one hundred thousand inhabitants. The election commissioner shall be appointed by the Governor and shall serve for a term of four years or until a successor has been appointed and qualified. In the event of a vacancy, the Governor shall appoint an election commissioner to serve the unexpired portion of the term. In order to further the purpose of fair and open elections free from outside influence, the election commissioner shall have the duty of operational and administrative oversight over the business of the office, subject to review by the Secretary of State.

Source: Laws 1994, LB 76, § 27; Laws 2022, LB843, § 10.
Effective date July 21, 2022.

Cross References

Distribute political accountability and disclosure forms, see section 49-14,139.

32-208 Election commissioner; qualifications; appointment to elective office; effect.

The election commissioner in counties having a population of more than one hundred thousand inhabitants shall be a registered voter, a resident of such county for at least one year, and of good moral character and integrity and capacity. No person who is a candidate for any elective office or is a deputy, clerk, or employee of any person who is a candidate for any elective office shall be eligible for the office of election commissioner. The election commissioner shall not hold any other elective office or become a candidate for an elective office during his or her term of office. An election commissioner may be appointed to an elective office during his or her term of office as election commissioner, and acceptance of such appointment shall be deemed to be his or her resignation from the office of election commissioner.

Source: Laws 1994, LB 76, § 28; Laws 1997, LB 764, § 14; Laws 2001, LB 226, § 1; Laws 2003, LB 707, § 1; Laws 2011, LB449, § 1; Laws 2015, LB575, § 6; Laws 2017, LB451, § 2.

32-217 Election commissioner, chief deputy election commissioner, and employees; county employees; salaries; how paid.

The election commissioner and the chief deputy election commissioner shall be county employees for the purposes of salary and benefit plans. All employees of the office of the election commissioner shall be county employees and subject to the county personnel system. The county board shall set the salaries of the election commissioner and chief deputy election commissioner at least sixty days prior to the expiration of the term of office of the election commissioner holding office. The salary shall become effective as soon as such salary may become operative under the Constitution of Nebraska.

In counties having a population of more than two hundred thousand inhabitants, the salary of the election commissioner shall be at least ten thousand five hundred dollars annually payable in periodic installments out of the county general fund and the salary of the chief deputy election commissioner shall be at least nine thousand dollars annually payable in periodic installments out of the county general fund.

In counties having a population of more than one hundred fifty thousand and not more than two hundred thousand inhabitants, the salary of the election

commissioner shall be at least seven thousand five hundred dollars annually payable in periodic installments out of the county general fund and the salary of the chief deputy election commissioner shall be at least six thousand dollars annually payable in periodic installments out of the county general fund.

In counties having a population of more than one hundred thousand and not more than one hundred fifty thousand inhabitants, the salary of the election commissioner shall be at least nine thousand five hundred dollars annually payable in periodic installments out of the county general fund and the salary of the chief deputy election commissioner shall be at least eight thousand five hundred dollars annually payable in periodic installments out of the county general fund.

In counties having a population of not more than one hundred thousand inhabitants, the salary of the election commissioner shall be at least six thousand five hundred dollars annually payable in periodic installments out of the county general fund and the salary of the chief deputy election commissioner shall be at least five thousand dollars annually payable in periodic installments out of the county general fund.

Source: Laws 1994, LB 76, § 37; Laws 2022, LB843, § 11.
Effective date July 21, 2022.

(c) COUNTIES WITH ELECTION COMMISSIONERS

32-221 Inspectors and judges and clerks of election; appointment; term; qualifications; vacancy; failure to appear; removal.

(1) The election commissioner shall appoint precinct and district inspectors, judges of election, and clerks of election to assist the election commissioner in conducting elections on election day. In counties with a population of less than four hundred thousand inhabitants as determined by the most recent federal decennial census, judges and clerks of election and inspectors shall be appointed at least thirty days prior to the statewide primary election, shall hold office for terms of two years or until their successors are appointed and qualified for the next statewide primary election, and shall serve at all elections in the county during their terms of office. In counties with a population of four hundred thousand or more inhabitants as determined by the most recent federal decennial census, judges and clerks of election shall be appointed at least thirty days prior to the first election for which appointments are necessary and shall serve for at least four elections.

(2) Judges and clerks of election may be selected at random from a cross section of the population of the county. All qualified citizens shall have the opportunity to be considered for service. All qualified citizens shall fulfill their obligation to serve as judges or clerks of election as prescribed by the election commissioner. No citizen shall be excluded from service as a result of discrimination based upon race, color, religion, sex, national origin, or economic status. No citizen shall be excluded from service unless excused by reason of ill health or other good and sufficient reason.

(3) All persons appointed shall be of good repute and character, be able to read and write the English language, and except as otherwise provided in subsections (4), (5), and (6) of section 32-223, be registered voters in the county. No candidate at an election shall be appointed as a judge or clerk of election or

inspector for such election other than a candidate for delegate to a county, state, or national political party convention.

(4) If a vacancy occurs in the office of judge or clerk of election or inspector, the election commissioner shall fill such vacancy in accordance with section 32-223. If any judge or clerk of election or inspector fails to appear at the hour appointed for the opening of the polls, the remaining officers shall notify the election commissioner, select a registered voter to serve in place of the absent officer if so directed by the election commissioner, and proceed to conduct the election. If the election commissioner finds that a judge or clerk of election or inspector does not possess all the qualifications prescribed in this section or if any judge or clerk of election or inspector is guilty of neglecting the duties of the office or of any official misconduct, the election commissioner shall remove the person and fill the vacancy.

Source: Laws 1994, LB 76, § 41; Laws 1997, LB 764, § 19; Laws 2003, LB 357, § 1; Laws 2016, LB742, § 16; Laws 2019, LB411, § 31; Laws 2022, LB843, § 12.
Effective date July 21, 2022.

32-223 Receiving board; members; inspectors; requirements; appointment.

(1) Except as otherwise provided in the Election Act, the election commissioner shall appoint a precinct inspector and a receiving board to consist of at least two judges and two clerks of election for each precinct. The election commissioner may appoint district inspectors to aid the election commissioner in the performance of his or her duties and supervise a group of precincts on election day.

(2) The election commissioner may allow persons serving on a receiving board as judges and clerks of election and precinct inspectors to serve for part of the time the polls are open and appoint other judges and clerks of election and precinct inspectors to serve on the same receiving board for the remainder of the time the polls are open.

(3) On each receiving board at any one time, one judge and one clerk of election shall be registered voters of the political party casting the highest number of votes in the county for Governor or for President of the United States in the immediately preceding general election, and one judge and one clerk of election shall be registered voters of the political party casting the next highest number of votes in the county for Governor or for President of the United States in the immediately preceding general election, except that one judge or clerk of election may be a registered voter who is not affiliated with either of such parties. If a third judge is appointed, such judge shall be a registered voter of the political party casting the highest number of votes in the county for Governor or for President of the United States in the immediately preceding general election. All precinct and district inspectors shall be divided between all political parties as nearly as practicable in proportion to the number of votes cast in such county at the immediately preceding general election for Governor or for President of the United States by the parties, respectively.

(4) The election commissioner may appoint an elector residing outside the county as a precinct inspector, district inspector, judge of election, or clerk of election if the elector resides in a county which conducts all elections by mail pursuant to section 32-960.

(5) If authorized by the Secretary of State and registered voters of the county are unavailable, the election commissioner may appoint an elector residing outside the county as a precinct inspector, district inspector, judge of election, or clerk of election.

(6) The election commissioner may appoint a person who is at least sixteen years old but is not eligible to register to vote as a clerk of election. Such clerk of election shall meet the requirements of subsection (3) of section 32-221, except that such clerk shall not be required to be a registered voter. No more than one clerk of election appointed under this subsection shall serve at any precinct. A clerk of election appointed under this subsection shall be considered a registered voter who is not affiliated with a political party for purposes of this section.

Source: Laws 1994, LB 76, § 43; Laws 2002, LB 1054, § 8; Laws 2003, LB 357, § 2; Laws 2003, LB 358, § 7; Laws 2019, LB411, § 32; Laws 2022, LB843, § 13.
Effective date July 21, 2022.

(d) COUNTIES WITHOUT ELECTION COMMISSIONERS

32-230 Receiving board; members; appointment; procedure; qualification; vacancy; inspectors; appointment.

(1) As provided in subsection (4) of this section, the precinct committeeman and committeewoman of each political party shall appoint a receiving board consisting of three judges of election and two clerks of election. The chairperson of the county central committee of each political party shall send the names of the appointments to the county clerk no later than February 1 prior to the primary election.

(2) If no names are submitted by the chairperson, the county clerk shall appoint judges or clerks of election from the appropriate political party. Judges and clerks of election may be selected at random from a cross section of the population of the county. All qualified citizens shall have the opportunity to be considered for service. All qualified citizens shall fulfill their obligation to serve as judges or clerks of election as prescribed by the county clerk. No citizen shall be excluded from service as a result of discrimination based upon race, color, religion, sex, national origin, or economic status. No citizen shall be excluded from service unless excused by reason of ill health or other good and sufficient reason.

(3) The county clerk may allow persons serving on a receiving board to serve for part of the time the polls are open and appoint other persons to serve on the same receiving board for the remainder of the time the polls are open.

(4) In each precinct at any one time, one judge and one clerk of election shall be appointed from the political party casting the highest number of votes in the county for Governor or for President of the United States in the immediately preceding general election, one judge and one clerk shall be appointed from the political party casting the next highest number of votes in the county for Governor or for President of the United States in the immediately preceding general election, and one judge shall be appointed from the political party casting the third highest number of votes in the county for Governor or for President of the United States in the immediately preceding general election. If the political party casting the third highest number of votes cast less than ten

percent of the total vote cast in the county at the immediately preceding general election, the political party casting the highest number of votes at the immediately preceding general election shall be entitled to two judges and one clerk.

(5) The county clerk may appoint registered voters to serve in case of a vacancy among any of the judges or clerks of election or in addition to the judges and clerks in any precinct when necessary to meet any situation that requires additional judges and clerks. Such appointees may include registered voters unaffiliated with any political party. Such appointees shall serve at subsequent or special elections as determined by the county clerk.

(6) The county clerk may appoint an elector residing outside the county as a precinct inspector, district inspector, judge of election, or clerk of election if the elector resides in a county which conducts all elections by mail pursuant to section 32-960.

(7) If authorized by the Secretary of State and registered voters of the county are unavailable, the county clerk may appoint an elector residing outside the county as a precinct inspector, district inspector, judge of election, or clerk of election.

(8) The county clerk may appoint a person who is at least sixteen years old but is not eligible to register to vote as a clerk of election. Such clerk of election shall meet the requirements of subsection (1) of section 32-231, except that such clerk shall not be required to be a registered voter. No more than one clerk of election appointed under this subsection shall serve at any precinct. A clerk of election appointed under this subsection shall be considered a registered voter who is not affiliated with a political party for purposes of this section.

Source: Laws 1994, LB 76, § 50; Laws 1997, LB 764, § 22; Laws 2002, LB 1054, § 11; Laws 2003, LB 357, § 3; Laws 2003, LB 358, § 8; Laws 2007, LB646, § 1; Laws 2019, LB411, § 33; Laws 2022, LB843, § 14.
Effective date July 21, 2022.

32-231 Judge and clerk of election; qualifications; term; district inspectors; duties.

(1) Each judge and clerk of election appointed pursuant to section 32-230 shall (a) be of good repute and character and able to read and write the English language, (b) reside in the precinct in which he or she is to serve unless necessity demands that personnel be appointed from another precinct, (c) be a registered voter except as otherwise provided in subsections (6), (7), and (8) of section 32-230, and (d) serve for a term of two years or until judges and clerks of election are appointed for the next primary election. No candidate at an election shall be eligible to serve as a judge or clerk of election at the same election other than a candidate for a delegate to a county, state, or national political party convention.

(2) The county clerk may appoint district inspectors to aid the county clerk in the performance of his or her duties and supervise a group of precincts on election day. A district inspector shall meet the requirements for judges and clerks of election as provided in subsection (1) of this section, shall oversee the procedures of a group of polling places, and shall act as the personal agent and deputy of the county clerk. The district inspector shall ensure that the Election Act is uniformly enforced at the polling places assigned to him or her and

perform tasks assigned by the county clerk. The district inspector may perform all of the duties required of a judge or clerk of election.

Source: Laws 1994, LB 76, § 51; Laws 1999, LB 802, § 2; Laws 2002, LB 1054, § 12; Laws 2003, LB 357, § 4; Laws 2019, LB411, § 34; Laws 2022, LB843, § 15.
Effective date July 21, 2022.

32-235 Election worker; notice of appointment.

(1) The county clerk shall, by mail, notify judges and clerks of election, district inspectors, members of counting boards, and members of canvassing boards of their appointment. The notice shall inform the appointee of his or her appointment and of the date and time he or she is required to report to the office of the county clerk or other designated location and the polling place. The notice shall be mailed at least fifteen days prior to each statewide primary and general election and on or before the third Friday prior to each special election. The county clerk shall order the members of the receiving board to appear at their respective polling place on the day and at the hour specified in the notice of appointment.

(2) Each appointee shall, at the time fixed in the notice of appointment, report to the office or other location to complete any informational forms and receive training regarding his or her duties. The training shall include instruction as required by the Secretary of State and any other training deemed necessary by the county clerk.

Source: Laws 1994, LB 76, § 55; Laws 1997, LB 764, § 23; Laws 1999, LB 802, § 5; Laws 2002, LB 1054, § 14; Laws 2007, LB646, § 3; Laws 2022, LB843, § 16.
Effective date July 21, 2022.

32-236 Judge and clerk of election; district inspector; service required; violation; penalty.

Each judge and clerk of election appointed pursuant to subsection (4) of section 32-230 and each district inspector appointed pursuant to subsection (2) of section 32-231 shall serve at all elections, except city and village elections, held in the county or precinct during his or her two-year term unless excused. A violation of this section by an appointee is a Class V misdemeanor. The county clerk shall submit the names of appointees violating this section to the local law enforcement agency for citation pursuant to sections 32-1549 and 32-1550.

Source: Laws 1994, LB 76, § 56; Laws 1997, LB 764, § 24; Laws 1999, LB 802, § 6; Laws 2002, LB 1054, § 15; Laws 2019, LB411, § 35.

ARTICLE 3

REGISTRATION OF VOTERS

Section

Section
32-318.01. Identification documents; required, when.
32-320.01. Voter registration application; distribution by mail; requirements; applicability.
32-326. Removal of name and cancellation of registration; conditions.
32-329. Registration list; maintenance; voter registration register; verification; training procedure; voter registration systems; information exempt from disclosure, when; Secretary of State; report.
32-330. Voter registration register; public record; exception; examination; lists of registered voters; availability; breach in security; notice required.
32-331. Confidential records; procedure.

32-301 Registration list; registration of electors; registration records; how kept; use on election day.

(1) The Secretary of State shall implement, in a uniform and nondiscriminatory manner, a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the office of the Secretary of State that contains the name and registration information of every legally registered voter in the state and assigns a unique identifier to each legally registered voter in the state. The computerized list shall serve as the single system for storing and managing the official list of registered voters throughout the state and shall comprise the voter registration register. The computerized list shall be coordinated with other agency databases within the state and shall be available for electronic access by election commissioners and county clerks. The computerized list shall serve as the official voter registration list for the conduct of all elections under the Election Act and beginning July 1, 2019, shall be the basis for electronic poll books at each precinct if applicable. The Secretary of State shall provide such support as may be required so that election commissioners and county clerks are able to electronically enter voter registration information obtained by such officials on an expedited basis at the time the information is received. The Secretary of State shall provide adequate technological security measures to prevent unauthorized access to the computerized list.

(2) The election commissioner or county clerk shall provide for the registration of the electors of the county. Upon receipt of a voter registration application in his or her office from an eligible elector, the election commissioner or county clerk shall enter the information from the application in the voter registration register and may create an electronic image, photograph, microphotograph, or reproduction in an electronic digital format to be used as the voter registration record. The election commissioner or county clerk shall provide a precinct list of registered voters for each precinct for the use of judges and clerks of election in their respective precincts on election day. Beginning July 1, 2019, the election commissioner or county clerk may provide an electronic poll book as described in section 32-301.01 to meet the requirements for a precinct list of registered voters.

(3) The digital signatures in the possession of the Secretary of State, the election commissioner, or the county clerk shall not be public records as defined in section 84-712.01 and are not subject to disclosure under sections 84-712 to 84-712.09.

Source: Laws 1994, LB 76, § 63; Laws 1999, LB 234, § 1; Laws 2003, LB 357, § 5; Laws 2005, LB 566, § 5; Laws 2017, LB451, § 3; Laws 2018, LB1065, § 3.

32-301.01 Electronic poll books; contents.

Beginning July 1, 2019, the electronic poll books for a precinct shall contain the list of registered voters and the sign-in register for the precinct combined in one database and shall include the registration information and the digital signatures for the registered voters of the precinct.

Source: Laws 2018, LB1065, § 2.

32-304 Registration of electors electronically; application process; application; contents; Secretary of State; Department of Motor Vehicles; duties.

(1) The Secretary of State in conjunction with the Department of Motor Vehicles shall implement a registration application process which may be used statewide to register to vote and update voter registration records electronically using the Secretary of State's website. An applicant who has a valid Nebraska motor vehicle operator's license or state identification card may use the application process to register to vote or to update his or her voter registration record with changes in his or her personal information or other information related to his or her eligibility to vote. For each electronic application, the Secretary of State shall obtain a copy of the electronic representation of the applicant's signature from the Department of Motor Vehicles' records of his or her motor vehicle operator's license or state identification card for purposes of voter registration and electronic poll books.

(2) The application shall contain substantially all the information provided in section 32-312 and the following informational statements:

(a) An applicant who submits this application electronically is affirming that the information in the application is true. Any applicant who submits this application electronically knowing that any of the information in the application is false shall be guilty of a Class IV felony under section 32-1502 of the statutes of Nebraska. The penalty for a Class IV felony is up to two years imprisonment and twelve months post-release supervision, a fine of up to ten thousand dollars, or both;

(b) An applicant who submits this application electronically is agreeing to the use of his or her digital signature from the Department of Motor Vehicles' records of his or her motor vehicle operator's license or state identification card for purposes of voter registration;

(c) To vote at the polling place on election day, the completed application must be submitted on or before the third Friday before the election and prior to midnight on such Friday; and

(d) The election commissioner or county clerk will, upon receipt of the application for registration, send an acknowledgment of registration to the applicant indicating whether the application is proper or not.

Source: Laws 2014, LB661, § 3; Laws 2015, LB575, § 9; Laws 2017, LB451, § 4; Laws 2018, LB1038, § 2; Laws 2018, LB1065, § 4.

32-312 Registration application; contents.

The registration application prescribed by the Secretary of State pursuant to section 32-304 or 32-311.01 shall provide the instructional statements and request the information from the applicant as provided in this section.

CITIZENSHIP—''Are you a citizen of the United States of America?'' with boxes to check to indicate whether the applicant is or is not a citizen of the United States.

AGE—''Are you at least eighteen years of age or will you be eighteen years of age on or before the first Tuesday following the first Monday of November of this year?'' with boxes to check to indicate whether or not the applicant will be eighteen years of age or older on election day.

WARNING—''If you checked 'no' in response to either of these questions, do not complete this application.''.

NAME—the name of the applicant giving the first and last name in full, the middle name in full or the middle initial, and the maiden name of the applicant, if applicable.

RESIDENCE—the name and number of the street, avenue, or other location of the dwelling where the applicant resides if there is a number. If the registrant resides in a hotel, apartment, tenement house, or institution, such additional information shall be included as will give the exact location of such registrant's place of residence. If the registrant lives in an incorporated or unincorporated area not identified by the use of roads, road names, or house numbers, the registrant shall state the section, township, and range of his or her residence and the corporate name of the school district as described in section 79-405 in which he or she is located.

POSTAL ADDRESS—the address at which the applicant receives mail if different from the residence address.

ADDRESS OF LAST REGISTRATION—the name and number of the street, avenue, or other location of the dwelling from which the applicant last registered.

TELEPHONE NUMBERS—the telephone numbers of the applicant. At the request of the applicant, a designation shall be made that a telephone number is an unlisted number, and such designation shall preclude the listing of such telephone number on any list of voter registrations.

EMAIL ADDRESS—an email address of the applicant. At the request of the applicant, a designation shall be made that the email address is private, and such designation shall preclude the listing of the applicant's email address on any list of voter registrations.

DRIVER'S LICENSE NUMBER OR LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER—if the applicant has a Nebraska driver's license, the license number, and if the applicant does not have a Nebraska driver's license, the last four digits of the applicant's social security number.

DATE OF APPLICATION FOR REGISTRATION—the month, day, and year when the applicant presented himself or herself for registration, when the applicant completed and signed the registration application if the application was submitted by mail or delivered to the election official by the applicant's personal messenger or personal agent, or when the completed application was submitted if the registration application was completed pursuant to section 32-304.

PLACE OF BIRTH—show the state, country, kingdom, empire, or dominion where the applicant was born.

DATE OF BIRTH—show the date of the applicant's birth. The applicant shall be at least eighteen years of age or attain eighteen years of age on or before the

first Tuesday after the first Monday in November to have the right to register and vote in any election in the present calendar year.

REGISTRATION TAKEN BY—show the signature of the authorized official or staff member accepting the application pursuant to section 32-309 or 32-310 or at least one of the deputy registrars taking the application pursuant to section 32-306, if applicable.

PARTY AFFILIATION—show the party affiliation of the applicant as Democratic, Republican, or Other . . . . . or show no party affiliation as Nonpartisan. (Note: If you wish to vote in both partisan and nonpartisan primary elections for state and local offices, you must indicate a political party affiliation on the registration application. If you register without a political party affiliation (nonpartisan), you will receive only the nonpartisan ballots for state and local offices at primary elections. If you register without a political party affiliation, you may vote in partisan primary elections for congressional offices.)

OTHER—information the Secretary of State determines will assist in the proper and accurate registration of the voter.

Immediately following the spaces for inserting information as provided in this section, the following statement shall be printed:

To the best of my knowledge and belief, I declare under penalty of election falsification that:

(1) I live in the State of Nebraska at the address provided in this application;

(2) I have not been convicted of a felony or, if convicted, it has been at least two years since I completed my sentence for the felony, including any parole term;

(3) I have not been officially found to be non compos mentis (mentally incompetent); and

(4) I am a citizen of the United States.

Any registrant who signs this application knowing that any of the information in the application is false shall be guilty of a Class IV felony under section 32-1502 of the statutes of Nebraska. The penalty for a Class IV felony is up to two years imprisonment and twelve months post-release supervision, a fine of up to ten thousand dollars, or both.

APPLICANT'S SIGNATURE—require the applicant to affix his or her signature to the application.

Source: Laws 1994, LB 76, § 74; Laws 1996, LB 900, § 1037; Laws 1997, LB 764, § 34; Laws 2003, LB 357, § 7; Laws 2003, LB 359, § 2; Laws 2005, LB 53, § 4; Laws 2005, LB 566, § 11; Laws 2011, LB449, § 3; Laws 2014, LB661, § 7; Laws 2017, LB451, § 5; Laws 2020, LB1055, § 5; Laws 2022, LB843, § 18.
Effective date July 21, 2022.

32-318.01 Identification documents; required, when.

(1)(a) Except as provided by subsection (2) of this section, a person who registers to vote by mail after January 1, 2003, and has not previously voted in an election within the state shall present a photographic identification which is current and valid or a copy of a utility bill, bank statement, government check, paycheck, or other government document which is dated within the sixty days immediately prior to the date of presentation and which shows the same name

and residence address of the person provided on the registration application in order to avoid identification requirements at the time of voting pursuant to section 32-914 or 32-947.

(b) Such documentation may be presented at the time of application for registration, after submission of the application for registration, or at the time of voting. The documentation must be received by the election commissioner or county clerk not later than 6 p.m. on the second Friday preceding the election to avoid additional identification requirements at the time of voting at the polling place if the voter votes in person. If the voter is voting using a ballot for early voting, the documentation must be received by the election commissioner or county clerk prior to the date on which the ballot is mailed to the voter to avoid additional identification requirements at the time of voting. Documentation received after the ballot has been mailed to the voter but not later than the deadline for the receipt of ballots specified in subsection (2) of section 32-908 will be considered timely for purposes of determining the applicant's eligibility to vote in the election.

(c) Such documentation may be presented in person, by mail, or by facsimile transmission.

(d) Failure to present such documentation may result in the ballot not being counted pursuant to verification procedures prescribed in sections 32-1002 and 32-1027.

(2) A person who registers to vote by mail after January 1, 2003, and has not previously voted in an election within the state shall not be required to present identification if he or she:

(a) Has provided his or her Nebraska driver's license number or the last four digits of his or her social security number and the election commissioner or county clerk verifies the number provided pursuant to subsection (2) of section 32-312.03;

(b) Is a member of the armed forces of the United States who by reason of active duty is absent from his or her place of residence where the member is otherwise eligible to vote;

(c) Is a member of the United States Merchant Marine who by reason of service is away from his or her place of residence where the member is otherwise eligible to vote;

(d) Is a spouse or dependent of a member of the armed forces of the United States or United States Merchant Marine who is absent from his or her place of residence due to the service of that member;

(e) Resides outside the United States and but for such residence would be qualified to vote in the state if the state was the last place in which the person was domiciled before leaving the United States; or

(f) Is elderly or handicapped and has requested to vote by alternative means other than by casting a ballot at his or her polling place on election day.

Source: Laws 2005, LB 566, § 20; Laws 2022, LB843, § 19.
Effective date July 21, 2022.

32-320.01 Voter registration application; distribution by mail; requirements; applicability.

(1) Except as provided in subsection (2) of this section, any person or organization distributing voter registration applications by mail shall use the form prescribed by the Secretary of State. The form shall contain on the top of the first page in bold type (a) the identity of the person or organization distributing the form and (b) the following statements:

You may submit this form if you wish to register to vote or update your voter registration. You do not need to complete this form if you have already registered to vote.

(2) This section shall not apply to voter registration applications distributed by the Secretary of State, an election commissioner, a county clerk, the State Department of Education, the Department of Health and Human Services, or the Department of Motor Vehicles.

Source: Laws 2022, LB843, § 17.
Effective date July 21, 2022.

32-326 Removal of name and cancellation of registration; conditions.

The election commissioner or county clerk shall remove the name of a registered voter from the voter registration register and cancel the registration of such voter if:

(1) The election commissioner or county clerk has received information that the voter is deceased;

(2) The voter requests in writing that his or her name be removed;

(3) The election commissioner or county clerk has received information that the voter has moved from the address at which he or she is registered to vote from the National Change of Address program of the United States Postal Service pursuant to section 32-329 and the voter has not responded to a confirmation notice sent pursuant to section 32-329 and has not voted or offered to vote at any election held prior to and including the second statewide federal general election following the mailing of the confirmation notice;

(4) The election commissioner or county clerk has received information that the registrant has moved out of the state and has registered to vote or voted in another territory or state pursuant to section 32-314;

(5) The election commissioner or county clerk has received information from the Department of Motor Vehicles that the registrant has changed the registrant's state of residence by surrendering the registrant's Nebraska motor vehicle operator's license or state identification card to another state; or

(6) The voter has become ineligible to vote as provided in section 32-313.

Source: Laws 1994, LB 76, § 88; Laws 1999, LB 234, § 4; Laws 2005, LB 566, § 27; Laws 2022, LB843, § 20.
Effective date July 21, 2022.

32-329 Registration list; maintenance; voter registration register; verification; training; procedure; voter registration systems; information exempt from disclosure, when; Secretary of State; report.

(1) The Secretary of State with the assistance of the election commissioners and county clerks shall perform list maintenance with respect to the computerized statewide voter registration list on a regular basis. The list maintenance shall be conducted in a manner that ensures that:

(a) The name of each registered voter appears in the computerized list;

(b) Only persons who have been entered into the register in error or who are not eligible to vote are removed from the computerized list; and

(c) Duplicate names are eliminated from the computerized list.

(2) The election commissioner or county clerk shall verify the voter registration register by using (a) the National Change of Address program of the United States Postal Service and a confirmation notice pursuant to subsection (3) of this section or (b) the biennial mailing of a nonforwardable notice to each registered voter. The Secretary of State shall provide biennial training for the election commissioners and county clerks responsible for maintaining voter registration lists. No name shall be removed from the voter registration register for the sole reason that such person has not voted for any length of time.

(3) When an election commissioner or county clerk receives information from the National Change of Address program of the United States Postal Service that a registered voter has moved from the address at which he or she is registered to vote, the election commissioner or county clerk shall update the voter registration register to indicate that the voter may have moved and mail a confirmation notice by forwardable first-class mail. If a nonforwardable notice under subdivision (2)(b) of this section is returned as undeliverable, the election commissioner or county clerk shall mail a confirmation notice by forwardable first-class mail. The confirmation notice shall include a confirmation letter and a preaddressed, postage-paid confirmation card. The confirmation letter shall contain statements substantially as follows:

(a) The election commissioner or county clerk has received information that you have moved to a different residence address from that appearing on the voter registration register;

(b) If you have not moved or you have moved to a new residence within this county, you should return the enclosed confirmation card by the regular registration deadline prescribed in section 32-302. If you fail to return the card by the deadline, you will be required to affirm or confirm your address prior to being allowed to vote. If you are required to affirm or confirm your address, it may result in a delay at your polling place; and

(c) If you have moved out of the county, you must reregister to be eligible to vote. This can be accomplished by mail or in person. For further information, contact your local election commissioner or county clerk.

(4) The election commissioner or county clerk shall maintain for a period of not less than two years a record of each confirmation letter indicating the date it was mailed and the person to whom it was mailed.

(5) If information from the National Change of Address program or the nonforwardable notice under subdivision (2)(b) of this section indicates that the voter has moved outside the jurisdiction and the election commissioner or county clerk receives no response to the confirmation letter and the voter does not offer to vote at any election held prior to and including the second statewide federal general election following the mailing of the confirmation notice, the voter's registration shall be canceled and his or her name shall be deleted from the voter registration register.

(6)(a) In the event that the Secretary of State becomes a member of a nongovernmental entity whose sole purpose is to share and exchange information in order to improve the accuracy and efficiency of voter registration

systems, information received by the Secretary of State from such nongovernmental entity is exempt from disclosure as a public record pursuant to sections 84-712 to 84-712.09 and any other provision of law, except that the Secretary of State may provide such information to the election commissioners and county clerks to conduct voter registration list maintenance activities.

(b) If the Secretary of State becomes a member of a nongovernmental entity as described in subdivision (6)(a) of this section, the Secretary of State shall submit an annual report electronically to the Clerk of the Legislature by February 1 encompassing the preceding calendar year. The report shall describe the terms of membership in the nongovernmental entity and provide information on the total number of voters removed from the voter registration register as a result of information received by such membership and the reasons for the removal of such voters.

Source: Laws 1994, LB 76, § 91; Laws 1997, LB 764, § 44; Laws 1999, LB 234, § 7; Laws 2003, LB 357, § 8; Laws 2005, LB 566, § 29; Laws 2010, LB325, § 2; Laws 2021, LB285, § 5.

32-330 Voter registration register; public record; exception; examination; lists of registered voters; availability; breach in security; notice required.

(1) Except as otherwise provided in subsection (3) of section 32-301, the voter registration register shall be a public record. Any person may examine the register at the office of the election commissioner or county clerk, but no person other than the Secretary of State, the election commissioner, the county clerk, or law enforcement shall be allowed to make copies of the register. Copies of the register shall only be used for list maintenance as provided in section 32-329 or law enforcement purposes. The electronic records of the original voter registrations created pursuant to section 32-301 may constitute the voter registration register. The Secretary of State, election commissioner, or county clerk shall withhold information in the register designated as confidential under section 32-331. No portion of the register made available to the public and no list distributed pursuant to this section shall include the digital signature of any voter.

(2) The Secretary of State, election commissioner, or county clerk shall make available a list of registered voters that contains no more than the information authorized in subsections (3) and (7) of this section and, if requested, a list that only contains such information for registered voters who have voted in an election held more than thirty days prior to the request for the list. The Secretary of State, election commissioner, or county clerk shall establish the price of the lists at a rate that fairly covers the actual production cost of the lists, not to exceed three cents per name. Lists shall be used solely for purposes related to elections, political activities, voter registration, law enforcement, or jury selection. Lists shall not be posted, displayed, or used for commercial purposes or made accessible on the Internet.

(3)(a) The Secretary of State, election commissioner, or county clerk shall withhold from any list of registered voters distributed pursuant to subsection (2) of this section any information in the voter registration records which is designated as confidential under section 32-331 or marked private on the voter registration application or voter registration record.

(b) Except as otherwise provided in subdivision (a) of this subsection, a list of registered voters distributed pursuant to subsection (2) of this section shall contain no more than the following information:

(i) The registrant's name;

(ii) The registrant's residential address;

(iii) The registrant's mailing address;

(iv) The registrant's telephone number;

(v) The registrant's voter registration status;

(vi) The registrant's voter identification number;

(vii) The registrant's birth year;

(viii) The registrant's date of voter registration;

(ix) The registrant's voting precinct;

(x) The registrant's polling site;

(xi) The registrant's political party affiliation;

(xii) The political subdivisions in which the registrant resides; and

(xiii) The registrant's voter history.

(4) Any person who acquires a list of registered voters under subsection (2) of this section shall provide his or her name, address, telephone number, email address, and campaign committee name or organization name, if applicable, the state of organization, if applicable, and the reason for requesting the list, and shall take and subscribe to an oath in substantially the following form:

I hereby swear that I will use the list of registered voters of . . . . . County, Nebraska, (or the State of Nebraska) only for the purposes prescribed in section 32-330 and for no other purpose, that I will not permit the use or copying of such list for unauthorized purposes, and that I will not post, display, or make such list accessible on the Internet.

I hereby declare under the penalty of election falsification that the statements above are true to the best of my knowledge.

The penalty for election falsification is a Class IV felony.

. . . . . .

(Signature of person acquiring list)

Subscribed and sworn to before me this . . . . day of . . . . . 20. . .

. . . . . .

(Signature of officer)

. . . . . .

(Name and official title of officer)

(5) The Secretary of State, election commissioner, or county clerk shall provide, upon request and free of charge, a complete and current listing of all registered voters and their addresses to the Clerk of the United States District Court for the District of Nebraska. Such list shall be provided no later than December 31 of each even-numbered year.

(6) The Secretary of State, election commissioner, or county clerk shall provide, upon request and free of charge, a complete and current listing of all registered voters containing only the information authorized under subsection (3) of this section to the state party headquarters of each political party and to the county chairperson of each political party.

(7) The Secretary of State shall make available to each jury commissioner a list of registered voters that contains the information authorized in this section and the registrant's motor vehicle operator's license number or state identification card number.

(8) Nothing in this section shall prevent a political party or candidate from using the list of registered voters for campaign activities.

(9) Any person who acquires a list of registered voters under subsection (2) of this section shall, following discovery or notification of a breach in the security of the storage of the information, disclose the breach in security to the Secretary of State, election commissioner, or county clerk without delay.

Source: Laws 1994, LB 76, § 92; Laws 1995, LB 514, § 2; Laws 1997, LB 764, § 45; Laws 1999, LB 234, § 8; Laws 2015, LB575, § 10; Laws 2018, LB1065, § 5; Laws 2019, LB411, § 36; Laws 2021, LB285, § 6; Laws 2022, LB843, § 21.
Effective date July 21, 2022.

32-331 Confidential records; procedure.

A registered voter may file an affidavit with the election commissioner or county clerk to have the information relating to his or her name, residence address, and telephone number remain confidential. If the registered voter is a program participant under the Address Confidentiality Act, the affidavit shall state that fact. If the registered voter is not a program participant under the act, the affidavit shall state that the county court or district court has issued an order upon a showing of good cause that a life-threatening circumstance exists in relation to the voter or a member of his or her household. The registered voter shall vote under sections 32-938 to 32-951 in elections held after the filing of the affidavit. To terminate the affidavit and withdraw the confidential designation, the registered voter shall notify the election commissioner or county clerk in writing. The registered voter shall provide a valid mailing address to be used in place of the residence address for election, research, and government purposes. If the registered voter is a program participant under the Address Confidentiality Act, the mailing address shall be as provided in the act. The election commissioner or county clerk may use the mailing address or the word ''confidential'' or a similar designation in place of the residence address in producing any list, roster, or register required under the Election Act. Those records declared confidential under this section shall be kept in a separate file from the other registered voter information. A county, election commissioner, or county clerk shall be liable in an action for negligence as a result of the disclosure of the confidential information if there is a showing of gross negligence or willfulness.

Source: Laws 1995, LB 514, § 3; Laws 2003, LB 228, § 11; Laws 2005, LB 98, § 4; Laws 2022, LB843, § 22.
Effective date July 21, 2022.

Cross References

Address Confidentiality Act, see section 42-1201.

ARTICLE 4
TIME OF ELECTIONS

Section
32-404. Political subdivisions; elections; how held; notice of filing deadlines; certifications required; forms.
32-405. Special election; when held.

32-404 Political subdivisions; elections; how held; notice of filing deadlines; certifications required; forms.

(1) When any political subdivision holds an election in conjunction with the statewide primary or general election, the election shall be held as provided in the Election Act. Any other election held by a political subdivision shall be held as provided in the act unless otherwise provided by the charter, code, or bylaws of the political subdivision.

(2) No later than December 1 of each odd-numbered year, the Secretary of State, election commissioner, or county clerk shall give notice to each political subdivision of the filing deadlines for the statewide primary election. No later than January 5 of each even-numbered year, the governing board of each political subdivision which will hold an election in conjunction with a statewide primary election shall certify to the Secretary of State, the election commissioner, or the county clerk the name of the subdivision, the number of officers to be elected, the length of the terms of office, the vacancies to be filled by election and length of remaining term, and the number of votes to be cast by a registered voter for each office.

(3) No later than June 15 of each even-numbered year, the governing board of each reclamation district, county weed district, village, county under township organization, public power district receiving annual gross revenue of less than forty million dollars, or educational service unit which will hold an election in conjunction with a statewide general election shall certify to the Secretary of State, the election commissioner, or the county clerk the name of the subdivision, the number of officers to be elected, the length of the terms of office, the vacancies to be filled by election and length of remaining term, and the number of votes to be cast by a registered voter for each office.

(4) The Secretary of State shall prescribe the forms to be used for certification to him or her, and the election commissioner or county clerk shall prescribe the forms to be used for certification to him or her.

Source: Laws 1994, LB 76, § 96; Laws 1997, LB 764, § 46; Laws 2004, LB 927, § 1; Laws 2017, LB451, § 6; Laws 2021, LB285, § 7.

32-405 Special election; when held.

Any special election under the Election Act shall be held on the first Tuesday following the second Monday of the selected month unless otherwise specifically provided. No special election shall be held under the Election Act in April, May, June, October, November, or December of an even-numbered year unless it is held in conjunction with the statewide primary or general election. No special election shall be held under the Election Act in September of an even-numbered year except for a special election by a political subdivision pursuant to section 13-519 or 77-3444 to approve a property tax levy or exceed a property tax levy limitation. A special election for a Class III, IV, or V school

district which is located in whole or in part in a county in which a city of the primary or metropolitan class is located may be held in conjunction with the primary or general election for a city of the primary or metropolitan class which is governed by a home rule charter.

Source: Laws 2003, LB 521, § 4; Laws 2014, LB946, § 6; Laws 2020, LB1055, § 6.

ARTICLE 5

OFFICERS AND ISSUES

(a) OFFICES AND OFFICEHOLDERS

Section
32-504. Congressional districts; numbers; boundaries; established by maps; Clerk of Legislature; Secretary of State; duties.
32-505. Congressional districts; population figures and maps; basis.
32-538. City with city manager plan of government; city council; members; nomination and election; terms.
32-539. City with commission plan of government; city council; members; nonpartisan ballot; mayor and council members; terms.
32-541. Repealed. Laws 2018, LB377, § 87.
32-542. Repealed. Laws 2018, LB377, § 87.
32-545. Class V school district; board of education members; districts; qualifications; terms; nonpartisan ballot.
32-546. Repealed. Laws 2018, LB377, § 87.
32-551. Regional metropolitan transit authority; terms.

(b) LOCAL ELECTIONS

32-552. Election districts; adjustment of boundaries; when; procedure; Class IV school district; Class V school district; districts.
32-553. Political subdivision; redistrict; when; procedure.
32-559. Political subdivision; special election; certification; cancellation; procedure.

(c) VACANCIES

32-566. Legislature; vacancy; how filled.
32-567. Vacancies; offices listed; how filled.
32-570. School board; vacancy; how filled.
32-573. Board of Regents of the University of Nebraska; vacancy; how filled.

(a) OFFICES AND OFFICEHOLDERS

32-504 Congressional districts; numbers; boundaries; established by maps; Clerk of Legislature; Secretary of State; duties.

(1) Based on the 2020 Census of Population by the United States Department of Commerce, Bureau of the Census, the State of Nebraska is hereby divided into three districts for electing Representatives in the Congress of the United States, and each district shall be entitled to elect one representative.

(2) The numbers and boundaries of the districts are designated and established by maps identified and labeled as maps CONG21-39002, CONG21-39002-1, CONG21-39002-2, and CONG21-39002-3, filed with the Clerk of the Legislature, and incorporated by reference as part of Laws 2021, LB1, 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 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 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 districts.

Source: Laws 1994, LB 76, § 100; Laws 2001, LB 851, § 1; Laws 2011, LB704, § 1; Laws 2021, First Spec. Sess., LB1, § 1.
Effective date October 1, 2021.

32-505 Congressional districts; population figures and maps; basis.

For purposes of section 32-504, 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.

Source: Laws 1994, LB 76, § 101; Laws 2001, LB 851, § 2; Laws 2011, LB704, § 2; Laws 2021, First Spec. Sess., LB1, § 2.
Effective date October 1, 2021.

32-538 City with city manager plan of government; city council; members; nomination and election; terms.

(1) In a city which adopts the city manager plan of government pursuant to the City Manager Plan of Government Act, the city council members shall be nominated at the statewide primary election and elected at the statewide general election.

(2) City council members shall be elected from the city at large unless the city council by ordinance provides for the election of all or some of the city council members by wards, the number and boundaries of which are provided for in section 16-104. City council members shall serve for terms of four years or until their successors are elected and qualified. The city council members shall meet the qualifications found in sections 19-613 and 19-613.01.

(3) The first election under an ordinance changing the number of city council members or their manner of election shall take place at the next statewide primary and general elections. City council members whose terms of office expire after the election shall continue in office until the expiration of the terms for which they were elected and until their successors are elected and qualified. At the first election under an ordinance changing the number of city council members or their manner of election, one-half or the bare majority of city council members elected at large, as the case may be, who receive the highest number of votes shall serve for four years and the other or others, if needed, for two years. At such first election, one-half or the bare majority of city council members, as the case may be, who are elected by wards shall serve for four years and the other or others, if needed, for two years, as provided in the ordinance. If only one city council member is to be elected at large at such first election, such member shall serve for four years.

Source: Laws 1994, LB 76, § 134; Laws 2001, LB 71, § 2; Laws 2001, LB 730, § 3; Laws 2017, LB113, § 37; Laws 2019, LB193, § 240; Laws 2020, LB1003, § 184.

Cross References

City Manager Plan of Government Act, see section 19-601.

32-539 City with commission plan of government; city council; members; nonpartisan ballot; mayor and council members; terms.

(1) In a city which adopts the commission plan of government pursuant to the Municipal Commission Plan of Government Act, the number of city council members shall be determined by the class and population of the city. In cities having two thousand or more but not more than forty thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, there shall be five members, in cities of the primary class, there shall be five members, and in cities of the metropolitan class, there shall be seven members. Council members shall be elected from the city at large. Nomination and election of all council members shall be by nonpartisan ballot. The mayor shall be elected for a four-year term.

(2) If a city elects to adopt the commission plan of government, the council member elected as the commissioner of the department of public works and the council member elected as the commissioner of the department of public accounts and finances shall each serve a term of four years and the council member elected as the commissioner of the department of streets, public improvements, and public property and the council member elected as the commissioner of the department of parks and recreation shall each serve a term of two years. Upon the expiration of such terms, all council members shall serve terms of four years and until their successors are elected and qualified.

(3) Commencing with the statewide primary election in 2000, and every two years thereafter, candidates shall be nominated at the statewide primary election and elected at the statewide general election except as otherwise provided in section 19-405.

Source: Laws 1994, LB 76, § 135; Laws 1999, LB 250, § 3; Laws 2017, LB113, § 38; Laws 2019, LB193, § 241.

Cross References

Municipal Commission Plan of Government Act, see section 19-401.

32-541 Repealed. Laws 2018, LB377, § 87.

32-542 Repealed. Laws 2018, LB377, § 87.

32-545 Class V school district; board of education members; districts; qualifications; terms; nonpartisan ballot.

(1) A member of the board of education of a Class V school district shall be elected from each district provided for in section 32-552. Such election shall be held on the date provided in subsection (2) of this section. The members of such board of education shall meet the qualifications found in sections 79-543 and 79-552.

(2) In 2014, candidates for election to such board of education from even-numbered districts shall be nominated at the statewide primary election and elected at the statewide general election and shall take office on the first Monday in January 2015. In 2016, candidates for election to such board of education from odd-numbered districts shall be nominated at the statewide primary election and elected at the statewide general election and shall take

office on the first Monday in January 2017. Thereafter, all members shall be nominated at the statewide primary election and elected at the statewide general election, shall take office on the first Monday in January following their election, and shall serve terms of four years or until their successors are elected and qualified. Candidates for election to such board of education shall be nominated upon the nonpartisan ballot.

Source: Laws 1994, LB 76, § 141; Laws 1996, LB 900, § 1044; Laws 2013, LB125, § 1; Laws 2020, LB1055, § 7.

32-546 Repealed. Laws 2018, LB377, § 87.

32-551 Regional metropolitan transit authority; terms.

(1) Members of the board of directors of a regional metropolitan transit authority shall be nominated at the statewide primary election and elected at the statewide general election following the effective date of the conversion of such transit authority established under the Transit Authority Law into a regional metropolitan transit authority as provided in section 18-808, and subsequently elected members shall be nominated at subsequent statewide primary elections and elected at subsequent statewide general elections. Candidates for election shall be nominated upon a nonpartisan ballot.

(2) Members elected to represent odd-numbered districts in the first election of board members shall be elected for two-year terms. Members elected to represent even-numbered districts in the first election of board members shall be elected for four-year terms. Members elected in subsequent elections shall be elected for four-year terms and until their successors are elected and qualified.

(3) Members shall take office on the first Thursday after the first Tuesday in January following their election, except that members appointed to fill vacancies shall take office immediately following administration of the oath of office.

Source: Laws 2019, LB492, § 36.

Cross References

Transit Authority Law, see section 14-1826.

(b) LOCAL ELECTIONS

32-552 Election districts; adjustment of boundaries; when; procedure; Class IV school district; Class V school district; districts.

(1) Except as provided by subsection (4) of this section, at least five months prior to an election, the governing board of any political subdivision requesting the adjustment of the boundaries of election districts shall provide to the election commissioner or county clerk (a) written notice of the need and necessity of his or her office to perform such adjustments and (b) a revised election district boundary map that has been approved by the requesting political subdivision's governing board and subjected to all public review and challenge ordinances of the political subdivision.

(2) After the next federal decennial census, the election commissioner of the county in which the greater part of a Class IV school district is situated shall, subject to review by the school board, divide the school district into seven numbered districts, substantially equal in population as determined by the most recent federal decennial census. The election commissioner shall consider the

location of schools within the district and their boundaries. The election commissioner shall adjust the boundaries of the election districts, subject to final review and adjustment by the school board, to conform to changes in the territory and population of the school district and also following each federal decennial census. Except when specific procedures are otherwise provided, section 32-553 shall apply to all Class IV school districts.

(3) For purposes of election of members to the board of education of a Class V school district:

(a)(i) The Legislature hereby divides such school district into nine numbered election districts of compact and contiguous territory and of as nearly equal population as may be practical. Each election district shall be entitled to one member on the board of education of such Class V school district. The Legislature adopts the official population figures and maps from the 2010 Census Redistricting (Public Law 94-171) TIGER/Line Shapefiles published by the United States Department of Commerce, Bureau of the Census. The numbers and boundaries of the election districts are designated and established by a map identified and labeled as OPS-13-002, filed with the Clerk of the Legislature, and incorporated by reference as part of Laws 2013, LB125. Such districts are drawn using the boundaries of the Class V school district as they existed on February 12, 2013; (ii) the Clerk of the Legislature shall transfer possession of the map referred to in subdivision (a)(i) of this subsection to the Secretary of State and the election commissioner of the county in which the greater part of the school district is situated on February 12, 2013; (iii) when questions of interpretation of such election district boundaries arise, the map referred to in subdivision (a)(i) of this subsection in possession of such election commissioner shall serve as the indication of the legislative intent in drawing the election district boundaries; and (iv) the Secretary of State and such election commissioner shall also have available for viewing on his or her website the map referred to in subdivision (a)(i) of this subsection identifying the boundaries for such election districts; and

(b) After the next federal decennial census, the election commissioner of the county in which the greater part of a Class V school district is situated shall divide the school district into nine numbered districts of compact and contiguous territory and of as nearly equal population as may be practical. The election commissioner shall adjust the boundaries of such districts, subject to final review and adjustment by the school board, to conform to changes in the territory of the school district and also following each federal decennial census.

(4) Following the release of the 2020 Census of Population data by the United States Department of Commerce, Bureau of the Census, as required by Public Law 94-171, the governing board of any political subdivision requesting the adjustment of the boundaries of election districts shall provide to the election commissioner or county clerk (a) written notice of the need and necessity of his or her office to perform such adjustments and (b) a revised election district boundary map that has been approved by the requesting political subdivision's governing board and subjected to all public review and challenge ordinances of the political subdivision by December 30, 2021.

(5) The Secretary of State may grant additional days upon request of the political subdivision if precinct maps are not delivered to the political subdivision by November 1, 2021, or for an extraordinary circumstance.

Source: Laws 1994, LB 76, § 148; Laws 1997, LB 764, § 49; Laws 2002, LB 935, § 5; Laws 2013, LB125, § 2; Laws 2019, LB411, § 37; Laws 2020, LB1055, § 8; Laws 2021, LB285, § 8.

32-553 Political subdivision; redistrict; when; procedure.

(1)(a) When any political subdivision except a public power district nominates or elects members of the governing board by districts, such districts shall be substantially equal in population as determined by the most recent federal decennial census.

(b) Except as provided by subdivision (c) of this subsection, (i) any such political subdivision which has districts in place on the date the census figures used in drawing district boundaries for the Legislature are required to be submitted to the state by the United States Department of Commerce, Bureau of the Census, shall, if necessary to maintain substantial population equality as required by this subsection, have new district boundaries drawn within six months after the passage and approval of the legislative bill providing for reestablishing legislative districts and (ii) any such political subdivision in existence on the date the census figures used in drawing district boundaries for the Legislature are required to be submitted to the state by the United States Department of Commerce, Bureau of the Census, and which has not established any district boundaries shall establish district boundaries pursuant to this section within six months after such date.

(c) Following the release of the 2020 Census of Population data by the United States Department of Commerce, Bureau of the Census, as required by Public Law 94-171, any such political subdivision which has districts in place on the date the census figures used in drawing district boundaries for the Legislature are required to be submitted to the state by the United States Department of Commerce, Bureau of the Census, shall, if necessary to maintain substantial population equality as required by this subsection, have new district boundaries drawn and submitted to the election commissioner or county clerk by December 30, 2021, after the passage and approval of the legislative bill providing for reestablishing legislative districts. Any such political subdivision in existence on the date the census figures used in drawing district boundaries for the Legislature are required to be submitted to the state by the United States Department of Commerce, Bureau of the Census, and which has not established any district boundaries shall establish district boundaries and submit the boundaries to the election commissioner or county clerk pursuant to this section by December 30, 2021.

(d) The Secretary of State may grant additional days upon request of the political subdivision if precinct maps are not delivered to the political subdivision by November 1, 2021, or for an extraordinary circumstance.

(e) If the deadline for drawing or redrawing district boundary lines imposed by this section is not met, the procedures set forth in section 32-555 shall be followed.

(2) The governing board of each such political subdivision shall be responsible for drawing its own district boundaries and shall, as nearly as possible, follow the precinct lines created by the election commissioner or county clerk after each federal decennial census, except that the election commissioner of any county in which a Class IV or V school district is located shall draw district boundaries for such school district as provided in this section and section 32-552.

Source: Laws 1994, LB 76, § 149; Laws 1997, LB 595, § 2; Laws 2001, LB 71, § 3; Laws 2021, LB285, § 9.

32-559 Political subdivision; special election; certification; cancellation; procedure.

(1)(a) Except as provided in section 77-3444, any issue to be submitted to the registered voters at a special election by a political subdivision shall be certified by the clerk of the political subdivision to the election commissioner or county clerk on or before the eighth Friday prior to the election. A special election may be held by mail as provided in sections 32-952 to 32-959. Any other special election under this section shall be subject to section 32-405.

(b) In lieu of submitting the issue at a special election, any political subdivision may submit the issue at a statewide primary or general election or at any scheduled county election, except that no such issue shall be submitted at a statewide election or scheduled county election unless the issue to be submitted has been certified by the clerk of the political subdivision to the election commissioner or county clerk by March 1 for the primary election and by September 1 for the general election. After the election commissioner or county clerk has received the certification of the issue to be submitted, he or she shall be responsible for all matters relating to the submission of the issue to the registered voters, except that the clerk of the political subdivision shall be responsible for the publication or posting of any required special notice of the submission of such issue other than the notice required to be given of the statewide election issues. The election commissioner or county clerk shall prepare the ballots and issue ballots for early voting and shall also conduct the submission of the issue, including the receiving and counting of the ballots on the issue. The election returns shall be made to the election commissioner or county clerk. The ballots shall be counted and canvassed at the same time and in the same manner as the other ballots. Upon completion of the canvass of the vote by the county canvassing board, the election commissioner or county clerk shall certify the election results to the governing body of the political subdivision. The canvass by the county canvassing board shall have the same force and effect as if made by the governing body of the political subdivision.

(2)(a) A political subdivision that has submitted an issue for a special election under subdivision (1)(a) of this section may cancel the special election if the Secretary of State, election commissioner, or county clerk receives a resolution adopted by the political subdivision canceling the special election on or before the fourth Thursday prior to the election. No cancellation shall be effective after such date. If a special election is canceled in such manner, the political subdivision shall be responsible for the costs incurred that are related to the canceled election. Such costs shall include all chargeable costs as provided in section 32-1202 associated with preparing for and conducting a special election.

(b) A political subdivision that has submitted an issue at a statewide primary or general election or at any scheduled county election under subdivision (1)(b) of this section may withdraw the issue from the ballot if the Secretary of State, election commissioner, or county clerk receives a resolution adopted by the political subdivision withdrawing the issue from the ballot no later than March 1 prior to a statewide primary election or September 1 prior to a statewide general election. No withdrawal shall be effective after such date. Any issue withdrawn in this manner shall not be printed on the ballot.

Source: Laws 1994, LB 76, § 155; Laws 1996, LB 964, § 3; Laws 1998, LB 306, § 4; Laws 2003, LB 521, § 4; Laws 2005, LB 98, § 6; Laws 2022, LB843, § 23.
Effective date July 21, 2022.

Cross References

School bonds, special elections, see sections 10-703 and 10-703.01.

(c) VACANCIES

32-566 Legislature; vacancy; how filled.

(1) When a vacancy occurs in the Legislature, the office shall be filled by the Governor. The Governor shall appoint a suitable person possessing the qualifications necessary for a member of the Legislature.

(2) If the vacancy occurs at any time on or after May 1 of the second year of the term of office, the appointee shall serve for the remainder of the unexpired term. If the vacancy occurs at any time prior to May 1 of the second year of the term of office, the appointee shall serve until the first Tuesday following the first Monday in January following the next regular general election and at the regular general election a member of the Legislature shall be elected to serve the unexpired term as provided in subsection (3) of this section.

(3)(a) If the vacancy occurs on or after February 1 and prior to May 1 during the second year of the term of office, the vacancy shall be filled at the regular election in November of that year. Candidates shall file petitions to appear on the ballot for such election as provided in section 32-617.

(b) If the vacancy occurs at any time prior to February 1 of the second year of the term of office, the procedure for filling the vacated office shall be the same as the procedure for filling the office at the expiration of the term and candidates shall be nominated and elected at the statewide primary and general elections during the second year of the term.

Source: Laws 1994, LB 76, § 162; Laws 2017, LB451, § 7.

32-567 Vacancies; offices listed; how filled.

Vacancies in office shall be filled as follows:

(1) In state and judicial district offices and in the membership of any board or commission created by the state when no other method is provided, by the Governor;

(2) In county offices, by the county board;

(3) In the membership of the county board, by the county clerk, county attorney, and county treasurer;

(4) In the membership of the city council, according to section 32-568 or 32-569, as applicable;

(5) In township offices, by the township board or, if there are two or more vacancies on the township board, by the county board;

(6) In offices in public power and irrigation districts, according to section 70-615;

(7) In offices in natural resources districts, according to section 2-3215;

(8) In offices in community college areas, according to section 85-1514;

(9) In offices in educational service units, according to section 79-1217;

(10) In offices in hospital districts, according to section 23-3534;

(11) In offices in metropolitan utilities districts, according to section 14-2104;

(12) In membership on airport authority boards, according to section 3-502, 3-611, or 3-703, as applicable;

(13) In membership on the board of trustees of a road improvement district, according to section 39-1607;

(14) In membership on the council of a municipal county, by the council;

(15) For learning community coordinating councils, according to section 32-546.01; and

(16) For regional metropolitan transit authority boards, according to section 18-808.

Source: Laws 1994, LB 76, § 163; Laws 1996, LB 900, § 1046; Laws 2001, LB 142, § 38; Laws 2007, LB641, § 1; Laws 2014, LB946, § 10; Laws 2015, LB575, § 12; Laws 2019, LB492, § 37.

Cross References

Public Service Commission, vacancy, how filled, see section 75-103.
State Board of Education, vacancy, how filled, see section 79-314.

32-570 School board; vacancy; how filled.

(1) A vacancy in the membership of a school board shall occur as set forth in section 32-560 or in the case of absences, unless excused by a majority of the remaining members of the board, when a member is absent from the district for a continuous period of sixty days at one time or from more than two consecutive regular meetings of the board. The resignation of a member or any other reason for a vacancy shall be made a part of the minutes of the school board. The school board shall give notice of the date the vacancy occurred, the office vacated, and the length of the unexpired term (a) in writing to the election commissioner or county clerk and (b) by a notice published in a newspaper of general circulation in the school district.

(2) Except as provided in subsection (3) of this section, a vacancy in the membership of a school board resulting from any cause other than the expiration of a term shall be filled by appointment of a qualified registered voter by the remaining members of the board for the remainder of the unexpired term. A registered voter appointed pursuant to this subsection shall meet the same requirements as the member whose office is vacant.

(3) Any vacancy in the membership of a school board of a school district described in section 79-549 which does not nominate candidates at a primary election and elect members at the following general election shall be filled by appointment of a qualified registered voter by the remaining members of the board for the remainder of the unexpired term.

(4) If any school board fails to fill a vacancy on the board, the vacancy may be filled by election at a special election or school district meeting called for that purpose. Such election or meeting shall be called in the same manner and subject to the same procedures as other special elections or school district meetings.

(5) If there are vacancies in the offices of one-half or more of the members of a school board, the Secretary of State shall conduct a special school district election to fill such vacancies.

Source: Laws 1994, LB 76, § 166; Laws 1999, LB 272, § 15; Laws 2010, LB965, § 1; Laws 2012, LB878, § 3; Laws 2013, LB125, § 3; Laws 2016, LB874, § 1; Laws 2018, LB377, § 2.

32-573 Board of Regents of the University of Nebraska; vacancy; how filled.

(1) When a vacancy occurs in the Board of Regents of the University of Nebraska, the office shall be filled by the Governor. The Governor shall appoint a suitable person possessing the qualifications necessary for a member of the Board of Regents.

(2)(a) If the vacancy occurs during the first year of the term or before February 1 during a calendar year in which a statewide general election will be held, the appointee shall serve until the first Thursday following the first Tuesday in January following such general election and at such general election a member of the Board of Regents shall be elected to serve the unexpired term if any.

(b) If the vacancy occurs on or after February 1 during a calendar year in which a statewide general election will be held and if the term vacated expires on the first Thursday following the first Tuesday in January following such general election, the appointee shall serve the unexpired term.

(c) If the vacancy occurs on or after February 1 during a calendar year in which a statewide general election will be held and if the term vacated extends beyond the first Thursday following the first Tuesday in January following such general election, the appointee shall serve until the first Thursday following the first Tuesday in January following the second general election next succeeding his or her appointment and at such election a member of the Board of Regents shall be elected to serve the unexpired term if any.

Source: Laws 2003, LB 181, § 2; Laws 2017, LB451, § 8.

ARTICLE 6

FILING AND NOMINATION PROCEDURES

Section

32-601 Political subdivision; offices to be filled; filing deadlines; notices required.

(1) Each political subdivision shall notify the election commissioner or county clerk of the offices to be filled no later than:

(a) January 5 of any election year as provided in subsection (2) of section 32-404; or

(b) June 15 of any election year as provided in subsection (3) of section 32-404.

(2) The election commissioner or county clerk shall give notice of the offices to be filled by election and the filing deadlines for such offices by publication in

at least one newspaper of general circulation in the county once at least fifteen days prior to such deadlines.

Source: Laws 1994, LB 76, § 169; Laws 2017, LB451, § 9.

32-602 Candidate; general requirements; limitation on filing for office.

(1) Any person seeking an elective office shall be a registered voter at the time of filing for the office pursuant to section 32-606 or 32-611.

(2) Any person filing for office shall meet the constitutional and statutory requirements of the office for which he or she is filing. If a person is filing for a partisan office, he or she shall be a registered voter affiliated with the appropriate political party if required pursuant to section 32-702. If the person is required to sign a contract or comply with a bonding or equivalent commercial insurance policy requirement prior to holding such office, he or she shall be at least nineteen years of age at the time of filing for the office.

(3) A person shall not be eligible to file for an office if he or she holds the office and his or her term of office expires after the beginning of the term of office for which he or she would be filing. This subsection does not apply to filing for an office to represent a different district, ward, subdistrict, or subdivision of the same governmental entity as the office held at the time of filing.

(4)(a) Except as provided in subdivision (b) of this subsection, a person shall not be eligible to file for an office until he or she has paid any outstanding civil penalties and interest imposed pursuant to the Nebraska Political Accountability and Disclosure Act. The filing officer shall determine such eligibility before accepting a filing. The Nebraska Accountability and Disclosure Commission shall provide the filing officers with current information or the most current list of such outstanding civil penalties and interest owed pursuant to subdivision (13) of section 49-14,123.

(b) A person owing a civil penalty to the commission shall be eligible to file for an office if:

(i) The matter in which the civil penalty was assessed is pending on appeal before a state court; and

(ii) The person files with the commission a surety bond running in favor of the State of Nebraska with surety by a corporate bonding company authorized to do business in this state and conditioned upon the payment of the civil penalty imposed under the Nebraska Political Accountability and Disclosure Act.

(5) The governing body of the political subdivision swearing in the officer shall determine whether the person meets all requirements prior to swearing in the officer.

Source: Laws 1994, LB 76, § 170; Laws 2004, LB 884, § 17; Laws 2011, LB499, § 1; Laws 2017, LB85, § 1.

Cross References

Nebraska Political Accountability and Disclosure Act, see section 49-1401.

32-604 Multiple office holding; when allowed.

(1) Except as provided in subsection (2) or (4) of this section, no person shall be precluded from being elected or appointed to or holding an elective office

for the reason that he or she has been elected or appointed to or holds another elective office.

(2) No person serving as a member of the Legislature or in an elective office described in Article IV, section 1 or 20, or Article VII, section 3 or 10, of the Constitution of Nebraska shall simultaneously serve in any other elective office, except that such a person may simultaneously serve in another elective office which is filled at an election held in conjunction with the annual meeting of a public body.

(3) Whenever an incumbent serving as a member of the Legislature or in an elective office described in Article IV, section 1 or 20, or Article VII, section 3 or 10, of the Constitution of Nebraska assumes another elective office, except an elective office filled at an election held in conjunction with the annual meeting of a public body, the office first held by the incumbent shall be deemed vacant.

(4) No person serving in a high elective office shall simultaneously serve in any other high elective office, except that a county attorney may serve as the county attorney for more than one county if appointed under subsection (2) of section 23-1201.01.

(5) Notwithstanding subsection (4) of this section, any person holding more than one high elective office upon July 15, 2010, shall be entitled to serve the remainder of all terms for which he or she was elected or appointed.

(6) For purposes of this section, (a) elective office has the meaning found in section 32-109 and includes an office which is filled at an election held in conjunction with the annual meeting of a public body created by an act of the Legislature but does not include a member of a learning community coordinating council appointed pursuant to subsection (5) or (7) of section 32-546.01 prior to January 5, 2017, and (b) high elective office means a member of the Legislature, an elective office described in Article IV, section 1 or 20, or Article VII, section 3 or 10, of the Constitution of Nebraska, or a county, city, community college area, learning community, regional metropolitan transit authority, or school district elective office.

Source: Laws 1994, LB 76, § 172; Laws 1997, LB 221, § 3; Laws 2003, LB 84, § 2; Laws 2007, LB641, § 2; Laws 2008, LB1154, § 4; Laws 2010, LB951, § 2; Laws 2016, LB1067, § 5; Laws 2019, LB492, § 38.

32-606 Candidate filing form; filing period.

(1) Any candidate may place his or her name on the primary election ballot by filing a candidate filing form prescribed by the Secretary of State as provided in section 32-607. Except as otherwise provided in subsection (4) of this section, if a candidate for an elective office is an incumbent of any elective office, the filing period for filing the candidate filing form shall be between January 5 and February 15 prior to the date of the primary election. No incumbent who resigns from elective office prior to the expiration of his or her term shall file for any office after February 15 of that election year. All other candidates shall file for office between January 5 and March 1 prior to the date of the primary election. A candidate filing form and a copy of payment of the filing fee, if applicable, may be transmitted by facsimile for the offices listed in subdivision (1) of section 32-607 if (a) the transmission is received in the office of the filing officer by the filing deadline and (b) the original filing form and

payment of the filing fee, if applicable, is mailed to the filing officer with a legible postmark bearing a date on or prior to the filing deadline and is in the office of the filing officer no later than seven days after the filing deadline.

(2) Any candidate for a township office in a county under township organization, the board of trustees of a village, the board of directors of a reclamation district, the county weed district board, the board of directors of a public power district receiving annual gross revenue of less than forty million dollars, or the board of an educational service unit may place his or her name on the general election ballot by filing a candidate filing form prescribed by the Secretary of State as provided in section 32-607. Except as otherwise provided in subsection (4) of this section, if a candidate for an elective office is an incumbent of any elective office, the filing period for filing the candidate filing form shall be between January 5 and July 15 prior to the date of the general election. No incumbent who resigns from elective office prior to the expiration of his or her term shall file for any office after July 15 of that election year. All other candidates shall file for office between January 5 and August 1 prior to the date of the general election. A candidate filing form may be transmitted by facsimile for the offices listed in subdivision (1) of section 32-607 if (a) the transmission is received in the office of the filing officer by the filing deadline and (b) the original filing form is mailed to the filing officer with a legible postmark bearing a date on or prior to the filing deadline and is in the office of the filing officer no later than seven days after the filing deadline.

(3) Any city having a home rule charter may provide for filing deadlines for any person desiring to be a candidate for the office of council member or mayor.

(4) If a candidate for an elective office was appointed to an elective office to fill a vacancy after the deadline for an incumbent to file a candidate filing form in subsection (1) or (2) of this section but before the deadline for all other candidates, the candidate may file a candidate filing form for any office on or before the deadline for all other candidates.

Source: Laws 1994, LB 76, § 174; Laws 1996, LB 967, § 2; Laws 1997, LB 764, § 54; Laws 1999, LB 802, § 12; Laws 2007, LB641, § 3; Laws 2009, LB392, § 7; Laws 2011, LB449, § 4; Laws 2011, LB550, § 1; Laws 2013, LB125, § 4; Laws 2018, LB377, § 3; Laws 2020, LB1055, § 9; Laws 2021, LB285, § 10.

32-607 Candidate filing forms; contents; filing officers.

All candidate filing forms shall contain the following statement: I hereby swear that I will abide by the laws of the State of Nebraska regarding the results of the primary and general elections, that I am a registered voter and qualified to be elected, and that I will serve if elected. Candidate filing forms shall also contain the following information regarding the candidate: Name; residence address; mailing address if different from the residence address; telephone number; office sought; party affiliation if the office sought is a partisan office; a statement as to whether or not civil penalties are owed pursuant to the Nebraska Political Accountability and Disclosure Act; and, if civil penalties are owed, whether or not a surety bond has been filed pursuant to subdivision (4)(b) of section 32-602. An email address shall also be included on the filing form as an optional field. Candidate filing forms shall be filed with the following filing officers:

(1) For candidates for national, state, or congressional office, directors of public power and irrigation districts, directors of reclamation districts, directors of natural resources districts, directors of metropolitan utilities districts, members of the boards of educational service units, members of governing boards of community colleges, delegates to national conventions, and other offices filled by election held in more than one county and judges desiring retention, in the office of the Secretary of State;

(2) For officers elected within a county, in the office of the election commissioner or county clerk;

(3) For officers in school districts which include land in adjoining counties, in the office of the election commissioner or county clerk of the county in which the greatest number of registered voters entitled to vote for the officers reside; and

(4) For city or village officers, in the office of the election commissioner or county clerk.

Source: Laws 1994, LB 76, § 175; Laws 1997, LB 764, § 55; Laws 1999, LB 571, § 2; Laws 2007, LB603, § 3; Laws 2009, LB501, § 2; Laws 2010, LB325, § 3; Laws 2015, LB575, § 15; Laws 2017, LB85, § 2; Laws 2019, LB411, § 38; Laws 2022, LB843, § 24. Effective date July 21, 2022.

Cross References

Nebraska Political Accountability and Disclosure Act, see section 49-1401.

32-608 Filing fees; payment; amount; not required; when; refund; when allowed.

(1) Except as provided in subsection (4) or (5) of this section, a filing fee shall be paid by or on behalf of each candidate prior to filing for office. For candidates who file in the office of the Secretary of State as provided in subdivision (1) of section 32-607, the filing fee shall be paid to the Secretary of State who shall remit the fee to the State Treasurer for credit to the Election Administration Fund. For candidates for any city or village office, the filing fee shall be paid to the city or village treasurer of the city or village in which the candidate resides. For candidates who file in the office of the election commissioner or county clerk, the filing fee shall be paid to the election commissioner or county clerk in the county in which the office is sought. The election commissioner or county clerk shall remit the fee to the county treasurer. The fee shall be placed in the general fund of the county, city, or village. No candidate filing forms shall be filed until the proper payment or the proper receipt showing the payment of such filing fee is presented to the filing officer. On the day of the filing deadline, the city or village treasurer's office shall remain open to receive filing fees until the hour of the filing deadline.

(2) Except as provided in subsection (4) or (5) of this section, the filing fees shall be as follows:

(a) For the office of United States Senator, state officers, including members of the Legislature, Representatives in Congress, county officers, and city or village officers, except the mayor or council members of cities having a home rule charter, a sum equal to one percent of the annual salary as of November 30 of the year preceding the election for the office for which he or she files as a candidate;

(b) For directors of public power and irrigation districts in districts receiving annual gross revenue of forty million dollars or more, twenty-five dollars, and in districts receiving annual gross revenue of less than forty million dollars, ten dollars;

(c) For directors of reclamation districts, ten dollars; and

(d) For Regents of the University of Nebraska, members of the State Board of Education, and directors of metropolitan utilities districts, twenty-five dollars.

(3) All declared write-in candidates shall pay the filing fees that are required for the office at the time that they present the write-in affidavit to the filing officer.

(4) No filing fee shall be required for any candidate filing for an office in which a per diem is paid rather than a salary or for which there is a salary of less than five hundred dollars per year. No filing fee shall be required for any candidate for membership on a school board, on the board of an educational service unit, on the board of governors of a community college area, on the board of directors of a natural resources district, or on the board of trustees of a sanitary and improvement district.

(5) No filing fee shall be required of any candidate completing an affidavit requesting to file for elective office in forma pauperis. A pauper shall mean a person whose income and other resources for maintenance are found under assistance standards to be insufficient for meeting the cost of his or her requirements and whose reserve of cash or other available resources does not exceed the maximum available resources that an eligible individual may own. Available resources shall include every type of property or interest in property that an individual owns and may convert into cash except:

(a) Real property used as a home;

(b) Household goods of a moderate value used in the home; and

(c) Assets to a maximum value of three thousand dollars used by a recipient in a planned effort directed towards self-support.

(6) If any candidate dies prior to an election, the spouse of the candidate may file a claim for refund of the filing fee with the proper governing body prior to the date of the election. Upon approval of the claim by the proper governing body, the filing fee shall be refunded.

Source: Laws 1994, LB 76, § 176; Laws 1997, LB 764, § 56; Laws 1998, LB 896, § 9; Laws 1998, LB 1161, § 12; Laws 1999, LB 272, § 16; Laws 1999, LB 802, § 13; Laws 2003, LB 537, § 1; Laws 2004, LB 323, § 2; Laws 2014, LB946, § 12; Laws 2021, LB285, § 11.

32-610 Partisan elections; candidate; requirements.

No person shall be allowed to file a candidate filing form as a partisan candidate or to have his or her name placed upon a primary election ballot of a political party if subsection (2) of section 32-720 applies to the political party. For any other political party, no person shall be allowed to file a candidate filing form as a partisan candidate or to have his or her name placed upon a primary election ballot of a political party unless (1) he or she is a registered voter of the political party if required pursuant to section 32-702 and (2)(a) the political party has at least ten thousand persons affiliated as indicated by voter registration records in Nebraska or (b) at one of the two immediately preceding

statewide general elections, (i) a candidate nominated by the political party polled at least five percent of the entire vote in the state in a statewide race or (ii) a combination of candidates nominated by the political party for a combination of districts that encompass all of the voters of the entire state polled at least five percent of the vote in each of their respective districts. A candidate filing form filed in violation of this section shall be void.

Source: Laws 1994, LB 76, § 178; Laws 2012, LB1035, § 1; Laws 2014, LB1048, § 2; Laws 2017, LB34, § 1.

32-615 Write-in candidate; requirements.

(1) Except as otherwise provided in subsection (2) of this section, any candidate engaged in or pursuing a write-in campaign shall file a notarized affidavit of his or her intent together with the receipt for any filing fee with the filing officer as provided in section 32-608 no earlier than January 5 and no later than the second Friday prior to the election.

(2) For any county office elected pursuant to sections 32-517 to 32-529 which is subject to subdivision (1)(b) of section 32-811, a candidate may engage in or pursue a write-in campaign if he or she files a notarized affidavit of his or her intent together with the receipt for the filing fee with the filing officer as provided in section 32-608 on or before March 3 of the year of the statewide primary election. If such an affidavit is filed as prescribed, the election commissioner or county clerk shall place that county office on the statewide primary election ballot with the names of the candidate properly filed for the nomination of the applicable political party and a line for write-in candidates.

(3) A candidate submitting an affidavit under this section for a partisan office shall be a registered voter of the political party named in the affidavit unless the political party allows candidates not affiliated with the party by not adopting a rule under section 32-702.

(4) A candidate who has been defeated as a candidate in the primary election or defeated as a write-in candidate in the primary election shall not be eligible as a write-in candidate for the same office in the general election unless (a) a vacancy on the ballot exists pursuant to section 32-625 or (b) the candidate was a candidate for an office described in sections 32-512 to 32-550 and the candidate lost the election as a result of a determination pursuant to section 32-1122 in the case of a tie vote.

(5) A candidate who files a notarized affidavit shall be entitled to all write-in votes for the candidate even if only the last name of the candidate has been written if such last name is reasonably close to the proper spelling.

Source: Laws 1994, LB 76, § 183; Laws 2002, LB 251, § 4; Laws 2003, LB 537, § 2; Laws 2011, LB449, § 5; Laws 2014, LB56, § 1; Laws 2014, LB144, § 2; Laws 2015, LB575, § 17; Laws 2022, LB843, § 25.
Effective date July 21, 2022.

32-618 Nomination by petition; number of signatures required.

(1) The number of signatures of registered voters needed to place the name of a candidate upon the nonpartisan ballot for the general election shall be as follows:

(a) For each nonpartisan office other than members of the Board of Regents of the University of Nebraska and board members of a Class III school district, at least ten percent of the total number of registered voters voting for Governor or President of the United States at the immediately preceding general election in the district or political subdivision in which the officer is to be elected, not to exceed two thousand;

(b) For members of the Board of Regents of the University of Nebraska, at least ten percent of the total number of registered voters voting for Governor or President of the United States at the immediately preceding general election in the regent district in which the officer is to be elected, not to exceed one thousand; and

(c) For board members of a Class III school district, at least twenty percent of the total number of votes cast for the board member receiving the highest number of votes at the immediately preceding general election in the school district.

(2) The number of signatures of registered voters needed to place the name of a candidate for an office upon the partisan ballot for the general election shall be as follows:

(a) For each partisan office to be filled by the registered voters of the entire state, at least four thousand, and at least seven hundred fifty signatures shall be obtained in each congressional district in the state;

(b) For each partisan office to be filled by the registered voters of a county, at least twenty percent of the total number of registered voters voting for Governor or President of the United States at the immediately preceding general election within the county, not to exceed two thousand, except that the number of signatures shall not be required to exceed twenty-five percent of the total number of registered voters voting for the office at the immediately preceding general election; and

(c) For each partisan office to be filled by the registered voters of a political subdivision other than a county, at least twenty percent of the total number of registered voters voting for Governor or President of the United States at the immediately preceding general election within the political subdivision, not to exceed two thousand.

Source: Laws 1994, LB 76, § 186; Laws 1997, LB 764, § 62; Laws 2003, LB 181, § 5; Laws 2003, LB 461, § 3; Laws 2007, LB298, § 1; Laws 2011, LB399, § 1; Laws 2016, LB874, § 2; Laws 2019, LB411, § 39.

32-623 Declination of nomination; deadline; notice, to whom given; vacancy, how filled.

If any person nominated for elective office for the general election notifies the filing officer with whom the candidate filing form or other acceptance of nomination was filed by filing a statement, in writing and duly acknowledged, that he or she declines such nomination on or before August 1 before the election, the person's name shall not be printed on the ballot, but no declination shall be effective after such date. The filing officer shall inform one or more persons whose names are attached to the nomination if the candidate was nominated by a political party convention or committee or, if nominated at a primary election, the chairperson or secretary of the campaign or political

party committee of his or her political party if there is one within the jurisdiction of the filing officer and, if not, at least three of the prominent members of the candidate's political party within the jurisdiction of the filing officer that such candidate has declined the nomination by mailing or delivering to them personally notice of such fact. Such declination shall create a vacancy on the ballot which may be filled pursuant to section 32-627. In lieu of filing a declination with the Secretary of State, the person so nominated may file a declination with the election commissioner or county clerk in the county in which he or she resides. Any election commissioner or county clerk receiving such a declination shall within five days after its receipt forward a copy of the written declination statement to the Secretary of State. The Secretary of State shall make notifications required by this section for all individuals for whom he or she receives a copy of the written declination statement.

Source: Laws 1994, LB 76, § 191; Laws 2012, LB503, § 1; Laws 2022, LB843, § 26.
Effective date July 21, 2022.

32-631 Petitions; signature verification; procedure.

(1) All petitions that are filed with the election commissioner or county clerk for signature verification shall be retained in the election office and shall be open to public inspection. Upon receipt of the pages of a petition, the election commissioner or county clerk shall issue a written receipt indicating the number of pages of the petition in his or her custody to the person filing the petition for signature verification. Petitions may be destroyed twenty-two months after the election to which they apply.

(2) The election commissioner or county clerk shall determine the validity and sufficiency of such petition by comparing the names, dates of birth if applicable, and addresses of the signers with the voter registration records to determine if the signers were registered voters on the date of signing the petition. If it is determined that a signer has affixed his or her signature more than once to any petition and that only one person is registered by that name, the election commissioner or county clerk shall strike from the pages of the petition all but one such signature. Only one of the duplicate signatures shall be added to the total number of valid signatures. All signatures, dates of birth, and addresses shall be presumed to be valid if the election commissioner or county clerk has found the signers to be registered voters on or before the date on which the petition was signed. This presumption shall not be conclusive and may be rebutted by any credible evidence which the election commissioner or county clerk finds sufficient.

(3) If the election commissioner or county clerk verifies signatures in excess of one hundred ten percent of the number necessary for the issue to be placed on the ballot, the election commissioner or county clerk may cease verifying signatures and certify the number of signatures verified to the person who delivered the petitions for verification.

(4) If the number of signatures verified does not equal or exceed the number necessary to place the issue on the ballot upon completion of the comparison of names and addresses with the voter registration records, the election commissioner or county clerk shall prepare in writing a certification under seal setting forth the name and address of each signer found not to be a registered voter and the petition page number and line number where the signature is found. If

the signature or address is challenged for a reason other than the nonregistration of the signer, the election commissioner or county clerk shall set forth the reasons for the challenge of the signature.

Source: Laws 1994, LB 76, § 199; Laws 1997, LB 460, § 3; Laws 1997, LB 764, § 66; Laws 2003, LB 444, § 8; Laws 2019, LB411, § 40.

ARTICLE 7

POLITICAL PARTIES

Section
32-716. New political party; formation; petition; requirements.
32-717. New political party; validity of petition signatures; certification of establishment; copy of constitution and bylaws; filed.

32-716 New political party; formation; petition; requirements.

(1) Any person, group, or association desiring to form a new political party shall present to the Secretary of State petitions containing signatures totaling not less than one percent of the total votes cast for Governor at the most recent general election for such office. The signatures of registered voters on such petitions shall be so distributed as to include registered voters totaling at least one percent of the votes cast for Governor in the most recent gubernatorial election in each of the three congressional districts in this state. Petition signers and petition circulators shall conform to the requirements of sections 32-629 and 32-630. The petitions shall be filed with the Secretary of State no later than January 15 before any statewide primary election for the new political party to be entitled to have ballot position in the primary election of that year. If the new political party desires to be established and have ballot position for the general election and not in the primary election of that year, the petitions shall be filed with the Secretary of State on or before July 15 of that year. Prior to the circulation of petitions to form a new political party, a sample copy of the petitions shall be filed with the Secretary of State by the person, group, or association seeking to establish the new party. The sample petition shall be accompanied by the name and address of the person or the names and addresses of the members of the group or association sponsoring the petition to form a new political party. The sponsor or sponsors of the petition shall file, as one instrument, all petition papers comprising a new political party petition for signature verification with the Secretary of State. All signed petitions in circulation but not filed with the Secretary of State shall become invalid after July 15 in the year of the statewide general election.

(2) The petition shall conform to the requirements of section 32-628. The Secretary of State shall prescribe the form of the petition for the formation of a new political party. The petition shall be addressed to and filed with the Secretary of State and shall state its purpose and the name of the party to be formed. Such name shall not be or include the name of any political party then in existence or any word forming any part of the name of any political party then in existence, and in order to avoid confusion regarding party affiliation of a candidate or registered voter, the name of the party to be formed shall not include the word ''independent'' or ''nonpartisan''. The petition shall contain a statement substantially as follows:

We, the undersigned registered voters of the State of Nebraska and the county of ....., being severally qualified to sign this petition, re-

spectfully request that the above-named new political party be formed in the State of Nebraska, and each for himself or herself says: I have personally signed this petition on the date opposite my name; I am a registered voter of the State of Nebraska and county of ..... and am qualified to sign this petition; and my date of birth and city, village, or post office address and my street and number or voting precinct are correctly written after my name.

Source: Laws 1994, LB 76, § 216; Laws 1997, LB 460, § 4; Laws 2006, LB 940, § 1; Laws 2021, LB285, § 12.

32-717 New political party; validity of petition signatures; certification of establishment; copy of constitution and bylaws; filed.

Within twenty business days after all the petitions to form a new political party which contain signatures are filed with the Secretary of State, he or she shall determine the validity and sufficiency of such petitions and signatures. Clerical and technical errors in a petition shall be disregarded if the forms prescribed by the Secretary of State are substantially followed. If the petitions are determined to be sufficient and valid, the Secretary of State shall issue a certification establishing the new political party. Copies of such certification shall be issued to the person, group, or association forming the new political party. Within twenty days after the certification of establishment of the new political party by the Secretary of State, the person, group, or association forming the new political party or its new officers shall file with the Secretary of State the constitution and bylaws of such party along with a certified list of the names and addresses of the officers of the new political party.

Source: Laws 1994, LB 76, § 217; Laws 2021, LB285, § 13.

ARTICLE 8

NOTICE, PUBLICATION, AND PRINTING OF BALLOTS

Section
32-802. Notice of election; contents.
32-803. Sample of official ballot; publication; requirements; rate; limitation.
32-808.01. Ballot for early voting; application; distribution by mail; requirements; applicability.
32-809. Statewide primary election; official ballot; form; contents.
32-816. Official ballots; write-in space provided; exceptions; requirements.

32-802 Notice of election; contents.

The notice of election for any election shall state the date on which the election is to be held and the hours the polls will be open and list all offices, candidates, and issues that will appear on the ballots. The notice of election shall be printed in English and in any other language required pursuant to the Voting Rights Act Language Assistance Amendments of 1992. In the case of a primary election, the notice of election shall list all offices and candidates that are being forwarded to the general election. The notice of election shall only state that amendments or referendums will be voted upon and that the Secretary of State will publish a true copy of the title and text of any amendments or referendums once each week for three consecutive weeks preceding the election. Such notice of election shall appear in at least one newspaper designated by the election commissioner, county clerk, city council, or village board no later than forty-two days prior to the election. The election commissioner or county clerk shall, not later than forty-two days prior to the election, (1) post in

his or her office the same notice of election published in the newspaper and (2) provide a copy of the notice to the political subdivisions appearing on the ballot. The election commissioner or county clerk shall correct the ballot to reflect any corrections received within five days after mailing the notice as provided in section 32-819. The notice of election shall be posted in lieu of sample ballots until such time as sample ballots are printed. If joint elections are held in conjunction with the statewide primary or general election by a county, city, or village, only one notice of election need be published and signed by the election commissioner or county clerk.

Source: Laws 1994, LB 76, § 223; Laws 2002, LB 935, § 6; Laws 2017, LB451, § 10.

32-803 Sample of official ballot; publication; requirements; rate; limitation.

(1) A sample of the official ballot shall be printed in one or more newspapers of general circulation in the county, city, or village as designated by the election commissioner, county clerk, city council, or village board. The sample shall be printed in English and in any other language required pursuant to the Voting Rights Language Assistance Act of 1992.

(2) Except for elections conducted in accordance with section 32-960, such publication shall be made not more than fifteen nor less than two days before the day of election, and the same shall appear in only one regular issue of each paper. For elections conducted in accordance with section 32-960, such publication shall be made not less than thirty days before the election.

(3) The form of the ballot so published shall conform in all respects to the form prescribed for official ballots as set forth in sections 32-806, 32-809, and 32-812, but larger or smaller type may be used. When paper ballots are not being used, a reduced-size facsimile of the official ballot shall be published as it appears on the voting system. Such publication shall include suitable instructions to the voters for casting their ballots using the voting system being used at the election.

(4) The rate charged by the newspapers and paid by the county board for the publication of such sample ballot shall not exceed the rate regularly charged for display advertising in such newspaper in which the publication is made.

Source: Laws 1994, LB 76, § 224; Laws 1997, LB 764, § 73; Laws 2003, LB 358, § 10; Laws 2019, LB411, § 41.

32-808.01 Ballot for early voting; application; distribution by mail; requirements; applicability.

(1) Except as provided in subsection (2) of this section, any person or organization distributing an application by mail for a ballot for early voting shall use the form prescribed by the Secretary of State. The form shall contain on the top of the first page in bold type (a) the identity of the person or organization distributing the form and (b) the following statements:

You may submit this form if you wish to request a ballot for early voting. You do not need to complete this form if you have already requested a ballot for early voting for this election.

(2) This section shall not apply to an application for a ballot for early voting distributed by the Secretary of State, an election commissioner, or a county clerk.

Source: Laws 2022, LB843, § 31.
Effective date July 21, 2022.

32-809 Statewide primary election; official ballot; form; contents.

(1) The form of the official ballot at the statewide primary election shall be prescribed by the Secretary of State. At the top of the ballot and over all else shall be printed in boldface type the name of the political party, ... Official Ballot, Primary Election 20. . . Each division containing the names of the office and a list of candidates for such office shall be separated from other groups by a bold line. The ballot shall list at-large candidates and subdistrict candidates under appropriate headings.

(2) All proposals for constitutional amendments and candidates on the nonpartisan ballot shall be submitted on a ballot where bold lines separate one office or issue from another. Proposals for constitutional amendments proposed by the Legislature shall be placed on the ballot as provided in sections 49-201 to 49-211. All constitutional amendments shall be placed on a separate ballot when a paper ballot is used which requires the ballot after being voted to be folded before being deposited in a ballot box. When an optical-scan ballot is used which requires a ballot envelope or sleeve in which the ballot after being voted is placed before being deposited in a ballot box, constitutional amendments may be printed on either side of the ballot and shall be separated from other offices or issues by a bold line. Constitutional amendments so arranged shall constitute a separate ballot.

(3) Except as otherwise provided in section 32-811, the statewide primary election ballot shall contain the name of every candidate filing or recognized under subsection (1) of section 32-606 and sections 32-611, 32-613, and 32-614 and no other names. No name of a candidate for member of the Legislature or an elective office described in Article IV, section 1, of the Constitution of Nebraska shall appear on any ballot or any series of ballots at any primary election more than once. When two or more of the last names of candidates for the same office at the primary election are the same in spelling or sound, the official ballots may, on the request of any such candidate, have his or her address printed immediately below his or her name in capital and lowercase letters in lightface type of the same size as the type in which the name of the candidate is printed.

Source: Laws 1994, LB 76, § 230; Laws 2003, LB 358, § 11; Laws 2012, LB878, § 4; Laws 2022, LB843, § 27.
Effective date July 21, 2022.

32-816 Official ballots; write-in space provided; exceptions; requirements.

(1) A blank space shall be provided at the end of each office division on the ballot for registered voters to fill in the name of any person for whom they wish to vote and whose name is not printed upon the ballot. A square or oval shall be printed opposite each write-in space similar to the square or oval placed opposite other candidates and issues on the ballot. The square or oval shall be marked to vote for a write-in candidate whose name appears in the write-in space provided.

(2) The Secretary of State shall approve write-in space for optical-scan ballots and any other voting system authorized for use under the Election Act. Adequate provision shall be made for write-in votes sufficient to allow one write-in space for each office to be elected at any election except offices for which write-in votes are specifically prohibited. The write-in ballot shall clearly identify the office for which such write-in vote is cast. The write-in space shall be a part of the official ballot, may be on the envelope or a separate piece of paper from the printed portion of the ballot, and shall allow the voter adequate space to fill in the name of the candidate for whom he or she desires to cast his or her ballot.

Source: Laws 1994, LB 76, § 237; Laws 1997, LB 764, § 79; Laws 2001, LB 252, § 2; Laws 2003, LB 358, § 14; Laws 2010, LB852, § 1; Laws 2019, LB411, § 42; Laws 2021, LB285, § 14.

ARTICLE 9

VOTING AND ELECTION PROCEDURES

Section

32-901 Ballots; voting procedure.

(1) To vote for a candidate or on a ballot question using a paper ballot that is to be manually counted, the registered voter shall make a cross or other clear, discernible mark in the square opposite the name of every candidate, including write-in candidates, for whom he or she desires to vote and, in the case of a ballot question, opposite the answer he or she wishes to give. Making a cross or other clear, discernible mark in the square constitutes a valid vote.

(2) To vote for a candidate or on a ballot question using a ballot that is to be counted by optical scanner, the registered voter shall fill in the oval or other space provided opposite the name of every candidate, including write-in candidates, for whom he or she desires to vote and, in the case of a ballot question, opposite the answer he or she wishes to give. A mark in the oval or provided space that is discernible by the scanner constitutes a valid vote.

(3) To vote for a candidate or on a ballot question using a voting system with an electronic aspect authorized for use under the Election Act, the registered voter shall follow the instructions for using the voting system to cause a mark to be recorded opposite the candidate or ballot question response for which the voter wishes to vote. Causing such mark to be recorded does not constitute a valid vote. A paper ballot printed to reflect the voter's choices constitutes a valid vote.

Source: Laws 1994, LB 76, § 244; Laws 2003, LB 358, § 16; Laws 2005, LB 566, § 31; Laws 2019, LB411, § 43.

32-903 Precincts; creation; requirements; election commissioner or county clerk; powers and duties.

(1) The election commissioner or county clerk shall create precincts composed of compact and contiguous territory within the boundary lines of legislative districts. The precincts shall contain not less than seventy-five nor more than one thousand seven hundred fifty registered voters based on the number of voters voting at the last statewide general election, except that a precinct may contain less than seventy-five registered voters if in the judgment of the election commissioner or county clerk it is necessary to avoid creating an undue hardship on the registered voters in the precinct. The election commissioner or county clerk shall create precincts based on the number of votes cast at the immediately preceding presidential election or the current list of registered voters for the precinct. The election commissioner or county clerk shall revise and rearrange the precincts and increase or decrease them at such times as may be necessary to make the precincts contain as nearly as practicable not less than seventy-five nor more than one thousand seven hundred fifty registered voters voting at the last statewide general election. The election commissioner or county clerk shall, when necessary and possible, readjust precinct boundaries to coincide with the boundaries of cities, villages, and school districts which are divided into districts or wards for election purposes. The election commissioner or county clerk shall not make any precinct changes in precinct boundaries or divide precincts into two or more parts between the statewide primary and general elections unless he or she has been authorized to do so by the Secretary of State. If changes are authorized, the election commissioner or county clerk shall notify each state and local candidate affected by the change.

(2) The election commissioner or county clerk may alter and divide the existing precincts, except that when any city of the first class by ordinance divides any ward of such city into two or more voting districts or polling places, the election commissioner or county clerk shall establish precincts or polling places in conformity with such ordinance. No such alteration or division shall take place between the statewide primary and general elections except as provided in subsection (1) of this section.

(3) Following the release of the 2020 Census of Population data by the United States Department of Commerce, Bureau of the Census, as required by Public Law 94-171, the election commissioner or county clerk shall create, revise, or rearrange precincts in compliance with subsections (1) and (2) of this section and deliver maps of the updated precinct boundaries to all applicable political subdivisions within the jurisdiction of the election commissioner or county clerk by November 1, 2021.

(4) The Secretary of State may grant additional days for election commissioners and county clerks to meet the requirements of subsection (3) of this section for an extraordinary circumstance.

Source: Laws 1994, LB 76, § 246; Laws 1997, LB 764, § 80; Laws 2003, LB 358, § 18; Laws 2005, LB 401, § 3; Laws 2011, LB449, § 8; Laws 2019, LB411, § 44; Laws 2021, LB285, § 15.

32-904 Polling places; designation; changes; notification required.

(1) The election commissioner or county clerk shall designate the polling places for each precinct at which the registered voters of the precinct will cast their votes. Polling places representing different precincts may be combined at a single location when potential sites cannot be found, contracts for utilizing polling sites cannot be obtained, or a potential site is not accessible to handicapped persons as provided in section 32-907.

(2) When combining polling places at a single site for an election other than a special election, the election commissioner or county clerk shall clearly separate the polling places from each other and maintain separate receiving boards. When combining polling places at a single site for a special election, the election commissioner or county clerk may combine the polling places and receiving boards.

(3) Polling places shall not be changed between the statewide primary and general elections unless the election commissioner or county clerk has been authorized to make such change by the Secretary of State. If changes are authorized, the election commissioner or county clerk shall notify each state and local candidate affected by the change.

(4) Notwithstanding any other provision of the Election Act, the Secretary of State may adopt and promulgate rules and regulations, with the consent of the appropriate election commissioner or county clerk, for the establishment of polling places which may be used for voting pursuant to section 32-1041 for the twenty days preceding the day of election. Such polling places shall be in addition to the office of the election commissioner or county clerk and the polling places otherwise established pursuant to this section.

Source: Laws 1994, LB 76, § 247; Laws 1997, LB 764, § 81; Laws 2005, LB 401, § 4; Laws 2007, LB646, § 6; Laws 2019, LB411, § 45.

32-905 Political subdivision; building; use as polling place or for election training purposes; when.

A political subdivision which receives federal or state funds and owns or leases a building which is suitable for a polling place in the county shall make the building available to the election commissioner or county clerk for use as a polling place or for election training purposes. The political subdivision shall not charge for the use of the building as a polling place or for election training purposes.

Source: Laws 1994, LB 76, § 248; Laws 2022, LB843, § 28.
Effective date July 21, 2022.

32-907 Polling places; accessibility requirements; Secretary of State; duties; training manual; training.

(1) All polling places shall be accessible to all registered voters and shall be in compliance with the federal Americans with Disabilities Act of 1990, as amended, and the federal Help America Vote Act of 2002, as amended. In addition, all polling places shall be modified or relocated to architecturally barrier-free buildings to provide unobstructed access to such polling places by people with physical limitations as required by this section. At least one voting booth shall be so constructed as to provide easy access for people with limitations, shall accommodate a wheelchair, and shall have a cover or barrier to provide privacy. The modifications required by this section may be of a temporary nature to provide such unobstructed access only on election day.

(2) All polling places shall meet the requirements of the federal Americans with Disabilities Act of 1990, as amended, and the federal Help America Vote Act of 2002, as amended, including, but not limited to, requirements for:

(a) Parking;

(b) An exterior route to an accessible entrance;

(c) Polling place entrances;

(d) The route from the entrance into the voting area;

(e) Voting areas, including, but not limited to, a sign (i) that indicates that assistance is available, (ii) that contains the contact telephone number approved by the Secretary of State, and (iii) posted with visible lettering that is two inches, plus one-eighth inch per foot of viewing distance more than one hundred eighty inches from viewing points;

(f) Ramps;

(g) Lifts; and

(h) Elevators.

(3) The Secretary of State shall develop, print, and make publicly available a training manual regarding accessibility requirements of the Election Act, the federal Americans with Disabilities Act of 1990, as amended, and the federal Help America Vote Act of 2002, as amended.

(4) The Secretary of State shall include in the biennial training for election commissioners and county clerks current standards for accessibility. All poll workers shall receive training regarding accessibility between appointment and serving at an election.

Source: Laws 1994, LB 76, § 250; Laws 2019, LB411, § 46.

32-908 Polls; when opened and closed; receipt of ballots; deadline.

(1) At all elections in the area of this state lying within the Mountain Standard or Mountain Daylight time zone, the polls shall open at 7 a.m. and close at 7 p.m. of the same day, and in the area lying within the Central Standard or Central Daylight time zone, the polls shall open at 8 a.m. and close at 8 p.m. of the same day.

(2) Except for special elections conducted by mail as provided in sections 32-952 to 32-959, the deadline for the receipt of ballots is 7 p.m. on the day set for the election in the area lying within the Mountain Standard or Mountain Daylight time zone and 8 p.m. on the day set for the election in the area lying within the Central Standard or Central Daylight time zone.

(3) If the judges and clerks of election are not present at the polls at the required hour, the polls may be opened by those placed in charge of the polling place at any time before the time required for closing the polls on election day.

(4) If at the hour of closing there are any persons desiring to vote who are in the polling place or in a line at the polling place and who have not been able to vote since appearing at the polling place, the polls shall be kept open reasonably long enough after the hour for closing to allow those present at that hour to vote. No person arriving after the hour when the polls have officially closed shall be entitled to vote.

Source: Laws 1994, LB 76, § 251; Laws 2005, LB 566, § 32; Laws 2022, LB843, § 29.
Effective date July 21, 2022.

32-910 Polling places; obstructions prohibited; restrictions on access.

Any judge or clerk of election, precinct or district inspector, sheriff, or other peace officer shall clear the passageways and prevent obstruction of the doors or entries and provide free ingress to and egress from the polling place or building and shall arrest any person obstructing such passageways. Other than a registered voter engaged in receiving, preparing, or marking a ballot or depositing a ballot in a ballot box or a precinct-based optical scanner at the polling place, an election commissioner, a county clerk, a precinct inspector, a district inspector, a judge of election, a clerk of election, a member of a counting board, or a poll watcher as provided in section 32-1525, no person shall be permitted to be within eight feet of the ballot boxes or within eight feet of any ballots being counted by a counting board.

Source: Laws 1994, LB 76, § 253; Laws 1997, LB 764, § 82; Laws 2019, LB411, § 47; Laws 2020, LB1055, § 13.

32-913 Precinct list of registered voters; sign-in register; preparation and use.

(1) The clerks of election shall have a list of registered voters of the precinct and a sign-in register at the polling place on election day. The list of registered voters shall be used for guidance on election day and may be in the form of a computerized, typed, or handwritten list or precinct registration cards. Registered voters of the precinct shall place and record their signature in the sign-in register before receiving any ballot. The list of registered voters and the sign-in register may be combined into one document at the discretion of the election commissioner or county clerk including, beginning July 1, 2019, by the use of

an electronic poll book. If a combined document is used, a clerk of election may list the names of the registered voters in a separate book in the order in which they voted.

(2) Within twenty-four hours after the polls close in the precinct, the precinct inspector or one of the judges of election shall deliver the precinct list of registered voters and the precinct sign-in register to the election commissioner or county clerk. The election commissioner or county clerk shall file and preserve the list and register. No member of a receiving board who has custody or charge of the precinct list of registered voters and the precinct sign-in register shall permit the list or register to leave his or her possession from the time of receipt until he or she delivers them to another member of the receiving board or to the precinct inspector or judge of election for delivery to the election commissioner or county clerk.

Source: Laws 1994, LB 76, § 256; Laws 1997, LB 764, § 83; Laws 2003, LB 358, § 21; Laws 2007, LB44, § 1; Laws 2018, LB1065, § 6.

32-915 Provisional ballot; conditions; certification.

(1) A person whose name does not appear on the precinct list of registered voters at the polling place for the precinct in which he or she resides, whose name appears on the precinct list of registered voters at the polling place for the precinct in which he or she resides at a different residence address as described in section 32-914.02, or whose name appears with a notation that he or she received a ballot for early voting may vote a provisional ballot if he or she:

(a) Claims that he or she is a registered voter who has continuously resided in the county in which the precinct is located since registering to vote;

(b) Is not entitled to vote under section 32-914.01 or 32-914.02;

(c) Has not registered to vote or voted in any other county since registering to vote in the county in which the precinct is located;

(d) Has appeared to vote at the polling place for the precinct to which the person would be assigned based on his or her residence address; and

(e) Completes and signs a registration application before voting.

(2) A voter whose name appears on the precinct list of registered voters for the polling place with a notation that the voter is required to present identification pursuant to section 32-318.01 but fails to present identification may vote a provisional ballot if he or she completes and signs a registration application before voting.

(3) Each person voting by provisional ballot shall enclose his or her ballot in an envelope marked Provisional Ballot and shall, by signing the certification on the front of the envelope or a separate form attached to the envelope, certify to the following facts:

(a) I am a registered voter in . . . . . County;

(b) My name or address did not correctly appear on the precinct list of registered voters;

(c) I registered to vote on or about this date . . . . . ;

(d) I registered to vote

. . . . in person at the election office or a voter registration site,

. . . . by mail,

. . . . by using the Secretary of State's website,

. . . . through the Department of Motor Vehicles,

. . . . on a form through another state agency,

. . . . in some other way;

(e) I have not resided outside of this county or voted outside of this county since registering to vote in this county;

(f) My current address is shown on the registration application completed as a requirement for voting by provisional ballot; and

(g) I am eligible to vote in this election and I have not voted and will not vote in this election except by this ballot.

(4) The voter shall sign the certification under penalty of election falsification. The following statements shall be on the front of the envelope or on the attached form: By signing the front of this envelope or the attached form you are certifying to the information contained on this envelope or the attached form under penalty of election falsification. Election falsification is a Class IV felony and may be punished by up to two years imprisonment and twelve months post-release supervision, a fine of up to ten thousand dollars, or both.

(5) If the person's name does not appear on the precinct list of registered voters for the polling place and the judge or clerk of election determines that the person's residence address is located in another precinct within the same county, the judge or clerk of election shall direct the person to his or her correct polling place to vote.

Source: Laws 1994, LB 76, § 258; Laws 1997, LB 764, § 87; Laws 1999, LB 234, § 12; Laws 2003, LB 358, § 24; Laws 2005, LB 401, § 5; Laws 2005, LB 566, § 37; Laws 2010, LB325, § 5; Laws 2010, LB951, § 4; Laws 2014, LB661, § 14; Laws 2017, LB451, § 11.

32-916 Ballots; initials required; approval; deposit in ballot box; procedure.

(1) Two judges of election or a precinct inspector and a judge of election shall affix their initials to the official ballots. The judge of election shall deliver a ballot to each registered voter after complying with section 32-914.

(2) After voting the ballot, the registered voter shall, as directed by the judge of election, fold his or her ballot or place the ballot in the ballot envelope or sleeve so as to conceal the voting marks and to expose the initials affixed on the ballot. The registered voter shall, without delay and without exposing the voting marks upon the ballot, deliver the ballot to the judge of election before leaving the enclosure in which the voting booths are placed.

(3) The judge of election shall, without exposing the voting marks on the ballot, approve the exposed initials upon the ballot and deposit the ballot in the ballot box or the precinct-based optical scanner in the presence of the registered voter. No judge of election shall deposit any ballot in a ballot box unless the ballot has been identified as having the appropriate initials. Any ballot not properly identified shall be rejected in the presence of the voter, the judge of election shall make a notation on the ballot Rejected, not properly identified, and another ballot shall be issued to the voter and the voter shall then be permitted to cast his or her ballot. If the ballot is in order, the judge shall deposit the ballot in the ballot box or the precinct-based optical scanner in the

presence of the voter and the voter shall promptly leave the polling place. If a precinct uses a precinct-based optical scanner and a ballot is identified by the scanner as containing an overvote or an undervote, the voter shall be notified of the consequence of an overvote and the right to vote in the case of an undervote, whichever is applicable. The judges of election shall maintain the secrecy of the rejected ballots and shall cause the rejected ballots to be made up in a sealed packet. The judges of election shall endorse the packet with the words Rejected Ballots and the designation of the precinct. The judges of election shall sign the endorsement label and shall return the packet to the election commissioner or county clerk with a statement by the judges of election showing the number of ballots rejected.

(4) Upon receiving a provisional ballot as provided in section 32-915, the judge of election shall give the voter written information that states that the voter may determine if his or her vote was counted and, if not, the reason that the vote was not counted by accessing the system created pursuant to section 32-202 and the judge of election shall ensure that the appropriate information is on the outside of the envelope in which the ballot is enclosed or attached to the envelope, attach the statement required by section 32-915 if not contained on the envelope, and place the entire envelope into the ballot box. Upon receiving a provisional ballot as provided in section 32-915.01, the judge of election shall comply with the requirements for a provisional ballot under this subsection, except that a provisional ballot cast pursuant to section 32-915.01 shall be kept separate from the other ballots cast at the election.

Source: Laws 1994, LB 76, § 259; Laws 1997, LB 764, § 88; Laws 1999, LB 802, § 15; Laws 2002, LB 1054, § 21; Laws 2003, LB 358, § 26; Laws 2003, LB 359, § 6; Laws 2005, LB 566, § 38; Laws 2019, LB411, § 48.

32-918 Assistance to registered voters; when; procedure.

(1) If a registered voter declares to the judge of election that the voter cannot read or that the voter is blind or visually impaired or has a disability such that the registered voter requires assistance in the marking of the voter's ballot, (a) the registered voter may be assisted in marking the voter's ballot by a relative or friend of the voter's selection or (b) one judge of election and one clerk of election of different political parties may take the ballot or ballots from the polling place to a convenient place within the building or to the registered voter's automobile if the automobile is within one block of the polling place and the registered voter may cast the voter's ballot in the general presence of the judge and clerk. If a registered voter declares to the judge of election that the voter needs assistance in the operation of a voting device, a judge or clerk of election may assist the voter in operating the device.

(2) The judge and clerk shall give no information regarding the casting of the ballot. Any registered voter receiving assistance in voting the ballot from a judge and clerk shall declare to the judge and clerk the name of the candidates and the measures for which the voter desires to vote, and the judge and clerk shall cast the voter's ballot only as the voter so requests. No person other than the registered voter who is receiving assistance shall divulge to anyone within the polling place the name of any candidate for whom the voter intends to vote or ask or receive assistance within the polling place in the preparation of the voter's ballot.

(3) The judges of election shall enter Assistance Rendered upon the precinct sign-in register near the name of any registered voter who receives such assistance in casting a ballot and shall include the name of such person rendering assistance to the registered voter. The person rendering assistance shall sign an oath before a judge of election substantially as follows: . . . . . , hereby swears that he or she is a friend or relative of . . . . . , a registered voter with a disability who requested assistance in casting the ballot, that he or she did enter the voting booth or aid such voter outside of the voting booth and marked the ballot according to the intentions and desires of the registered voter, that he or she has kept the ballot at all times in his or her possession, and that the ballot was duly delivered to the judge of election on this . . . . . day of . . . . . 20. . . . .

Source: Laws 1994, LB 76, § 261; Laws 2003, LB 358, § 27; Laws 2022, LB843, § 30.
Effective date July 21, 2022.

32-939 Nebraska resident residing outside the state or country; members of Nebraska National Guard in active service; registration to vote; application for ballot; when; elector and citizen outside the country; register to vote or voting; form.

(1) As provided in section 32-939.02, the persons listed in this subsection who are residents of Nebraska and who reside outside of Nebraska or the United States or are members of the Nebraska National Guard ordered into the active service of the state or of the United States shall be allowed to simultaneously register to vote and make application for ballots for all elections in a calendar year through the use of the Federal Post Card Application or a personal letter which includes the same information as appears on the Federal Post Card Application:

(a) Members of the armed forces of the United States or the United States Merchant Marine, and their spouses and dependents residing with them who are absent from the state;

(b) Members of the Nebraska National Guard ordered into the active service of the state or of the United States;

(c) Citizens temporarily residing outside of the United States and the District of Columbia; and

(d) Overseas citizens.

(2)(a) As provided in section 32-939.02, a person who is the age of an elector and a citizen of the United States residing outside the United States, who has never resided in the United States, who has not registered to vote in any other state of the United States, and who has a parent registered to vote within this state shall be eligible to register to vote and vote in one county in which either one of his or her parents is a registered voter.

(b) A person registering to vote or voting pursuant to this subsection shall sign and enclose with the registration application and with the ballot being voted a form provided by the election commissioner or county clerk substantially as follows: I am the age of an elector and a citizen of the United States residing outside the United States, I have never resided in the United States, I have not registered to vote in any other state of the United States, and I have a parent registered to vote in . . . . . County, Nebraska. I hereby declare,

under penalty of election falsification, a Class IV felony, that the statements above are true to the best of my knowledge.

THE PENALTY FOR ELECTION FALSIFICATION IS IMPRISONMENT FOR UP TO TWO YEARS AND TWELVE MONTHS POST-RELEASE SUPERVISION OR A FINE NOT TO EXCEED TEN THOUSAND DOLLARS, OR BOTH.

(Signature of Voter) . . . . . .

Source: Laws 1994, LB 76, § 282; Laws 2004, LB 727, § 1; Laws 2005, LB 98, § 11; Laws 2005, LB 401, § 7; Laws 2005, LB 566, § 41; Laws 2010, LB951, § 5; Laws 2011, LB499, § 4; Laws 2017, LB451, § 12; Laws 2022, LB843, § 32.
Effective date July 21, 2022.

32-939.02 Person residing outside the country; ballot for early voting; request; use of Federal Post Card Application or personal letter; special ballot; use of Federal Write-In Absentee Ballot; Secretary of State; duties; oath.

(1) Upon request for a ballot, a ballot for early voting shall be forwarded to each voter meeting the criteria of section 32-939 at least forty-five days prior to any election.

(2) An omission of required information, except the political party affiliation of the applicant, may prevent the processing of an application for and mailing of ballots. The request for any ballots and a registration application shall be sent to the election commissioner or county clerk of the county of the applicant's residence. The request may be sent at any time in the same calendar year as the election, except that the request shall be received by the election commissioner or county clerk not later than the third Friday preceding an election to vote in that election. If an applicant fails to indicate his or her political party affiliation on the application, the applicant shall be registered as nonpartisan.

(3) A person described in section 32-939 may register to vote through the use of the Federal Post Card Application or a personal letter which includes the same information as appears on the Federal Post Card Application and may simultaneously make application for ballots for all elections in a calendar year. The person may indicate a preference for ballots and other election materials to be delivered via facsimile transmission or electronic mail by indicating such preference on the Federal Post Card Application. If the person indicates such a preference, the election commissioner or county clerk shall accommodate the voter's preference.

(4) If the ballot for early voting has not been printed in sufficient time to meet the request and special requirements of a voter meeting the criteria of section 32-939, the election commissioner or county clerk may issue a special ballot at least sixty days prior to an election to such a voter upon a written request by such voter requesting the special ballot. For purposes of this subsection, a special ballot means a ballot prescribed by the Secretary of State which contains the titles of all offices being contested at such election and permits the voter to vote by writing in the names of the specific candidates or the decision on any issue. The election commissioner or county clerk shall include with the special ballot a complete list of the nominated candidates and issues to be voted upon by the voter which are known at the time of the voter's request.

(5) Any person meeting the criteria in section 32-939 may cast a ballot by the use of the Federal Write-In Absentee Ballot. The Federal Write-In Absentee Ballot may be used for all elections. If a person casting a ballot using the Federal Write-In Absentee Ballot is not a registered voter, the information submitted in the Federal Write-In Absentee Ballot transmission envelope shall be treated as a voter registration application.

(6)(a) Any person requesting a ballot under this section may receive and return the ballot and the oath prescribed in subdivision (b) of this subsection using any method of transmission authorized by the Secretary of State.

(b) An oath shall be delivered with the ballot and shall be in a form substantially as follows:

VOTER'S OATH

I, the undersigned voter, declare that the ballot or ballots contained no voting marks of any kind when I received them, and I caused the ballot or ballots to be marked.

To the best of my knowledge and belief, I declare under penalty of election falsification that:

(a) I, ... , am a registered voter in . . . . . County;

(b) I have voted the ballot and am returning it in compliance with Nebraska law; and

(c) I have not voted and will not vote in this election except by this ballot.

ANY PERSON WHO SIGNS THIS FORM KNOWING THAT ANY OF THE INFORMATION IN THE FORM IS FALSE SHALL BE GUILTY OF ELECTION FALSIFICATION, A CLASS IV FELONY UNDER SECTION 32-1502 OF THE STATUTES OF NEBRASKA. THE PENALTY FOR ELECTION FALSIFICATION IS IMPRISONMENT FOR UP TO TWO YEARS AND TWELVE MONTHS POST-RELEASE SUPERVISION OR A FINE NOT TO EXCEED TEN THOUSAND DOLLARS, OR BOTH.

I also understand that failure to sign below will invalidate my ballot.

Signature . . . . . .

(7) The Secretary of State shall develop a process for a person casting a ballot under this section to check the status of his or her ballot via the Internet or a toll-free telephone call.

Source: Laws 2010, LB951, § 6; Laws 2017, LB451, § 13.

32-939.03 Emergency response provider; outside of county of residence; application for ballot; when; form; voter's oath.

(1) A registered voter serving as an emergency response provider outside of the voter's county of residence for a period beginning on or after the forty-five days prior to any election may request an early voting ballot via facsimile transmission or electronic mail using a form prescribed by the Secretary of State. The election commissioner or county clerk shall send the requested ballot if the request is received not later than noon on election day and contains the required information.

(2)(a) Any person requesting a ballot under this section may receive and return the ballot and the oath prescribed in subdivision (b) of this subsection using any method of transmission authorized by the Secretary of State.

(b) An oath shall be delivered with the ballot and shall be in a form substantially as provided in this subdivision.

VOTER'S OATH

I, the undersigned voter, declare that the ballot or ballots contained no voting marks of any kind when I received them, and I caused the ballot or ballots to be marked.

To the best of my knowledge and belief, I declare under penalty of election falsification that:

(1) I, ... , am a registered voter in . . . . . County;

(2) I have voted the ballot and am returning it in compliance with Nebraska law; and

(3) I have not voted and will not vote in this election except by this ballot.

ANY PERSON WHO SIGNS THIS FORM KNOWING THAT ANY OF THE INFORMATION IN THE FORM IS FALSE SHALL BE GUILTY OF ELECTION FALSIFICATION, A CLASS IV FELONY UNDER SECTION 32-1502 OF THE STATUTES OF NEBRASKA. THE PENALTY FOR ELECTION FALSIFICATION IS IMPRISONMENT FOR UP TO TWO YEARS AND TWELVE MONTHS POST-RELEASE SUPERVISION OR A FINE NOT TO EXCEED TEN THOUSAND DOLLARS, OR BOTH.

I also understand that failure to sign below will invalidate my ballot.

Signature . . . . . .

Source: Laws 2022, LB843, § 33.
Effective date July 21, 2022.

32-947 Ballot to vote early; delivery; procedure; identification envelope; instructions.

(1) Upon receipt of an application or other request for a ballot to vote early, the election commissioner or county clerk shall determine whether the applicant is a registered voter and is entitled to vote as requested. If the election commissioner or county clerk determines that the applicant is a registered voter entitled to vote early and the application was received not later than the close of business on the second Friday preceding the election, the election commissioner or county clerk shall deliver a ballot to the applicant in person or by mail, postage paid. The election commissioner or county clerk or any employee of the election commissioner or county clerk shall write or cause to be affixed his or her customary signature or initials on the ballot.

(2) An unsealed identification envelope shall be delivered with the ballot, and upon the back of the envelope shall be printed a form substantially as follows:

VOTER'S OATH

I, the undersigned voter, declare that the enclosed ballot or ballots contained no voting marks of any kind when I received them, and I caused the ballot or ballots to be marked, enclosed in the identification envelope, and sealed in such envelope.

To the best of my knowledge and belief, I declare under penalty of election falsification that:

(a) I, ..., am a registered voter in ..... County;

(b) I reside in the State of Nebraska at .....;

(c) I have voted the enclosed ballot and am returning it in compliance with Nebraska law; and

(d) I have not voted and will not vote in this election except by this ballot.

ANY PERSON WHO SIGNS THIS FORM KNOWING THAT ANY OF THE INFORMATION IN THE FORM IS FALSE SHALL BE GUILTY OF ELECTION FALSIFICATION, A CLASS IV FELONY UNDER SECTION 32-1502 OF THE STATUTES OF NEBRASKA. THE PENALTY FOR ELECTION FALSIFICATION IS IMPRISONMENT FOR UP TO TWO YEARS AND TWELVE MONTHS POST-RELEASE SUPERVISION OR A FINE NOT TO EXCEED TEN THOUSAND DOLLARS, OR BOTH.

I also understand that failure to sign below will invalidate my ballot.

Signature .....

(3) If the ballot and identification envelope will be returned by mail or by someone other than the voter, the election commissioner or county clerk shall include with the ballot an identification envelope upon the face of which shall be printed the official title and post office address of the election commissioner or county clerk.

(4) The election commissioner or county clerk shall also enclose with the ballot materials:

(a) A registration application, if the election commissioner or county clerk has determined that the applicant is not a registered voter pursuant to section 32-945, with instructions that failure to return the completed and signed application indicating the residence address as it appears on the voter's request for a ballot to the election commissioner or county clerk by the close of the polls on election day will result in the ballot not being counted;

(b) A registration application and the oath pursuant to section 32-946, if the voter is without a residence address, with instructions that the residence address of the voter shall be deemed that of the office of the election commissioner or county clerk of the county of the voter's prior residence and that failure to return the completed and signed application and oath to the election commissioner or county clerk by the close of the polls on election day will result in the ballot not being counted; or

(c) Written instructions directing the voter to submit a copy of an identification document pursuant to section 32-318.01 if the voter is required to present identification under such section and advising the voter that failure to submit identification to the election commissioner or county clerk by the close of the polls on election day will result in the ballot not being counted.

(5) The election commissioner or county clerk may enclose with the ballot materials a separate return envelope for the voter's use in returning his or her identification envelope containing the voted ballot, registration application, and other materials that may be required.

Source: Laws 1994, LB 76, § 290; Laws 1995, LB 514, § 5; Laws 1999, LB 571, § 8; Laws 1999, LB 802, § 16; Laws 2002, LB 1054, § 22; Laws 2003, LB 359, § 7; Laws 2005, LB 98, § 19; Laws

2005, LB 566, § 48; Laws 2008, LB838, § 2; Laws 2011, LB449, § 9; Laws 2015, LB575, § 22; Laws 2016, LB874, § 4; Laws 2017, LB451, § 14.

Cross References

Forgery or false placement of initials or signatures on ballot pursuant to section, penalty, see section 32-1516.

32-949.01 Ballot for early voting; destroyed, spoiled, lost, or not received; cast provisional ballot or obtain replacement ballot; deadline; procedure.

(1) If a ballot for early voting is destroyed, spoiled, lost, or not received by the registered voter, the voter may cast a provisional ballot pursuant to section 32-915 at the voter's polling place on election day or may obtain a replacement ballot from the election commissioner or county clerk by signing a statement on a form prescribed by the Secretary of State that the original ballot for early voting was destroyed, spoiled, lost, or not received and delivering the statement to the election commissioner or county clerk.

(2) If the voter mails the statement or uses electronic mail or a facsimile machine for the submission of the statement, the election commissioner or county clerk shall not mail a replacement ballot to the voter unless the statement is received by 6 p.m. on the second Friday preceding the election. To receive a replacement ballot in person, the voter shall return the statement to the office of the election commissioner or county clerk by the deadline for the receipt of ballots specified in subsection (2) of section 32-908.

(3) The election commissioner or county clerk shall verify the signature on the statement with the signature appearing on the voter registration records.

(4) If the election commissioner or county clerk receives a statement meeting the requirements of this section, the election commissioner or county clerk shall deliver a replacement ballot to the voter if the voter is present in the office or shall mail a replacement ballot to the voter at the address shown on the statement. The election commissioner or county clerk shall keep a record of all replacement ballots issued under this section.

Source: Laws 2005, LB 401, § 8; Laws 2014, LB946, § 16; Laws 2016, LB874, § 5; Laws 2022, LB843, § 34.
Effective date July 21, 2022.

32-950.01 Secure ballot drop-box; requirements; election commissioner or county clerk; duties.

(1) If an election commissioner or county clerk maintains a secure ballot drop-box for voters to deposit completed ballots, the election commissioner or county clerk shall ensure that the secure ballot drop-box:

(a) Is securely fastened to the ground or a concrete slab connected to the ground;

(b) Is secured by a lock that can only be opened by the election commissioner or county clerk or by an election official designated by the election commissioner or county clerk; and

(c) Complies with the federal Americans with Disabilities Act of 1990 and is accessible as determined by the election commissioner or county clerk.

(2) The election commissioner or county clerk shall inform the Secretary of State of each secure ballot drop-box's location no later than forty-two days prior to any statewide primary or general election.

(3) The election commissioner or county clerk or an election official designated by the election commissioner or county clerk shall open each secure ballot drop-box no later than the sixth Friday prior to any statewide primary or general election and no later than the fourth Friday prior to any special election. For any statewide primary or general election, each secure ballot drop-box shall remain accessible to voters until the deadline for the receipt of ballots as provided in section 32-908. For any special election, at least one secure ballot drop-box shall remain accessible to voters until the deadline for the receipt of ballots as provided in section 32-954.

(4) After a secure ballot drop-box is made available for depositing ballots, the election commission or county clerk shall ensure that ballots deposited in such secure ballot drop-box are collected and returned to the office of the election commissioner or county clerk at least once during each business day.

Source: Laws 2022, LB843, § 40.
Effective date July 21, 2022.

32-952 Special election by mail; when.

If a political subdivision decides to place a candidate or an issue on the ballot at a special election, the election commissioner or county clerk may conduct the special election by mail as provided in section 32-953 or conduct the special election as otherwise authorized in the Election Act. In making a determination as to whether to conduct the election by mail, the election commissioner or county clerk shall consider whether all of the following conditions are met:

(1) All registered voters of the political subdivision or a district or ward of the political subdivision are eligible to vote on all candidates and issues submitted to the voters;

(2) Only registered voters of the political subdivision or the district or ward of the political subdivision are eligible to vote on all candidates and issues submitted to the voters;

(3) A review has been conducted of the costs and the expected voter turnout which may result from holding the election by mail;

(4) The election commissioner or county clerk has determined a date for the election which is not the same date as another election in which the registered voters of the political subdivision are eligible to vote;

(5) The election commissioner or county clerk has submitted a written plan to the Secretary of State within five business days after receiving the resolution from the political subdivision to hold the election; and

(6) The Secretary of State has approved a written plan for the conduct of the election, including a written timetable for the conduct of the election, submitted by the election commissioner or county clerk. The written plan shall include provisions for the notice of election to be published and for the application for ballots for early voting notwithstanding other statutory provisions regarding the content and publication of a notice of election or the application for ballots for early voting.

Source: Laws 1996, LB 964, § 5; Laws 2005, LB 98, § 24; Laws 2015, LB575, § 23; Laws 2019, LB411, § 49.

32-956 Special election by mail; replacement ballot; how obtained; procedure.

(1) If a ballot is destroyed, spoiled, lost, or not received by the registered voter, the voter may obtain a replacement ballot from the election commissioner or county clerk by signing a statement on a form prescribed by the Secretary of State that the ballot was destroyed, spoiled, lost, or not received and delivering the statement to the election commissioner or county clerk by 5 p.m. on the date set for the election.

(2) If the voter mails the statement or uses electronic mail or a facsimile machine for the submission of the statement, the election commissioner or county clerk shall not deliver a replacement ballot to the voter unless the statement is received prior to the close of business on the second Friday preceding the election.

(3) The election commissioner or county clerk shall verify the signature on the statement with the signature appearing on the voter registration records.

(4) If the election commissioner or county clerk receives a statement meeting the requirements of this section, he or she shall deliver a replacement ballot to the voter if the voter is present in the office or shall mail a replacement ballot to the voter at the address shown on the statement. The election commissioner or county clerk shall keep a record of all replacement ballots issued under this section.

Source: Laws 1996, LB 964, § 9; Laws 2002, LB 935, § 15; Laws 2014, LB946, § 18; Laws 2019, LB411, § 50; Laws 2022, LB843, § 35. Effective date July 21, 2022.

32-960 County with less than ten thousand inhabitants; elections conducted by mail; application for approval; contents; requirements for voting and returning ballots.

(1) In any county with less than ten thousand inhabitants, the county clerk may apply to the Secretary of State to mail ballots for all elections held after approval of the application to registered voters of any or all of the precincts in the county. The application shall include a written plan for the conduct of the election which complies with this section, including a timetable for the conduct of the election and provisions for the notice of election to be published and for the application for ballots for early voting notwithstanding other statutory provisions regarding the content and publication of a notice of election or the application for ballots for early voting. If the Secretary of State approves such application for one or more precincts in the county, the county clerk shall follow the applicable procedures in sections 32-953 to 32-959 for conducting elections by mail, except that the deadline for receipt of the ballots shall be the deadline specified in subsection (2) of section 32-908.

(2) The county clerk of a county that has an approved application pursuant to subsection (1) of this section:

(a) Shall allow a voter to return the ballot by hand-delivering it to the office of the county clerk;

(b) Shall maintain at least one secure ballot drop-box available for voters to deposit completed ballots twenty-four hours per day, starting at least ten days before the election through the deadline provided in subsection (1) of this section for the receipt of ballots;

(c) Shall maintain at least one in-person voting location at the office of the county clerk at which a voter in a precinct subject to a plan under this section approved by the Secretary of State may receive and cast a ballot which shall be open on the day of the election from the time for opening the polls pursuant to section 32-908 through the deadline provided in subsection (1) of this section for the receipt of ballots;

(d) Shall maintain in-person early voting opportunities as described in section 32-942; and

(e) May provide additional secure ballot drop-boxes and in-person voting locations that need not be open according to the requirements of subdivisions (b) and (c) of this subsection.

Source: Laws 2005, LB 401, § 9; Laws 2009, LB501, § 3; Laws 2020, LB1055, § 14; Laws 2022, LB843, § 36.
Effective date July 21, 2022.

32-961 Poll watchers; eligibility; appointment; notice required.

(1)(a) To be eligible to be a poll watcher, an individual shall be either:

(i) A registered voter of this state; or

(ii) An individual representing a state-based, national, or international election monitoring organization.

(b) A candidate or a spouse of a candidate on the ballot at the election shall not be eligible for appointment as a poll watcher at such election.

(2) For poll watchers eligible under subdivision (1)(a)(i) of this section, any political party in Nebraska, a candidate for election in Nebraska not affiliated with a political party, an organization of persons interested in a question on the ballot, or a nonpartisan organization interested in Nebraska's elections and the elective process may appoint one or more poll watchers. Any such person or organization intending to appoint one or more poll watchers shall provide written notification to the election commissioner or county clerk of the county in which the poll watchers will be active on election day no later than the close of business on the Wednesday prior to election day. The notification shall include a list of appointed poll watchers and a list of the precincts that the poll watchers plan to observe and shall be provided prior to each election at which one or more poll watchers will be active. A poll watcher shall not be denied entry to a polling place because the poll watcher is not on the list or because the precinct is not on the list.

(3) For poll watchers eligible under subdivision (1)(a)(ii) of this section, any national or international election monitoring organization intending to appoint one or more poll watchers shall provide written notification to the Secretary of State no later than the close of business on the Wednesday prior to election day. The notification shall include a list of appointed poll watchers and a list of the counties and precincts to be observed and shall be provided prior to each election at which one or more poll watchers will be active.

Source: Laws 2020, LB1055, § 10.

32-962 Poll watchers; credential; requirements; notice.

(1) For poll watchers eligible under subdivision (1)(a)(i) of section 32-961, the election commissioner or county clerk shall provide a credential as an election observer for each poll watcher for whom the election commissioner or county

clerk receives notice of appointment under section 32-961. The election commissioner or county clerk may approve, as a credential, a name badge provided by the person who appointed the poll watcher if the name badge includes the name of the poll watcher and the name of the person or organization who appointed the poll watcher and if the name badge does not contain any campaign materials advocating a vote for or against any candidate, political party, or position on a ballot question.

(2) For poll watchers eligible under subdivision (1)(a)(ii) of section 32-961, the Secretary of State shall provide the national or international election monitoring organization with the proper credentials for each poll watcher for whom the Secretary of State receives notice. The Secretary of State shall also notify the election commissioner or county clerk in each of the counties in which the poll watchers would be observing, and the notice shall include the name of the organization, a list of the poll watchers, a description of the credential that will be worn by the poll watchers, and the plans of the organization for election day, including which counties and precincts the organization plans to observe.

Source: Laws 2020, LB1055, § 11; Laws 2022, LB843, § 37.
Effective date July 21, 2022.

32-963 Poll watchers; display credential; sign register; authorized activities; protest conduct of election; ruling.

(1) Upon arrival at a polling place, a poll watcher shall display such poll watcher's credentials to the precinct inspector or precinct receiving board and sign the register of poll watchers. The election commissioner or county clerk shall provide a register at each precinct for poll watchers to sign. A poll watcher shall wear the approved credential with the poll watcher's name and the name of the person or organization who appointed the poll watcher while engaged in observing at a polling place.

(2) Subject to section 32-1525, a poll watcher may be present during all proceedings at the polling place governed by the Election Act and may watch and observe the performance in and around the polling place of all duties under the act.

(3) If a poll watcher or the person or organization who appointed the poll watcher wishes to protest any aspect of the conduct of the election, such poll watcher, person, or organization shall present such protest to the Secretary of State or to the election commissioner or county clerk of the applicable county. The Secretary of State, election commissioner, or county clerk shall rule on the issue within a reasonable amount of time relative to the issue presented.

Source: Laws 2020, LB1055, § 12.

ARTICLE 10

COUNTING AND CANVASSING BALLOTS

Section

Section
32-1012. Centralized location; partial returns; when; designation of location; counting procedure.
32-1013. Counting location; watchers; counting board members; oath; authorized observers.
32-1027. Counting board for early voting; appointment; duties.
32-1031. County canvassing board; canvass of votes; procedure.
32-1033. Certificate of nomination; certificate of election; issuance by election commissioner or county clerk; when; form.
32-1041. Voting and counting methods and locations authorized; approval required; when; electronic voting system prohibited.
32-1049. Vote counting device; requirements.

32-1002 Provisional ballots; when counted.

(1) As the ballots are removed from the ballot box pursuant to sections 32-1012 to 32-1018, the receiving board shall separate the envelopes containing the provisional ballots from the rest of the ballots and deliver them to the election commissioner or county clerk.

(2) Upon receipt of a provisional ballot, the election commissioner or county clerk shall verify that the certificate on the front of the envelope or the form attached to the envelope is in proper form and that the certification has been signed by the voter.

(3) The election commissioner or county clerk shall also (a) verify that such person has not voted anywhere else in the county or been issued a ballot for early voting, (b) investigate whether any credible evidence exists that the person was properly registered to vote in the county before the deadline for registration for the election, (c) investigate whether any information has been received pursuant to section 32-308, 32-309, 32-310, or 32-324 that the person has resided, registered, or voted in any other county or state since registering to vote in the county, and (d) upon determining that credible evidence exists that the person was properly registered to vote in the county, make the appropriate changes to the voter registration register by entering the information contained in the registration application completed by the voter at the time of voting a provisional ballot.

(4) A provisional ballot cast by a voter pursuant to section 32-915 shall be counted if:

(a) Credible evidence exists that the voter was properly registered in the county before the deadline for registration for the election;

(b) The voter has resided in the county continuously since registering to vote in the county;

(c) The voter has not voted anywhere else in the county or has not otherwise voted early using a ballot for early voting;

(d) The voter has completed a registration application prior to voting as prescribed in subsection (6) of this section and:

(i) The residence address provided on the registration application completed pursuant to subdivision (1)(e) of section 32-915 is located within the precinct in which the person voted; and

(ii) If the voter is voting in a primary election, the party affiliation provided on the registration application completed prior to voting the provisional ballot is the same party affiliation that appears on the voter's voter registration record based on his or her previous registration application; and

(e) The certification on the front of the envelope or form attached to the envelope is in the proper form and signed by the voter.

(5) A provisional ballot cast by a voter pursuant to section 32-915 shall not be counted if:

(a) The voter was not properly registered in the county before the deadline for registration for the election;

(b) Information has been received pursuant to section 32-308, 32-309, 32-310, or 32-324 that the voter has resided, registered, or voted in any other county or state since registering to vote in the county in which he or she cast the provisional ballot;

(c) Credible evidence exists that the voter has voted elsewhere or has otherwise voted early;

(d) The voter failed to complete and sign a registration application pursuant to subsection (6) of this section and subdivision (1)(e) of section 32-915;

(e) The residence address provided on the registration application completed pursuant to subdivision (1)(e) of section 32-915 is in a different county or in a different precinct than the county or precinct in which the voter voted;

(f) If the voter is voting in a primary election, the party affiliation on the registration application completed prior to voting the provisional ballot is different than the party affiliation that appears on the voter's voter registration record based on his or her previous registration application; or

(g) The voter failed to complete and sign the certification on the envelope or form attached to the envelope pursuant to subsection (3) of section 32-915.

(6) An error or omission of information on the registration application or the certification required under section 32-915 shall not result in the provisional ballot not being counted if:

(a)(i) The errant or omitted information is contained elsewhere on the registration application or certification; or

(ii) The information is not necessary to determine the eligibility of the voter to cast a ballot; and

(b) Both the registration application and the certification are signed by the voter.

(7) Upon determining that the voter's provisional ballot is eligible to be counted, the election commissioner or county clerk shall remove the ballot from the envelope without exposing the marks on the ballot and shall place the ballot with the ballots to be counted by the county canvassing board.

(8) The election commissioner or county clerk shall notify the system administrator of the system created pursuant to section 32-202 as to whether the ballot was counted and, if not, the reason the ballot was not counted.

(9) The verification and investigation shall be completed within seven business days after the election.

Source: Laws 1994, LB 76, § 296; Laws 1999, LB 234, § 13; Laws 2002, LB 1054, § 23; Laws 2003, LB 358, § 30; Laws 2005, LB 566, § 53; Laws 2007, LB646, § 10; Laws 2010, LB325, § 7; Laws 2014, LB661, § 15; Laws 2019, LB411, § 51.

32-1005 Write-in vote; when valid.

If the last name or a reasonably close spelling of the last name of a person engaged in or pursuing a write-in campaign pursuant to section 32-615 or 32-633 is written or printed on a line provided for that purpose and the square or oval opposite such line has been marked with a cross or other clear, intelligible mark, the vote shall be valid and the ballot shall be counted. A write-in vote for a person who is not engaged in or pursuing a write-in campaign pursuant to section 32-615 or 32-633 shall not be counted.

Source: Laws 1994, LB 76, § 299; Laws 1999, LB 571, § 9; Laws 2003, LB 358, § 31; Laws 2013, LB349, § 4; Laws 2021, LB285, § 16.

32-1006 Repealed. Laws 2021, LB285, § 21.

32-1007 Ballots; write-in votes; improper name; rejected.

If only the last name of a person is in the write-in space on the ballot and there is more than one person in the county having the same last name, the counting board shall reject the ballot for that office unless the last name is reasonably close to the proper spelling of the last name of a candidate engaged in or pursuing a write-in campaign pursuant to section 32-615. The counting board shall make the following notation on the rejected ballot: Rejected for the office of . . . . . , no first or generally recognized name.

Source: Laws 1994, LB 76, § 301; Laws 1999, LB 571, § 10; Laws 2001, LB 252, § 3; Laws 2003, LB 358, § 33; Laws 2013, LB349, § 5; Laws 2018, LB377, § 4; Laws 2019, LB411, § 52.

32-1008 Write-in votes; totals; how reported.

If the write-in vote in the county for a person pursuing a write-in campaign pursuant to section 32-615 or 32-633 totals less than five percent of the vote for such office in the county and the election commissioner or county clerk believes that such vote will not impact the outcome of the election, the number of write-in votes for that office may be counted and listed together as one total.

Source: Laws 1994, LB 76, § 302; Laws 1999, LB 571, § 11; Laws 2013, LB349, § 6; Laws 2019, LB411, § 53.

32-1010 Ballots; where counted.

Ballots shall be counted at a centralized location or at polling places as provided in sections 32-1012 to 32-1018. If counting takes place at a centralized location, the receiving board shall deliver the ballot box and other election materials to the centralized location as directed by the election commissioner or county clerk.

Source: Laws 1994, LB 76, § 304; Laws 2007, LB646, § 12; Laws 2019, LB411, § 54.

32-1012 Centralized location; partial returns; when; designation of location; counting procedure.

(1) In counties using optical scanners to count the ballots at a centralized location, the election commissioner or county clerk may arrange to have partial returns delivered, properly locked or sealed, to the centralized location or locations at any time desired after the opening of the polls if at least twenty-five ballots have been cast since any prior delivery of ballots. The election commissioner or county clerk shall designate the location or locations for counting the

ballots and may designate a location or locations in any county. Upon completion of the count, the ballots shall be conveyed under supervision of the election commissioner or county clerk to the office of such official. If for any reason it becomes impracticable to count all or a part of the ballots with optical scanners, the election commissioner or county clerk may direct that the ballots be counted manually following as closely as possible the provisions governing the manual counting of ballots.

(2) In counties using optical scanners to count the ballots at polling places, the election commissioner or county clerk may arrange to have partial returns delivered, properly locked, sealed, or digitally secured, to the election office at any time desired after the opening of the polls if at least twenty-five ballots have been cast since any prior delivery of partial returns. The election commissioner or county clerk shall designate polling places as locations for counting the ballots. Upon completion of the count, the ballots shall be conveyed under supervision of the election commissioner or county clerk to the office of such official. If for any reason it becomes impracticable to count all or a part of the ballots with optical scanners, the election commissioner or county clerk may direct that the ballots be counted manually following as closely as possible the provisions governing the manual counting of ballots.

Source: Laws 1994, LB 76, § 306; Laws 2003, LB 358, § 34; Laws 2019, LB411, § 55.

32-1013 Counting location; watchers; counting board members; oath; authorized observers.

(1) In each counting location, watchers may be appointed to be present and observe the counting of ballots. Each political party shall be entitled to one watcher at each location appointed and supplied with credentials by the county central committee of such political party. The district court having jurisdiction over any such county may appoint additional watchers for any location.

(2) The watchers and the members of the counting board shall take the following oath administered by the election commissioner or county clerk or an election official designated by the election commissioner or county clerk: I do solemnly swear that I will not in any manner make known to anyone other than duly authorized election officials the results of the votes as they are being counted until the polls have officially closed and the summary of votes cast is delivered to the election commissioner or county clerk.

(3) Except for polling places using precinct-based optical scanners, all other persons shall be excluded from the place where the counting is being conducted except for observers authorized by the election commissioner or county clerk. No such observer shall be connected with any candidate, political party, or measure on the ballot.

Source: Laws 1994, LB 76, § 307; Laws 2019, LB411, § 56.

32-1027 Counting board for early voting; appointment; duties.

(1) The election commissioner or county clerk shall appoint two or more registered voters to the counting board for early voting. One registered voter shall be appointed from the political party casting the highest number of votes for Governor or for President of the United States in the county in the immediately preceding general election, and one registered voter shall be appointed from the political party casting the next highest vote for such office.

The election commissioner or county clerk may appoint additional registered voters to serve on the counting board and may appoint registered voters to serve in case of a vacancy among any of the members of the counting board. Such appointees shall be balanced between the political parties and may include registered voters unaffiliated with any political party. The counting board may begin carrying out its duties not earlier than the second Friday before the election and shall meet as directed by the election commissioner or county clerk.

(2) The counting board shall place all identification envelopes in order and shall review each returned identification envelope pursuant to verification procedures prescribed in subsections (3) and (4) of this section.

(3) In its review, the counting board shall determine if:

(a) The voter has provided his or her name, residence address, and signature on the voter identification envelope;

(b) The ballot has been received from the voter who requested it and the residence address is the same address provided on the voter's request for a ballot for early voting, by comparing the information provided on the identification envelope with information recorded in the record of early voters or the voter's request;

(c) A completed and signed registration application has been received from the voter by the deadline in section 32-302, 32-321, or 32-325 or by the close of the polls pursuant to section 32-945;

(d) An identification document has been received from the voter not later than the close of the polls on election day if required pursuant to section 32-318.01; and

(e) A completed and signed registration application and oath has been received from the voter by the close of the polls on election day if required pursuant to section 32-946.

(4) On the basis of its review, the counting board shall determine whether the ballot shall be counted or rejected as follows:

(a) A ballot received from a voter who was properly registered on or prior to the deadline for registration pursuant to section 32-302 or 32-321 shall be accepted for counting without further review if:

(i) The name on the identification envelope appears to be that of a registered voter to whom a ballot for early voting has been issued or sent;

(ii) The residence address provided on the identification envelope is the same residence address at which the voter is registered or is in the same precinct and subdivision of a precinct, if any; and

(iii) The identification envelope has been signed by the voter;

(b) In the case of a ballot received from a voter who was not properly registered prior to the deadline for registration pursuant to section 32-302 or 32-321, the ballot shall be accepted for counting if:

(i) A valid registration application completed and signed by the voter has been received by the election commissioner or county clerk prior to the close of the polls on election day;

(ii) The name on the identification envelope appears to be that of the person who requested the ballot;

(iii) The residence address provided on the identification envelope and on the registration application is the same as the residence address as provided on the voter's request for a ballot for early voting; and

(iv) The identification envelope has been signed by the voter;

(c) In the case of a ballot received from a voter without a residence address who requested a ballot pursuant to section 32-946, the ballot shall be accepted for counting if:

(i) The name on the identification envelope appears to be that of a registered voter to whom a ballot has been sent;

(ii) A valid registration application completed and signed by the voter, for whom the residence address is deemed to be the address of the office of the election commissioner or county clerk pursuant to section 32-946, has been received by the election commissioner or county clerk prior to the close of the polls on election day;

(iii) The oath required pursuant to section 32-946 has been completed and signed by the voter and received by the election commissioner or county clerk by the close of the polls on election day; and

(iv) The identification envelope has been signed by the voter; and

(d) In the case of a ballot received from a registered voter required to present identification before voting pursuant to section 32-318.01, the ballot shall be accepted for counting if:

(i) The name on the identification envelope appears to be that of a registered voter to whom a ballot has been issued or sent;

(ii) The residence address provided on the identification envelope is the same address at which the voter is registered or is in the same precinct and subdivision of a precinct, if any;

(iii) A copy of an identification document authorized in section 32-318.01 has been received by the election commissioner or county clerk prior to the close of the polls on election day; and

(iv) The identification envelope has been signed by the voter.

(5) In opening the identification envelope or the return envelope to determine if registration applications, oaths, or identification documents have been enclosed by the voters from whom they are required, the counting board shall make a good faith effort to ensure that the ballot remains folded and that the secrecy of the vote is preserved.

(6) The counting board may, on the second Friday before the election, open all identification envelopes which are approved, and if the signature of the election commissioner or county clerk or his or her employee is on the ballot, the ballot shall be unfolded, flattened for purposes of using the optical scanner, and placed in a sealed container for counting as directed by the election commissioner or county clerk. At the discretion of the election commissioner or county clerk, the counting board may begin counting early ballots no earlier than twenty-four hours prior to the opening of the polls on the day of the election.

(7) If an identification envelope is rejected, the counting board shall not open the identification envelope. The counting board shall write Rejected on the identification envelope and the reason for the rejection. If the ballot is rejected after opening the identification envelope because of the absence of the official

signature on the ballot, the ballot shall be reinserted in the identification envelope which shall be resealed and marked Rejected, no official signature. The counting board shall place the rejected identification envelopes and ballots in a container labeled Rejected Ballots and seal it.

(8) As soon as all ballots have been placed in the sealed container and rejected identification envelopes or ballots have been sealed in the Rejected Ballots container, the counting board shall count the ballots the same as all other ballots and an unofficial count shall be reported to the election commissioner or county clerk. No results shall be released prior to the closing of the polls on election day.

Source: Laws 1994, LB 76, § 321; Laws 1999, LB 802, § 18; Laws 2002, LB 935, § 16; Laws 2005, LB 98, § 26; Laws 2005, LB 566, § 54; Laws 2007, LB646, § 13; Laws 2020, LB1055, § 15.

32-1031 County canvassing board; canvass of votes; procedure.

(1) The election commissioner or county clerk shall, prior to 1 p.m. on election day, post in a conspicuous place in the office of such election commissioner or county clerk a notice stating the day and hour when the county canvassing board will convene.

(2) After counting the ballots under section 32-1027 but no earlier than twenty-four hours after the notice is posted as required under subsection (1) of this section, the county canvassing board shall proceed with the official canvass of votes cast on election day. If in the process of canvassing the votes for any candidate or measure in any precinct the election commissioner or county clerk or the canvassing board determines that there is an obvious error in the certification of the votes, the error shall be corrected. The county canvassing board may open the ballots-cast container and recount the ballots for any candidate or any measure which appears to be in error. If the county canvassing board finds and corrects any such error, it shall make the correction entry in the precinct sign-in register, the precinct list of registered voters, and the official summary or summaries of votes cast and shall attach a letter of explanation to each book where the correction was made. The letter shall be signed by all members of the county canvassing board.

(3) When it has been determined that the returns in all precincts are correct, the county canvassing board shall provide a record of the results to the election commissioner or county clerk either in a ledger or by using a computer printout. The election commissioner or county clerk shall preserve the record of the results for the period of time specified by the State Records Administrator pursuant to the Records Management Act, and then it may be transferred to the State Archives of the Nebraska State Historical Society for permanent preservation.

(4) Any recesses or adjournments of the county canvassing board shall be to a fixed time and publicly announced. When a recess is called, all ballots that have not been counted and all other supplies shall be placed in a fireproof safe or other suitable location which is locked until such board reconvenes.

Source: Laws 1994, LB 76, § 325; Laws 2005, LB 98, § 28; Laws 2012, LB1035, § 3; Laws 2022, LB843, § 38.
Effective date July 21, 2022.

Cross References

Records Management Act, see section 84-1220.

32-1033 Certificate of nomination; certificate of election; issuance by election commissioner or county clerk; when; form.

The election commissioner or county clerk shall, on or before the sixth Monday after the election, prepare, sign, and deliver a certificate of nomination or a certificate of election to each person whom the county canvassing board has declared to have received the highest vote for county, city, or village offices. No person shall be issued a certificate of nomination as a candidate of a political party unless such person has received a number of votes at least equal to five percent of the total ballots cast at the primary election by registered voters affiliated with that political party in the district which the office for which he or she is a candidate serves. The certificate shall be substantially as follows:

State of Nebraska. At an election held on the ..... day of ..... 20.., ... was elected to the office of ..... for the term of ..... years from the ..... day of ..... 20.. (or when filling a vacancy, for the residue of the term ending on the .... day of ..... 20..). Given at ..... this .... day of ..... 20... .

Source: Laws 1994, LB 76, § 327; Laws 1997, LB 764, § 101; Laws 1999, LB 571, § 12; Laws 2022, LB843, § 39.
Effective date July 21, 2022.

32-1041 Voting and counting methods and locations authorized; approval required; when; electronic voting system prohibited.

(1) The election commissioner or county clerk may use optical-scan ballots or voting systems approved by the Secretary of State to allow registered voters to cast their votes at any election. The election commissioner or county clerk may use vote counting devices and voting systems approved by the Secretary of State for tabulating the votes cast at any election. Vote counting devices shall include electronic counting devices such as optical scanners.

(2) No electronic voting system shall be used under the Election Act.

(3) Any new voting or counting system shall be approved by the Secretary of State prior to use by an election commissioner or county clerk. The Secretary of State may adopt and promulgate rules and regulations to establish different procedures and locations for voting and counting votes pursuant to the use of any new voting or counting system. The procedures shall be designed to preserve the safety and confidentiality of each vote cast and the secrecy and security of the counting process, to establish security provisions for the prevention of fraud, and to ensure that the election is conducted in a fair manner.

Source: Laws 1994, LB 76, § 335; Laws 1997, LB 526, § 1; Laws 2003, LB 358, § 37; Laws 2005, LB 401, § 10; Laws 2007, LB646, § 14; Laws 2019, LB411, § 57.

32-1049 Vote counting device; requirements.

Any election commissioner or county clerk using a vote counting device to count ballots in a centralized location shall:

(1) Provide for the proper sealing of the containers and the security of the ballots when transported from each polling place to the centralized location and when removed from their containers and delivered to the personnel who operate the vote counting devices;

(2) Provide a process of counting which allows for the ballots of each precinct to be placed in a sealed container and placed in a secure location after the counting process has been completed;

(3) Provide for a method of overseeing the ballots that have been overvoted or damaged which does not involve judging voter intent to assure that these ballots have not been or will not be intentionally mismarked;

(4) Provide for a procedure for counting write-in votes when such votes and names of write-in candidates are to be counted and recorded;

(5) Provide for at least three independent tests to be conducted before counting begins to verify the accuracy of the counting process, which includes the computerized program installed for counting various ballots by vote counting devices, by (a) the election commissioner or county clerk, (b) the chief deputy election commissioner or a registered voter with a different party affiliation than that of the election commissioner or county clerk, and (c) the person who installed the program in the vote counting device or the person in charge of operating the device;

(6) Provide for storing and safeguarding the magnetic tapes or computer chips of the vote counting devices for the required period of time;

(7) Provide the appropriate security personnel or measures necessary to safeguard the secrecy and security of the counting process;

(8) Develop a procedure for picking up and counting ballots during election day at the discretion of the election commissioner or county clerk. No report or tabulation of vote totals for such ballots shall be produced or generated prior to one hour before the closing of the polls;

(9) Develop a procedure for picking up and transporting ballots from a secure ballot drop-box to the office of the election commissioner or county clerk; and

(10) Submit a written plan to the Secretary of State specifically outlining the procedures that will be followed on election day to implement this section. The plan shall be submitted no later than twenty-five days before the election and shall be modified, as necessary, for each primary, general, or special election.

Source: Laws 1994, LB 76, § 343; Laws 2007, LB646, § 15; Laws 2022, LB843, § 41.
Effective date July 21, 2022.

ARTICLE 11
CONTEST OF ELECTIONS AND RECOUNTS

Section

Section
32-1116. Election contests and recounts; costs.
32-1121. Recount requested by losing candidate; procedure; costs.

32-1101 Contest of election other than member of Legislature; applicability of sections; grounds.

(1) Sections 32-1101 to 32-1117 shall apply to contests of any election other than the election of a member of the Legislature. The contest of the election of a member of the Legislature is subject to the Legislative Qualifications and Election Contests Act.

(2) The election of any person to an elective office other than the Legislature, the location or relocation of a county seat, or any proposition submitted to a vote of the people may be contested:

(a) For misconduct, fraud, or corruption on the part of an election commissioner, a county clerk, an inspector, a judge or clerk of election, a member of a counting or canvassing board, or an employee of the election commissioner or county clerk sufficient to change the result;

(b) If the incumbent was not eligible to the office at the time of the election;

(c) If the incumbent has been convicted of a felony unless at the time of the election his or her civil rights have been restored;

(d) If the incumbent has given or offered to any voter or an election commissioner, a county clerk, an inspector, a judge or clerk of election, a member of a counting or canvassing board, or an employee of the election commissioner or county clerk any bribe or reward in money, property, or thing of value for the purpose of procuring his or her election;

(e) If illegal votes have been received or legal votes rejected at the polls sufficient to change the results;

(f) For any error of any board of canvassers in counting the votes or in declaring the result of the election if the error would change the result;

(g) If the incumbent is in default as a collector and custodian of public money or property; or

(h) For any other cause which shows that another person was legally elected.

(3) When the misconduct is on the part of an election commissioner, a county clerk, an inspector, a judge or clerk of election, a member of a counting or canvassing board, or an employee of the election commissioner or county clerk, it shall be insufficient to set aside the election unless the vote of the county, precinct, or township would change the result as to that office.

Source: Laws 1994, LB 76, § 344; Laws 2018, LB744, § 1.

Cross References

Legislative Qualifications and Election Contests Act, see section 50-1501.

32-1105 Election contest; bond.

The petitioner shall file in the proper court within ten days after filing of the petition a bond with security to be approved by the clerk of the court conditioned to pay all costs in case the election is confirmed.

Source: Laws 1994, LB 76, § 348; Laws 2018, LB744, § 2.

32-1106 Repealed. Laws 2018, LB744, § 30.

32-1107 Repealed. Laws 2018, LB744, § 30.

32-1111 Election contest; person holding certificate of election; powers and duties.

When a contested election is pending, the person holding the certificate of election may give bond, qualify and take the office at the time specified by law, and exercise the duties of the office until the contest is decided. If the contest is decided against him or her, the court shall order him or her to give up the office to the successful party in the contest and deliver to the successful party all books, records, papers, property, and effects pertaining to the office, and the court may enforce such order by attachment or other proper legal process.

Source: Laws 1994, LB 76, § 354; Laws 2018, LB744, § 3.

32-1112 Election contest; recount of votes; issuance of writ; certification of results.

Any court before which any contested election may be pending or the clerk of such court in vacation may issue a writ to the election commissioner or county clerk of the county in which the contested election was held commanding him or her to open, count, compare with the list of voters, and examine the ballots in his or her office which were cast at the election in contest and to certify the result of such count, comparison, and examination to the court from which the writ was issued.

Source: Laws 1994, LB 76, § 355; Laws 2018, LB744, § 4.

32-1114 Election contest; recount of ballots; procedure.

On the day fixed for opening the ballots pursuant to section 32-1113, the election commissioner or county clerk and the county canvassing board which officiated in making the official county canvass of the election returns shall proceed to open such ballots in the presence of the petitioner and the person whose election is contested or their attorneys. While the ballots are open and being examined, the election commissioner or county clerk shall exclude all other persons from the counting room. All persons witnessing the counting of ballots shall be placed under oath requiring them not to disclose any fact discovered from such ballots except as stated in the certificate of the election commissioner or county clerk.

Source: Laws 1994, LB 76, § 357; Laws 2018, LB744, § 5.

32-1115 Election contest; rights of parties; recount of ballots; completion; certification.

The election commissioner or county clerk shall permit the petitioner, the person whose election is being contested, and their attorneys to fully examine the ballots. The election commissioner or county clerk shall make return to the writ, under his or her hand and official seal, of all the facts which either of the parties may desire and which appear from the ballots to affect or relate to the contested election. After the examination of the ballots is completed, the election commissioner or county clerk shall again securely seal the ballots as they were and preserve and destroy them as provided by law in the same manner as if they had not been opened. The certificate of the election commissioner or county clerk certifying the total number of votes received by a candidate shall be prima facie evidence of the facts stated in the certificate, but

the persons present at the examination of the ballots may be heard as witnesses to contradict the certificate.

Source: Laws 1994, LB 76, § 358; Laws 2018, LB744, § 6.

32-1116 Election contests and recounts; costs.

Except for election contests involving a member of the Legislature under the Legislative Qualifications and Election Contests Act, the cost of election contests under sections 32-1101 to 32-1117 and recounts under section 32-1118 shall be adjudged against the petitioner if he or she loses the contest, and if the petitioner wins the contest, the cost shall be adjudged against the state, county, or other political subdivision of which such contested office was a part. The payment of such costs shall be enforced as in civil cases.

Source: Laws 1994, LB 76, § 359; Laws 2018, LB744, § 7.

Cross References

Legislative Qualifications and Election Contests Act, see section 50-1501.

32-1121 Recount requested by losing candidate; procedure; costs.

If any candidate failed to be nominated or elected by more than the margin provided in section 32-1119, the losing candidate may submit a certified written request for a recount at such candidate's expense. The request shall be filed with the filing officer with whom the candidate filed for election not later than the fifth day after the county canvassing board or the board of state canvassers concludes. The recount shall be conducted as provided in section 32-1119. Prior to conducting the recount, the cost of the recount shall be determined by the election commissioner or county clerk and the requesting candidate shall be so notified. The candidate requesting the recount shall pay the estimated cost of the recount before the recount is scheduled to be conducted. If the recount involves more than one county, the election commissioner or county clerk shall certify the cost to the Secretary of State. The Secretary of State shall then notify the candidate of the determined cost, and the cost shall be paid before any recount is scheduled to be conducted. The candidate shall pay the cost on demand to the county treasurer of each county involved, and such sums shall be placed in the county general fund to help defray the cost of the recount. If the actual expense is less than the determined cost, the candidate may file a claim with the county board for overpayment of the recount. If the recount determines the candidate to be the winner, all costs which he or she paid shall be refunded. Refunds shall be made from the county general fund.

Source: Laws 1994, LB 76, § 364; Laws 2019, LB411, § 58; Laws 2022, LB843, § 42.
Effective date July 21, 2022.

ARTICLE 12
ELECTION COSTS

Section
32-1201.01. Gift, grant, or donation; permitted, when.
32-1203. Political subdivisions; election expenses; duties; determination of charge.

32-1201.01 Gift, grant, or donation; permitted, when.

(1) The Secretary of State, election commissioners, and county clerks shall not accept or use any gift, grant, or donation from any private entity for the

purpose of preparing for, administering, or conducting an election unless the money received as a result of such gift, grant, or donation is appropriated to the Secretary of State for such use by the Legislature.

(2) This section does not prohibit (a) the acceptance of an in-kind contribution of food or beverages for election workers during the administration of an election or (b) the actual use of a public or private building, without charge or for a reduced fee, for the purposes of conducting an election, including use as a polling place or for election training purposes.

Source: Laws 2022, LB843, § 44.
Effective date July 21, 2022.

32-1203 Political subdivisions; election expenses; duties; determination of charge.

(1) Each city, village, township, school district, public power district, sanitary and improvement district, metropolitan utilities district, fire district, natural resources district, regional metropolitan transit authority, community college area, learning community coordinating council, educational service unit, hospital district, reclamation district, library board, and airport authority shall pay for the costs of nominating and electing its officers as provided in subsection (2), (3), or (4) of this section. If a special issue is placed on the ballot at the time of the statewide primary or general election by any political subdivision, the political subdivision shall pay for the costs of the election as provided in subsection (2), (3), or (4) of this section. The districts listed in this subsection shall furnish to the Secretary of State and election commissioner or county clerk any maps and additional information which the election commissioner or county clerk may require in the proper performance of their duties in the conduct of elections and certification of results.

(2) The charge for each primary and general election shall be determined by (a) ascertaining the total cost of all chargeable costs as described in section 32-1202, (b) dividing the total cost by the number of precincts participating in the election to fix the cost per precinct, (c) prorating the cost per precinct by the inked ballot inch in each precinct for each political subdivision, and (d) totaling the cost for each precinct for each political subdivision, except that the minimum charge for each primary and general election for each political subdivision shall be one hundred dollars.

(3) In lieu of the charge determined pursuant to subsection (2) of this section, the election commissioner or county clerk may charge public power districts the fee for election costs set by section 70-610.

(4) In lieu of the charge determined pursuant to subsection (2) of this section, the election commissioner or county clerk may bill school districts directly for the costs of an election held under section 10-703.01.

Source: Laws 1994, LB 76, § 368; Laws 1997, LB 764, § 104; Laws 2008, LB1067, § 1; Laws 2011, LB449, § 11; Laws 2015, LB575, § 27; Laws 2019, LB492, § 39; Laws 2022, LB843, § 43.
Effective date July 21, 2022.

ARTICLE 13
RECALL

Section
32-1303. Recall petition; signers and circulators; requirements; notification.
32-1305. Petition papers; filing; signature verification; procedure.
32-1306. Filing clerk; notification required; recall election; when held.
32-1309. Recall petition filing form prohibited; when.
32-1310. Recall election; failure or refusal to call; county attorney; duties.

32-1303 Recall petition; signers and circulators; requirements; notification.

(1) A petition demanding that the question of removing an elected official or member of a governing body listed in section 32-1302 be submitted to the registered voters shall be signed by registered voters equal in number to at least thirty-five percent of the total vote cast for that office in the last general election, except that (a) for an office for which more than one candidate is chosen, the petition shall be signed by registered voters equal in number to at least thirty-five percent of the number of votes cast for the person receiving the most votes for such office in the last general election and (b) for a member of a governing body of a village, the petition shall be signed by registered voters of the village equal in number to at least forty-five percent of the total vote cast for the person receiving the most votes for that office in the last general election. The signatures shall be affixed to petition papers and shall be considered part of the petition.

(2) Petition circulators shall conform to the requirements of sections 32-629 and 32-630.

(3) The petition papers shall be procured from the filing clerk. Prior to the issuance of such petition papers, a recall petition filing form shall be signed and filed with the filing clerk by at least one registered voter. Such voter or voters shall be deemed to be the principal circulator or circulators of the recall petition. The filing form shall state the name and office of the official sought to be removed, shall include in concise language of sixty words or less the reason or reasons for which recall is sought, and shall request that the filing clerk issue initial petition papers to the principal circulator for circulation. The filing clerk shall notify the official sought to be removed by any method specified in section 25-505.01 or, if notification cannot be made with reasonable diligence by any of the methods specified in section 25-505.01, by leaving a copy of the filing form at the official's usual place of residence and mailing a copy by first-class mail to the official's last-known address. If the official chooses, he or she may submit a defense statement in concise language of sixty words or less for inclusion on the petition. Any such defense statement shall be submitted to the filing clerk within twenty days after the official receives the copy of the filing form. The filing clerk shall prepare the petition papers within five business days after receipt of the defense statement. The principal circulator or circulators shall gather the petition papers within twenty days after being notified by the filing clerk that the petition papers are available. The filing clerk shall notify the principal circulator or circulators that the necessary signatures must be gathered within thirty days from the date of issuing the petitions.

(4) The filing clerk, upon issuing the initial petition papers or any subsequent petition papers, shall enter in a record, to be kept in his or her office, the name of the principal circulator or circulators to whom the papers were issued, the

date of issuance, and the number of papers issued. The filing clerk shall certify on the papers the name of the principal circulator or circulators to whom the papers were issued and the date they were issued. No petition paper shall be accepted as part of the petition unless it bears such certificate. The principal circulator or circulators who check out petitions from the filing clerk may distribute such petitions to persons who may act as circulators of such petitions.

(5) Petition signers shall conform to the requirements of sections 32-629 and 32-630. Each signer of a recall petition shall be a registered voter and qualified by his or her place of residence to vote for the office in question.

Source: Laws 1994, LB 76, § 376; Laws 1997, LB 764, § 106; Laws 2002, LB 1054, § 25; Laws 2003, LB 444, § 10; Laws 2004, LB 820, § 1; Laws 2008, LB39, § 4; Laws 2011, LB449, § 12; Laws 2018, LB377, § 5; Laws 2019, LB411, § 59.

32-1305 Petition papers; filing; signature verification; procedure.

(1) The principal circulator or circulators shall file, as one instrument, all petition papers comprising a recall petition for signature verification with the filing clerk within thirty days after the filing clerk issues the initial petition papers to the principal circulator or circulators as provided in section 32-1303.

(2) If the filing clerk is the subject of a recall petition, the signature verification process shall be conducted by two election commissioners or county clerks appointed by the Secretary of State. Mileage and expenses incurred by officials appointed pursuant to this subsection shall be reimbursed by the political subdivision involved in the recall.

(3) Within fifteen business days after the filing of the petition, the filing clerk shall ascertain whether or not the petition is signed by the requisite number of registered voters. No new signatures may be added after the initial filing of the petition papers. No signatures may be removed unless the filing clerk receives an affidavit signed by the person requesting his or her signature be removed before the petitions are filed with the filing clerk for signature verification. If the petition is found to be sufficient, the filing clerk shall attach to the petition a certificate showing the result of such examination. If the requisite number of signatures has not been gathered, the filing clerk shall file the petition in his or her office without prejudice to the filing of a new petition for the same purpose.

Source: Laws 1994, LB 76, § 378; Laws 2020, LB1055, § 16.

32-1306 Filing clerk; notification required; recall election; when held.

(1) If the recall petition is found to be sufficient, the filing clerk shall notify the official whose removal is sought and the governing body of the affected political subdivision that sufficient signatures have been gathered. Notification of the official sought to be removed may be by any method specified in section 25-505.01 or, if notification cannot be made with reasonable diligence by any of the methods specified in section 25-505.01, by leaving such notice at the official's usual place of residence and mailing a copy by first-class mail to the official's last-known address.

(2) The governing body of the political subdivision shall, within twenty-one days after receipt of the notification from the filing clerk pursuant to subsection (1) of this section, order an election. The date of the election shall be the first

available date that complies with section 32-405 and that can be certified to the election commissioner or county clerk at least fifty days prior to the election, except that if any other election is to be held in that political subdivision within ninety days after such notification, the governing body of the political subdivision shall provide for the holding of the recall election on the same day.

(3) All resignations shall be tendered as provided in section 32-562. If the official whose removal is sought resigns before the recall election is held, the governing body may cancel the recall election if the governing body notifies the election commissioner or county clerk of the cancellation on or before the fourth Thursday prior to the election, otherwise the recall election shall be held as scheduled.

(4) If a filing clerk is subject to a recall election, the Secretary of State shall conduct the recall election.

Source: Laws 1994, LB 76, § 379; Laws 2004, LB 820, § 2; Laws 2008, LB312, § 4; Laws 2011, LB449, § 13; Laws 2019, LB411, § 60; Laws 2020, LB1055, § 17; Laws 2022, LB843, § 45.
Effective date July 21, 2022.

32-1309 Recall petition filing form prohibited; when.

No recall petition filing form shall be filed against an elected official within twelve months after a recall election has failed to remove him or her from office or within six months after the beginning of his or her term of office or within six months prior to the incumbent filing deadline for the office.

Source: Laws 1994, LB 76, § 382; Laws 2019, LB411, § 61.

32-1310 Recall election; failure or refusal to call; county attorney; duties.

If the governing board of a political subdivision fails or refuses to call for a recall election by the date established in subsection (2) of section 32-1306, the county attorney in the county in which the board is located shall file an action in the district court to order the recall election. For offices filled by election in more than one county, the county attorney in the county with the most registered voters residing within the political subdivision shall file the action in the district court to order the recall election.

Source: Laws 2022, LB843, § 46.
Effective date July 21, 2022.

ARTICLE 14

INITIATIVES, REFERENDUMS, AND ADVISORY VOTES

Section

32-1405 Initiative and referendum petitions; sponsors; filing required; Revisor of Statutes; Secretary of State; duties.

(1) Prior to obtaining any signatures on an initiative or referendum petition, a statement of the object of the petition and the text of the measure shall be filed with the Secretary of State together with a sworn statement containing the names and street addresses of every person, corporation, or association sponsoring the petition.

(2) Upon receipt of the filing, the Secretary of State shall transmit the text of the proposed measure to the Revisor of Statutes. The Revisor of Statutes shall review the proposed measure and suggest changes as to form and draftsmanship. The revisor shall complete the review within ten business days after receipt from the Secretary of State. The Secretary of State shall provide the results of the review and suggested changes to the sponsor but shall otherwise keep the proposed measure, the review, and the sworn statement confidential for five days after receipt of the review by the sponsor. The Secretary of State shall then maintain the proposed measure, the opinion, and the sworn statement as public information and as a part of the official record of the initiative. The sponsor may make any changes recommended by the Revisor of Statutes and shall submit final language to the Secretary of State. If the final language is addressing a subject that is substantially different in form or substance from the initial filing or the changes recommended by the Revisor of Statutes, the Secretary of State shall reject it.

(3) The Secretary of State shall prepare the form of the petition from the final language filed by the sponsor and shall provide a copy of the form of the petition to the sponsor within five business days after receipt of the final language of the proposed measure. The sponsor shall print the petitions to be circulated from the forms provided. Prior to circulation, the sponsor shall file a sample copy of the petition to be circulated with the Secretary of State.

Source: Laws 1994, LB 76, § 387; Laws 1995, LB 337, § 5; Laws 2019, LB411, § 62; Laws 2022, LB843, § 47.
Effective date July 21, 2022.

32-1407 Initiative petition; filing deadline; issue placed on ballot; when; referendum petition; filing deadline; affidavit of sponsor.

(1) Initiative petitions shall be filed in the office of the Secretary of State at least four months prior to the general election at which the proposal would be submitted to the voters.

(2) When a copy of the form of any initiative petition is filed with the Secretary of State prior to obtaining signatures, the issue presented by such petition shall be placed before the voters at the next general election occurring at least four months after the date that such copy is filed if the signed petitions are found to be valid and sufficient. All signed initiative petitions shall become invalid on the date of the first general election occurring at least four months after the date on which the copy of the form is filed with the Secretary of State.

(3) Petitions invoking a referendum shall be filed in the office of the Secretary of State within ninety days after the Legislature at which the act sought to be referred was passed has adjourned sine die or has adjourned for more than ninety days.

(4) At the time of filing the signed petitions, at least one sponsor shall sign an affidavit certifying that the petitions contain a sufficient number of signatures

to place the issue on the ballot if such number of signatures were found to be valid.

Source: Laws 1994, LB 76, § 389; Laws 2019, LB411, § 63.

32-1409 Initiative and referendum petitions; signature verification; procedure; certification; Secretary of State; duties.

(1) Upon the receipt of the petitions, the Secretary of State, with the aid and assistance of the election commissioner or county clerk, shall determine the validity and sufficiency of signatures on the pages of the filed petition. The Secretary of State shall deliver the various pages of the filed petition to the election commissioner or county clerk by hand carrier, by use of law enforcement officials, or by certified mail, return receipt requested. Upon receipt of the pages of the petition, the election commissioner or county clerk shall issue to the Secretary of State a written receipt that the pages of the petition are in the custody of the election commissioner or county clerk. The election commissioner or county clerk shall determine if each signer was a registered voter on or before the date on which the petition was required to be filed with the Secretary of State. The election commissioner or county clerk shall compare the signer's signature, printed name, date of birth, street name and number or voting precinct, and city, village, or post office address with the voter registration records to determine whether the signer was a registered voter. The determination of the election commissioner or county clerk may be rebutted by any credible evidence which the election commissioner or county clerk finds sufficient. The express purpose of the comparison of names and addresses with the voter registration records, in addition to helping to determine the validity of such petition, the sufficiency of such petition, and the qualifications of the signer, shall be to prevent fraud, deception, and misrepresentation in the petition process. If the Secretary of State receives reports from a sufficient number of the counties that signatures in excess of one hundred ten percent of the number necessary to place the issue on the ballot have been verified, the Secretary of State may instruct the election commissioners and county clerks in all counties to stop verifying signatures and certify the number of signatures verified as of receipt of the instruction from the Secretary of State.

(2) Upon completion of the determination of registration, the election commissioner or county clerk shall prepare in writing a certification under seal setting forth the name and address of each signer found not to be a registered voter and the petition page number and line number where the name is found, and if the reason for the invalidity of the signature or address is other than the nonregistration of the signer, the election commissioner or county clerk shall set forth the reason for the invalidity of the signature. If the election commissioner or county clerk determines that a signer has affixed his or her signature more than once to any page or pages of the petition and that only one person is registered by that name, the election commissioner or county clerk shall prepare in writing a certification under seal setting forth the name of the duplicate signature and shall count only the earliest dated signature. The election commissioner or county clerk shall deliver all pages of the petition and the certifications to the Secretary of State within forty days after the receipt of such pages from the Secretary of State. The delivery shall be by hand carrier, by use of law enforcement officials, or by certified mail, return receipt requested. The Secretary of State may grant to the election commissioner or county

clerk an additional ten days to return all pages of the petition in extraordinary circumstances.

(3) Upon receipt of the pages of the petition, the Secretary of State shall issue a written receipt indicating the number of pages of the petition that are in his or her custody. When all the petitions and certifications have been received by the Secretary of State, he or she shall strike from the pages of the petition all but the earliest dated signature of any duplicate signatures and such stricken signatures shall not be added to the total number of valid signatures. Not more than twenty signatures on one sheet shall be counted. All signatures secured in a manner contrary to sections 32-1401 to 32-1416 shall not be counted. Clerical and technical errors in a petition shall be disregarded if the forms prescribed in sections 32-1401 to 32-1403 are substantially followed. The Secretary of State shall total the valid signatures and determine if constitutional and statutory requirements have been met. The Secretary of State shall immediately serve a copy of such determination by certified or registered mail upon the person filing the initiative or referendum petition. If the petition is found to be valid and sufficient, the Secretary of State shall proceed to place the measure on the general election ballot.

(4) The Secretary of State may adopt and promulgate rules and regulations for the issuance of all necessary forms and procedural instructions to carry out this section.

Source: Laws 1994, LB 76, § 391; Laws 1995, LB 337, § 6; Laws 1997, LB 460, § 8; Laws 2007, LB311, § 1; Laws 2019, LB411, § 64.

32-1412 Initiative and referendum measures; refusal of Secretary of State to place on ballot; jurisdiction of district court; parties; appeal.

(1) If the Secretary of State refuses to place on the ballot any measure proposed by an initiative petition presented at least four months preceding the date of the election at which the proposed law or constitutional amendment is to be voted upon or a referendum petition presented within ninety days after the Legislature enacting the law to which the petition applies adjourns sine die or for a period longer than ninety days, any resident may apply, within ten days after such refusal, to the district court of Lancaster County for a writ of mandamus. If it is decided by the court that such petition is legally sufficient, the Secretary of State shall order the issue placed upon the ballot at the next general election.

(2) On a showing that an initiative or referendum petition is not legally sufficient, the court, on the application of any resident, may enjoin the Secretary of State and all other officers from certifying or printing on the official ballot for the next general election the ballot title and number of such measure. If a suit is filed against the Secretary of State seeking to enjoin him or her from placing the measure on the official ballot, the person who is the sponsor of record of the petition shall be a necessary party defendant in such suit.

(3) Such suits shall be advanced on the trial docket and heard and decided by the court as quickly as possible. Either party may appeal to the Court of Appeals within ten days after a decision is rendered. The appeal procedures described in the Administrative Procedure Act shall not apply to this section.

(4) The district court of Lancaster County shall have jurisdiction over all litigation arising under sections 32-1401 to 32-1416.

Source: Laws 1994, LB 76, § 394; Laws 2018, LB193, § 69.

Cross References

Administrative Procedure Act, see section 84-920.

ARTICLE 15
VIOLATIONS AND PENALTIES

Section
32-1518. Election officials; other violations of Election Act; penalty; political subdivision; member of governing body; failure or refusal to perform duty; penalty.
32-1524. Electioneering; circulation of petitions; prohibited acts; penalty.
32-1525. Polling and interviews; poll watchers; prohibited acts; penalty.

32-1518 Election officials; other violations of Election Act; penalty; political subdivision; member of governing body; failure or refusal to perform duty; penalty.

(1) Any judge or clerk of election, any precinct or district inspector, or any other person upon whom any duty is imposed by the Election Act relating to elections who willfully does or performs anything prohibited by the act for which no other penalty is provided or neglects or omits to perform any such duty shall be guilty of a Class I misdemeanor and shall forfeit his or her office.

(2) Any member of a governing body of a political subdivision upon whom a duty is imposed under subsection (2) of section 32-1306 who fails or refuses to perform such duty is guilty of a Class I misdemeanor.

Source: Laws 1994, LB 76, § 417; Laws 2022, LB843, § 48.
Effective date July 21, 2022.

32-1524 Electioneering; circulation of petitions; prohibited acts; penalty.

(1) For purposes of this section:

(a) Electioneering means the deliberate, visible display or audible or physical dissemination of information for the purpose of advocating for or against:

(i) Any candidate on the ballot for the election at which such display or dissemination is occurring;

(ii) Any elected officeholder of a state constitutional office or federal office at the time of the election at which such display or dissemination is occurring;

(iii) Any political party on the ballot for the election at which such display or dissemination is occurring; or

(iv) Any measure on the ballot for the election at which such display or dissemination is occurring; and

(b) Information includes:

(i) Such a candidate's name, likeness, logo, or symbol;

(ii) Such a ballot measure's number, title, subject matter, logo, or symbol;

(iii) A button, hat, pencil, pen, shirt, sign, or sticker containing information prohibited by this section;

(iv) Audible information prohibited by this section; and

(v) Literature or any writing or drawing referring to a candidate, officeholder, or ballot measure described in subdivision (a) of this subsection.

(2) No judge or clerk of election or precinct or district inspector shall do any electioneering while acting as an election official.

(3) No person shall do any electioneering or circulate petitions within any polling place or any building designated for voters to cast ballots by the election commissioner or county clerk pursuant to the Election Act while the polling place or building is set up for voters to cast ballots or within two hundred feet of any such polling place or building except as otherwise provided in subsection (5) of this section.

(4) No person shall do any electioneering within two hundred feet of any secure ballot drop-box.

(5) Subject to any local ordinance, a person may display yard signs on private property within two hundred feet of a polling place or building designated for voters to cast ballots if the property is not under common ownership with the property on which the polling place or building is located.

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

Source: Laws 1994, LB 76, § 423; Laws 2006, LB 940, § 2; Laws 2016, LB874, § 7; Laws 2019, LB411, § 65; Laws 2022, LB843, § 49. Effective date July 21, 2022.

32-1525 Polling and interviews; poll watchers; prohibited acts; penalty.

(1) No person shall conduct an exit poll, a public opinion poll, or any other interview with voters on election day seeking to determine voter preference within twenty feet of the entrance of any polling place or, if inside the polling place or building, within one hundred feet of any voting booth.

(2)(a) No poll watcher shall interfere with any voter in the preparation or casting of such voter's ballot or prevent any election worker from performing the worker's duties.

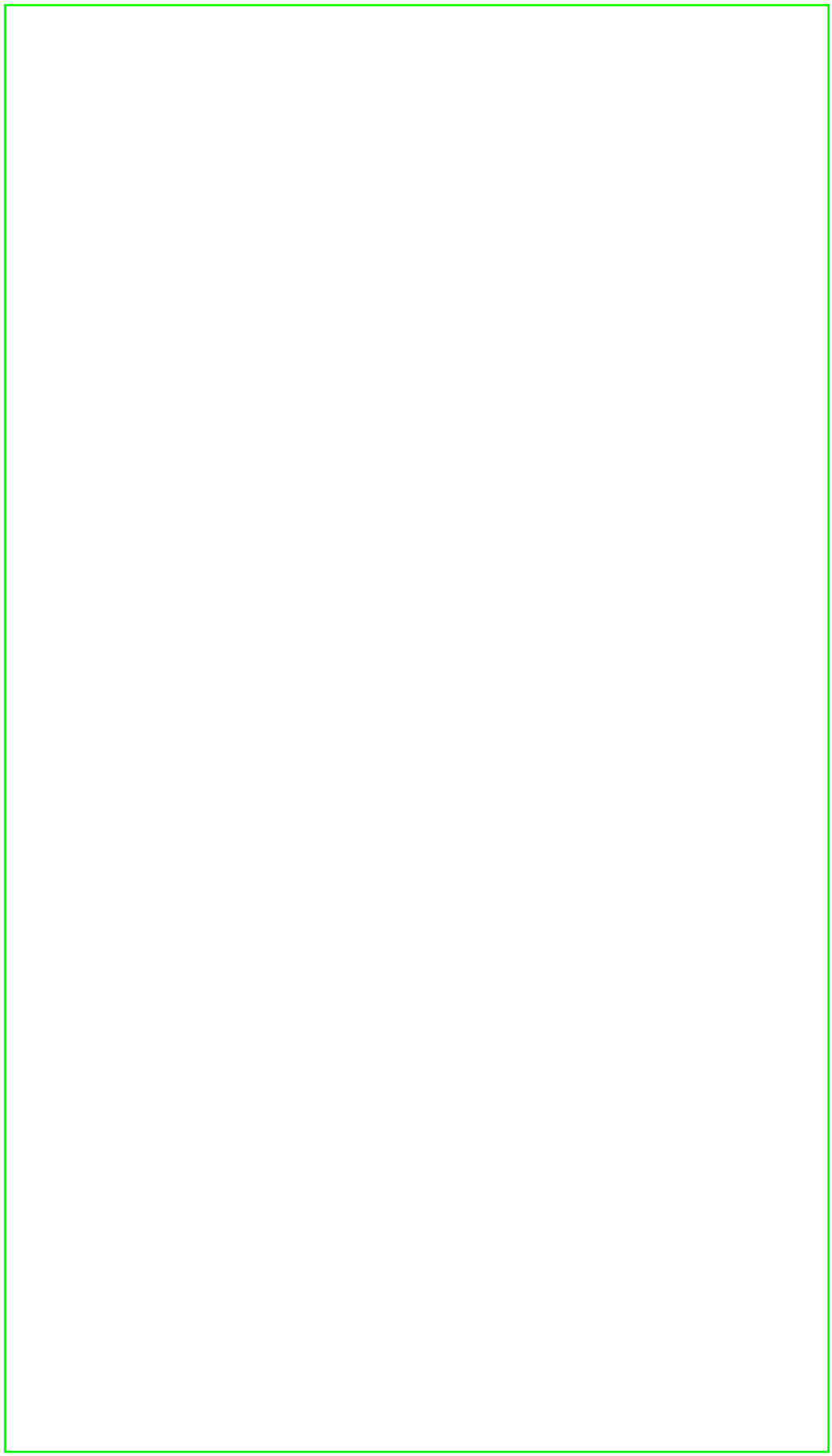
(b) A poll watcher shall not provide assistance to a voter as described in section 32-918 unless selected by the voter to provide assistance as provided in section 32-918.

(c) A poll watcher shall not engage in electioneering as defined in section 32-1524 while engaged in observing at a polling place.

(d) A poll watcher shall maintain a distance of at least eight feet from the sign-in table, the sign-in register, the polling booths, the ballot box, and any ballots which have not been cast, except that if the polling place is not large enough for a distance of eight feet, the judge of election shall post a notice of the minimum distance the poll watcher must maintain from the sign-in table, the sign-in register, the polling booths, the ballot box, and any ballots which have not been cast. The posted notice shall be clearly visible to the voters and shall be posted prior to the opening of the polls on election day. The minimum distance shall not be determined to exclude a poll watcher from being in the polling place.

(3) Any person violating this section shall be guilty of a Class V misdemeanor.

Source: Laws 1994, LB 76, § 424; Laws 2020, LB1055, § 18.



CHAPTER 33
FEES AND SALARIES

Section

33-101 Secretary of State; fees.

There shall be paid to the Secretary of State the following fees:

(1) For certificate or exemplification with seal, ten dollars;

(2) For copies of records, for each page, a fee of one dollar;

(3) For accessing records by electronic means:

(a) For batch requests of business entity information, fifteen dollars for up to one thousand business entities accessed and an additional fifteen dollars for each additional one thousand business entities accessed over one thousand;

(b) For information in the Secretary of State's Uniform Commercial Code Division database, including records filed pursuant to the Uniform Commercial Code, Chapter 52, article 2, 5, 7, 9, 10, 11, 12, or 14, Chapter 54, article 2, or the Uniform State Tax Lien Registration and Enforcement Act, for batch requests searched by debtor location, fifteen dollars for up to one thousand records accessed and an additional fifteen dollars for each additional one thousand records accessed over one thousand;

(c) For an electronically transmitted certificate indicating whether a business is properly registered with the Secretary of State and authorized to do business in the state, six dollars and fifty cents;

(d) For the entire contents of the database regarding corporations and the Uniform Commercial Code, but excluding electronic images, three hundred dollars weekly subscription rate, one thousand dollars monthly subscription

rate for a twice-monthly service, and eight hundred dollars monthly subscription rate;

(e) For images of records accessed over the Internet or by other electronic means other than facsimile machine, forty-five cents for each page or image of a page, not to exceed two thousand dollars per request for batch requests; and

(f) For the entire contents of the image database regarding corporations and the Uniform Commercial Code, eight hundred dollars monthly subscription rate;

(4) For taking acknowledgment, ten dollars;

(5) For administering oath, ten dollars;

(6) For filings by for-profit corporations and associations required or permitted by law to file articles of incorporation or organization with the Secretary of State, the fees provided in section 21-205 unless otherwise specifically provided by law; and

(7) For filings by nonprofit corporations and associations required or permitted by law to file articles of incorporation or organization with the Secretary of State or for such a filing by any entity declared to be a corporation under section 21-608, the fees provided in section 21-1905 unless otherwise specifically provided by law.

The Secretary of State shall remit all fees collected pursuant to subdivisions (1), (2), and (4) through (7) of this section to the State Treasurer for credit to the Secretary of State Cash Fund. The Secretary of State shall remit all fees collected pursuant to subdivision (3) of this section to the State Treasurer for credit to the Records Management Cash Fund, and such fees shall be distributed as provided in any agreements between the State Records Board and the Secretary of State.

Source: Laws 1877, § 5, p. 196; Laws 1897, c. 72, § 1, p. 331; Laws 1907, c. 139, § 1, p. 445; Laws 1911, c. 128, § 1, p. 435; R.S.1913, § 2423; Laws 1921, c. 104, § 1, p. 374; C.S.1922, § 2364; C.S. 1929, § 33-103; R.S.1943, § 33-101; Laws 1947, c. 118, § 1, p. 349; Laws 1955, c. 63, § 12, p. 207; Laws 1961, c. 156, § 1, p. 477; Laws 1965, c. 183, § 1, p. 569; Laws 1969, c. 268, § 1, p. 1030; Laws 1975, LB 95, § 6; Laws 1982, LB 928, § 27; Laws 1994, LB 1004, § 2; Laws 1995, LB 109, § 214; Laws 1996, LB 681, § 194; Laws 1998, LB 924, § 18; Laws 2000, LB 929, § 23; Laws 2003, LB 524, § 20; Laws 2014, LB278, § 1; Laws 2014, LB749, § 279; Laws 2018, LB749, § 2; Laws 2020, LB910, § 11.

Cross References

Uniform State Tax Lien Registration and Enforcement Act, see section 77-3901.

33-102 Notary public; fees.

The Secretary of State shall be entitled to the sum of thirty dollars for receiving an application for a commission to act as a notary public pursuant to section 64-102. The Secretary of State shall be entitled to the sum of thirty dollars for receiving a renewal application pursuant to section 64-104.

The fees received by the Secretary of State pursuant to this section shall be remitted to the State Treasurer for credit seventy-five percent to the General Fund and twenty-five percent to the Secretary of State Cash Fund.

Source: Laws 1869, § 13, p. 25; R.S.1913, § 2424; Laws 1921, c. 99, § 1, p. 364; C.S.1922, § 2365; C.S.1929, § 33-104; R.S.1943, § 33-102; Laws 1945, c. 145, § 11, p. 494; Laws 1949, c. 93, § 4, p. 246; Laws 1963, c. 184, § 1, p. 625; Laws 1967, c. 396, § 1, p. 1241; Laws 1982, LB 928, § 28; Laws 1994, LB 1004, § 3; Laws 1995, LB 7, § 30; Laws 2009, First Spec. Sess., LB3, § 17; Laws 2020, LB910, § 12.

33-106 Clerk of the district court; fees; enumerated.

(1) In addition to the judges' retirement fund fee provided in section 24-703 and the fees provided in section 33-106.03 and except as otherwise provided by law, the fees of the clerk of the district court shall be as provided in this section. There shall be a docket fee of forty-two dollars for each civil and criminal case except:

(a) There shall be a docket fee of twenty-five dollars for each case commenced by filing a transcript of judgment from another court in this state for the purpose of obtaining a lien;

(b) For proceedings under the Nebraska Workers' Compensation Act and the Employment Security Law, when provision is made for the fees that may be charged; and

(c) There shall be a docket fee of twenty-seven dollars for each criminal case appealed to the district court from any court inferior thereto.

(2) In all cases, other than those appealed from an inferior court or original filings which are within jurisdictional limits of an inferior court and when a jury is demanded in district court, the docket fee shall cover all fees of the clerk, except that the clerk shall be paid for each copy or transcript ordered of any pleading, record, or other document and that the clerk shall be entitled to a fee of fifteen dollars for a records management fee which will be taxed as costs of the case.

(3) In all civil cases, except habeas corpus cases in which a poverty affidavit is filed and approved by the court, and for all other services, the docket fee or other fee shall be paid by the party filing the case or requesting the service at the time the case is filed or the service requested.

(4) For any other service which may be rendered or performed by the clerk but which is not required in the discharge of his or her official duties, the fee shall be the same as that of a notary public but in no case less than one dollar.

Source: R.S.1866, c. 19, § 3, p. 157; Laws 1877, § 5, p. 217; Laws 1899, c. 31, § 1, p. 164; Laws 1905, c. 68, § 1, p. 363; Laws 1909, c. 55, § 1, p. 280; R.S.1913, §§ 2421, 2429; Laws 1917, c. 40, § 1, p. 119; Laws 1919, c. 82, § 1, p. 204; C.S.1922, §§ 2362, 2369; Laws 1925, c. 81, § 1, p. 255; Laws 1927, c. 118, § 1, p. 328; C.S.1929, §§ 33-101, 33-108; R.S.1943, § 33-106; Laws 1947, c. 120, § 1, p. 353; Laws 1949, c. 94, § 1(1), p. 252; Laws 1951, c. 106, § 2, p. 512; Laws 1959, c. 140, § 4, p. 546; Laws 1961, c. 157, § 1, p. 480; Laws 1965, c. 125, § 3, p. 463; Laws 1977, LB 126, § 2; Laws 1981, LB 84, § 1; Laws 1983, LB 617, § 4; Laws 1986, LB

811, § 14; Laws 1986, LB 333, § 8; Laws 2003, LB 760, § 13; Laws 2005, LB 348, § 7; Laws 2011, LB17, § 5; Laws 2017, LB307, § 1; Laws 2018, LB193, § 70; Laws 2020, LB912, § 16.

Cross References

Employment Security Law, see section 48-601.
Nebraska Workers' Compensation Act, see section 48-1,110.

33-106.01 Clerk of the district court; costs; record.

The clerk of the district court shall keep a record of the costs chargeable and taxable against each party in any suit pending in court. He or she at any time may make out a statement of such fees specifying each item of the fees so charged and taxed under seal of the court, which fee bill, so made under the seal of the court, shall have the same force and effect as an execution. The sheriff to whom the fee bill shall be issued shall execute the same as an execution and have the same fees therefor. The clerk shall not enter on the record any fees of any officer claiming the same, unless such officer shall duly return an itemized bill of the same.

Source: R.S.1866, c. 19, § 3, p. 157; Laws 1877, § 4, p. 217; Laws 1899, c. 31, § 1, p. 164; Laws 1905, c. 68, § 1, p. 363; Laws 1909, c. 55, § 1, p. 280; R.S.1913, §§ 2421, 2429; Laws 1917, c. 40, § 1, p. 119; Laws 1919, c. 82, § 1, p. 204; C.S.1922, §§ 2362, 2369; Laws 1925, c. 81, § 1, p. 255; Laws 1927, c. 118, § 1, p. 328; C.S.1929, §§ 33-101, 33-108; R.S.1943, § 33-106; Laws 1947, c. 120, § 1, p. 353; Laws 1949, c. 94, § 1(2), p. 253; Laws 1959, c. 140, § 5, p. 547; Laws 2018, LB193, § 71.

33-106.02 Clerk of the district court; fees; report; disposition.

(1) The clerk of the district court of each county shall not retain for his or her own use any fees, revenue, perquisites, or receipts, fixed, enumerated, or provided in this or any other section of the statutes of the State of Nebraska or any fees authorized by federal law to be collected or retained by a county official. The clerk shall on or before the fifteenth day of each month make a report to the county board, under oath, showing the different items of such fees, revenue, perquisites, or receipts received, from whom, at what time, and for what service, and the total amount received by such officer since the last report, and also the amount received for the current year.

(2) The clerk shall account for and pay any fees, revenue, perquisites, or receipts not later than the fifteenth day of the month following the calendar month in which such fees, revenue, perquisites, or receipts were received in the following manner:

(a) Of the forty-two-dollar docket fee imposed pursuant to section 33-106, one dollar shall be remitted to the State Treasurer for credit to the General Fund and six dollars shall be remitted to the State Treasurer for credit to the Nebraska Retirement Fund for Judges through June 30, 2021. Beginning July 1, 2021, seven dollars of such forty-two-dollar docket fee shall be remitted to the State Treasurer for credit to the Nebraska Retirement Fund for Judges;

(b) Of the twenty-seven-dollar docket fee imposed for appeal of a criminal case to the district court pursuant to section 33-106, two dollars shall be remitted to the State Treasurer for credit to the Nebraska Retirement Fund for Judges; and

(c) The remaining fees, revenue, perquisites, or receipts shall be credited to the general fund of the county.

Source: R.S.1866, c. 19, § 3, p. 157; Laws 1877, § 5, p. 217; Laws 1899, c. 31, § 1, p. 164; Laws 1905, c. 68, § 1, p. 363; Laws 1909, c. 55, § 1, p. 280; R.S.1913, §§ 2421, 2429; Laws 1917, c. 40, § 1, p. 119; Laws 1919, c. 82, § 1, p. 204; C.S.1922, §§ 2362, 2369; Laws 1925, c. 81, § 1, p. 255; Laws 1927, c. 118, § 1, p. 328; C.S.1929, §§ 33-101, 33-108; R.S.1943, § 33-106; Laws 1947, c. 120, § 1, p. 353; Laws 1949, c. 94, § 1(3), p. 254; Laws 1983, LB 617, § 5; Laws 1989, LB 4, § 3; Laws 2005, LB 348, § 8; Laws 2006, LB 823, § 1; Laws 2016, LB803, § 1; Laws 2021, LB17, § 5.

33-106.03 Dissolution of marriage; additional fees.

In addition to the fees provided for in sections 33-106 and 33-123, the clerk of the court shall collect an additional fifty dollars as a mediation fee and twenty-five dollars as a child abuse prevention fee for each complaint filed for dissolution of marriage. The fees shall be remitted to the State Treasurer who shall credit the child abuse prevention fee to the Nebraska Child Abuse Prevention Fund and the mediation fee to the Parenting Act Fund.

Source: Laws 1986, LB 333, § 7; Laws 1996, LB 1296, § 6; Laws 2002, Second Spec. Sess., LB 48, § 1; Laws 2007, LB554, § 26; Laws 2017, LB307, § 2.

33-107.02 Paternity determination; parental support proceeding; certain marriage, child support, child custody, or parenting time actions; additional mediation fee and civil legal services fee.

(1) A mediation fee of fifty dollars and a civil legal services fee of fifteen dollars shall be collected by the clerk of the county court or the clerk of the district court for each paternity determination or parental support proceeding under sections 43-1401 to 43-1418, for each complaint or action to modify a decree of dissolution or annulment of marriage, and for each complaint or action to modify an award of child support, child custody, parenting time, visitation, or other access as defined in section 43-2922. Such fees shall be remitted to the State Treasurer on forms prescribed by the State Treasurer within ten days after the close of each month. The civil legal services fee shall be credited to the Legal Aid and Services Fund, and the mediation fee shall be credited to the Parenting Act Fund.

(2) Any proceeding filed by a county attorney or an authorized attorney, in a case in which services are being provided under Title IV-D of the federal Social Security Act, as amended, shall not be subject to the provisions of subsection (1) of this section. In any such proceeding, a mediation fee of fifty dollars and a civil legal services fee of fifteen dollars shall be collected by the clerk of the county court or the clerk of the district court for any pleading in such proceeding filed by any party, other than a county attorney or authorized attorney, subsequent to the paternity filing if such pleading is to modify an award of child support or to establish or modify custody, parenting time, visitation, or other access as defined in section 43-2922. Such fees shall be remitted to the State Treasurer on forms prescribed by the State Treasurer within ten days after the close of each month. The mediation fee shall be

credited to the Parenting Act Fund and the civil legal services fee shall be credited to the Legal Aid and Services Fund.

(3) For purposes of this section, authorized attorney has the same meaning as in section 43-1704.

Source: Laws 1997, LB 729, § 2; Laws 1999, LB 19, § 1; Laws 2007, LB554, § 27; Laws 2017, LB307, § 3.

33-109 Register of deeds; county clerk; fees.

(1) The register of deeds and the county clerk shall receive for recording a deed, mortgage, or release, recording and indexing of a will, recording and indexing of a decree in a testate estate, recording proof of publication, or recording any other instrument, a fee of ten dollars for the first page and six dollars for each additional page. Two dollars and fifty cents of the ten-dollar fee for recording the first page and fifty cents of the six-dollar fee for recording each additional page shall be used exclusively for the purposes of preserving and maintaining public records of the office of the register of deeds and for modernization and technology needs relating to such records and preserving and maintaining public records of a register of deeds office that has been consolidated with another county office pursuant to section 22-417 and for modernization and technology needs relating to such records. The funds allocated under this subsection shall not be substituted for other allocations of county general funds to the register of deeds office or any other county office for the purposes enumerated in this subsection.

(2) The cost for a certified copy of any instrument filed or recorded in the office of county clerk or register of deeds shall be one dollar and fifty cents per page.

Source: Laws 1879, § 1, p. 107; Laws 1887, c. 42, § 1, p. 461; R.S.1913, § 2435; C.S.1922, § 2375; C.S.1929, § 33-114; Laws 1931, c. 66, § 1, p. 185; Laws 1935, c. 80, § 1, p. 269; Laws 1941, c. 67, § 1, p. 292; C.S.Supp.,1941, § 33-114; R.S.1943, § 33-109; Laws 1949, c. 93, § 5, p. 247; Laws 1961, c. 159, § 1, p. 484; Laws 1963, c. 185, § 1, p. 626; Laws 1965, c. 185, § 1, p. 574; Laws 1967, c. 204, § 1, p. 560; Laws 1969, c. 270, § 1, p. 1034; Laws 1971, LB 381, § 1; Laws 1972, LB 1264, § 1; Laws 1983, LB 463, § 1; Laws 2012, LB14, § 4; Laws 2017, LB152, § 2; Laws 2017, LB268, § 7; Laws 2019, LB593, § 5.

33-116 County surveyor; compensation; fees; mileage; equipment furnished.

Each county surveyor shall be entitled to receive the following fees: (1) For all services rendered to the county or state, a daily rate as determined by the county board; and (2) for each mile actually and necessarily traveled in going to and from work, the rate allowed by the provisions of section 81-1176. All expense of necessary assistants in the performance of the above work, the fees of witnesses, and material used for perpetuation and reestablishing lost exterior section and quarter corners necessary for the survey shall be paid for by the county and the remainder of the cost of the survey shall be paid for by the parties for whom the work may be done. All necessary equipment, conveyance, and repairs to such equipment, required in the performance of the duties of the office, shall be furnished such surveyor at the expense of the county, except that in any county with a population of less than one hundred thousand the county

board may, in its discretion, allow the county surveyor a salary fixed pursuant to section 23-1114, payable monthly, by warrant drawn on the general fund of the county. All fees received by surveyors so receiving a salary may, with the authorization of the county board, be retained by the surveyor, but in the absence of such authorization all such fees shall be turned over to the county treasurer monthly for credit to the county general fund.

Source: R.S.1866, c. 19, § 16, p. 168; Laws 1869, § 1, p. 157; Laws 1899, c. 32, § 1, p. 167; Laws 1913, c. 43, § 12, p. 146; R.S.1913, § 2440; Laws 1919, c. 75, § 1, p. 194; C.S.1922, § 2380; Laws 1927, c. 114, § 1, p. 321; C.S.1929, § 33-119; Laws 1931, c. 65, § 7, p. 180; C.S.Supp.,1941, § 33-119; Laws 1943, c. 90, § 19, p. 305; R.S.1943, § 33-116; Laws 1947, c. 122, § 1, p. 357; Laws 1953, c. 117, § 1, p. 372; Laws 1957, c. 70, § 4, p. 296; Laws 1961, c. 158, § 2, p. 482; Laws 1961, c. 160, § 1, p. 485; Laws 1969, c. 272, § 1, p. 1036; Laws 1981, LB 204, § 50; Laws 1982, LB 127, § 8; Laws 1996, LB 1011, § 21; Laws 2017, LB200, § 3; Laws 2022, LB791, § 3.
Effective date July 21, 2022.

33-123 County court; civil matters; fees.

The county court shall be entitled to the following fees in civil matters:

(1) Twenty dollars for any and all services rendered up to and including the judgment or dismissal of the action other than for a domestic relations matter. Of such twenty-dollar fee, the following amounts shall be remitted to the State Treasurer for credit to the Nebraska Retirement Fund for Judges: (a) Six dollars through June 30, 2021, (b) beginning July 1, 2021, through June 30, 2022, eight dollars, (c) beginning July 1, 2022, through June 30, 2023, nine dollars, (d) beginning July 1, 2023, through June 30, 2024, ten dollars, (e) beginning July 1, 2024, through June 30, 2025, eleven dollars, and (f) beginning July 1, 2025, twelve dollars;

(2) For any and all services rendered up to and including the judgment or dismissal of a domestic relations matter, forty dollars;

(3) For filing a foreign judgment or a judgment transferred from another court in this state, fifteen dollars; and

(4) For writs of execution, writs of restitution, garnishment, and examination in aid of execution, five dollars each.

Source: R.S.1866, c. 19, § 8, p. 164; Laws 1887, c. 41, § 1, p. 458; Laws 1907, c. 56, § 1, p. 229; Laws 1909, c. 58, § 1, p. 286; R.S.1913, § 2449; Laws 1915, c. 39, § 1, p. 110; Laws 1917, c. 45, § 1, p. 125; Laws 1921, c. 95, § 1, p. 357; C.S.1922, § 2388; Laws 1925, c. 98, § 1, p. 284; C.S.1929, § 33-127; Laws 1931, c. 64, § 1, p. 171; Laws 1937, c. 86, § 1, p. 283; C.S.Supp.,1941, § 33-127; R.S.1943, § 33-123; Laws 1945, c. 74, § 1, p. 276; Laws 1972, LB 1032, § 220; Laws 1974, LB 739, § 2; Laws 1981, LB 99, § 2; Laws 1982, LB 928, § 29; Laws 1983, LB 617, § 6; Laws 1989, LB 233, § 2; Laws 1995, LB 270, § 2; Laws 1996, LB 1296, § 7; Laws 2005, LB 348, § 10; Laws 2015, LB468, § 7; Laws 2021, LB17, § 6.

33-124 County court; criminal cases; fee.

In criminal matters, including preliminary and juvenile hearings, the county court shall receive, for any and all services rendered up to and including the judgment or dismissal of the action and the issuance of mittimus or discharge to the jailer, a fee of twenty dollars. Of such twenty-dollar fee, the following amounts shall be remitted to the State Treasurer for credit to the Nebraska Retirement Fund for Judges: (a) Six dollars through June 30, 2021, (b) beginning July 1, 2021, through June 30, 2022, eight dollars, (c) beginning July 1, 2022, through June 30, 2023, nine dollars, (d) beginning July 1, 2023, through June 30, 2024, ten dollars, (e) beginning July 1, 2024, through June 30, 2025, eleven dollars, and (f) beginning July 1, 2025, twelve dollars.

Source: Laws 1915, c. 39, § 1, p. 110; Laws 1917, c. 45, § 1, p. 126; Laws 1921, c. 95, § 1, p. 359; C.S.1922, § 2388; Laws 1925, c. 98, § 1, p. 285; C.S.1929, § 33-127; Laws 1931, c. 64, § 1, p. 172; Laws 1937, c. 86, § 1, p. 284; C.S.Supp.,1941, § 33-127; R.S.1943, § 33-124; Laws 1945, c. 74, § 2, p. 276; Laws 1972, LB 1032, § 221; Laws 1981, LB 99, § 3; Laws 1982, LB 928, § 30; Laws 1983, LB 617, § 7; Laws 1989, LB 233, § 3; Laws 2005, LB 348, § 11; Laws 2015, LB468, § 8; Laws 2021, LB17, § 7.

33-125 County court; probate fees; how determined.

(1) In probate matters the county court shall be entitled to receive the following fees:

(a)(i) Twenty-two dollars for probate proceedings commenced and closed informally. Of such twenty-two-dollar fee, the following amounts shall be remitted to the State Treasurer for credit to the Nebraska Retirement Fund for Judges: (A) Six dollars through June 30, 2021, (B) beginning July 1, 2021, through June 30, 2022, eight dollars, (C) beginning July 1, 2022, through June 30, 2023, nine dollars, (D) beginning July 1, 2023, through June 30, 2024, ten dollars, (E) beginning July 1, 2024, through June 30, 2025, eleven dollars, and (F) beginning July 1, 2025, twelve dollars;

(ii) Twenty-two dollars for each subsequent petition or application filed within an informal proceeding, not including the fee for a petition for determination of inheritance tax as provided in section 33-126.03. Of the twenty-two-dollar fee described in this subdivision (ii), the following amounts shall be remitted to the State Treasurer for credit to the Nebraska Retirement Fund for Judges: (A) Six dollars through June 30, 2021, (B) beginning July 1, 2021, through June 30, 2022, eight dollars, (C) beginning July 1, 2022, through June 30, 2023, nine dollars, (D) beginning July 1, 2023, through June 30, 2024, ten dollars, (E) beginning July 1, 2024, through June 30, 2025, eleven dollars, and (F) beginning July 1, 2025, twelve dollars; and

(iii) Twenty-two dollars for any other proceeding under the Nebraska Probate Code for which no court fee is established by statute. Of such twenty-two-dollar fee, the following amounts shall be remitted to the State Treasurer for credit to the Nebraska Retirement Fund for Judges: (A) Six dollars through June 30, 2021, (B) beginning July 1, 2021, through June 30, 2022, eight dollars, (C) beginning July 1, 2022, through June 30, 2023, nine dollars, (D) beginning July 1, 2023, through June 30, 2024, ten dollars, (E) beginning July 1, 2024, through June 30, 2025, eleven dollars, and (F) beginning July 1, 2025, twelve dollars.

The fees assessed under this subdivision (a) shall not exceed the fees which would be assessed for a formal probate under subdivision (b) of this subsection; and

(b) For probate proceedings commenced or closed formally:

(i) When the value does not exceed one thousand dollars, twenty-two dollars;

(ii) When the value exceeds one thousand dollars and is not more than two thousand dollars, thirty dollars;

(iii) When the value exceeds two thousand dollars and is not more than five thousand dollars, fifty dollars;

(iv) When the value exceeds five thousand dollars and is not more than ten thousand dollars, seventy dollars;

(v) When the value exceeds ten thousand dollars and is not more than twenty-five thousand dollars, eighty dollars;

(vi) When the value exceeds twenty-five thousand dollars and is not more than fifty thousand dollars, one hundred dollars;

(vii) When the value exceeds fifty thousand dollars and is not more than seventy-five thousand dollars, one hundred twenty dollars;

(viii) When the value exceeds seventy-five thousand dollars and is not more than one hundred thousand dollars, one hundred sixty dollars;

(ix) When the value exceeds one hundred thousand dollars and is not more than one hundred twenty-five thousand dollars, two hundred twenty dollars;

(x) When the value exceeds one hundred twenty-five thousand dollars and is not more than one hundred fifty thousand dollars, two hundred fifty dollars;

(xi) When the value exceeds one hundred fifty thousand dollars and is not more than one hundred seventy-five thousand dollars, two hundred seventy dollars;

(xii) When the value exceeds one hundred seventy-five thousand dollars and is not more than two hundred thousand dollars, three hundred dollars;

(xiii) When the value exceeds two hundred thousand dollars and is not more than three hundred thousand dollars, three hundred fifty dollars;

(xiv) When the value exceeds three hundred thousand dollars and is not more than four hundred thousand dollars, four hundred dollars;

(xv) When the value exceeds four hundred thousand dollars and is not more than five hundred thousand dollars, five hundred dollars;

(xvi) When the value exceeds five hundred thousand dollars and is not more than seven hundred fifty thousand dollars, six hundred dollars;

(xvii) When the value exceeds seven hundred fifty thousand dollars and is not more than one million dollars, seven hundred dollars;

(xviii) When the value exceeds one million dollars and is not more than two million five hundred thousand dollars, eight hundred dollars;

(xix) When the value exceeds two million five hundred thousand dollars and is not more than five million dollars, one thousand dollars; and

(xx) On all estates when the value exceeds five million dollars, one thousand five hundred dollars.

(2) The fees prescribed in subdivision (1)(b) of this section shall be based on the gross value of the estate, including both real and personal property in the

State of Nebraska at the time of death. The gross value shall mean the actual value of the estate less liens and joint tenancy property. Formal fees shall be charged in full for all services performed by the court, and no additional fees shall be charged for petitions, hearing, and orders in the course of such administration. The court shall provide one certified copy of letters of appointment without charge. In other cases when it is necessary to copy instruments, the county court shall be allowed the fees provided in section 33-126.05. In all cases when a petition for probate of will or appointment of an administrator, special administrator, personal representative, guardian, or trustee or any other petition for an order in probate matters is filed and no appointment is made or order entered and the cause is dismissed, the fee shall be ten dollars.

Source: R.S.1866, c. 19, § 8, p. 164; Laws 1887, c. 41, § 1, p. 459; Laws 1907, c. 56, § 1, p. 230; Laws 1909, c. 58, § 1, p. 287; R.S.1913, § 2449; Laws 1915, c. 39, § 1, p. 111; Laws 1917, c. 45, § 1, p. 126; Laws 1921, c. 95, § 1, p. 358; C.S.1922, § 2388; Laws 1925, c. 98, § 1, p. 285; C.S.1929, § 33-127; Laws 1931, c. 64, § 1, p. 172; Laws 1937, c. 86, § 1, p. 284; C.S.Supp.,1941, § 33-127; R.S.1943, § 33-125; Laws 1945, c. 74, § 3, p. 277; Laws 1963, c. 187, § 1, p. 629; Laws 1975, LB 481, § 22; Laws 1982, LB 928, § 31; Laws 1983, LB 2, § 1; Laws 1984, LB 373, § 2; Laws 1984, LB 492, § 1; Laws 1989, LB 233, § 4; Laws 2005, LB 348, § 12; Laws 2015, LB468, § 9; Laws 2021, LB17, § 8.

Cross References

Nebraska Probate Code, see section 30-2201.

33-126.02 County court; guardianships; conservatorships; fees; how determined.

In matters of guardianship and conservatorship, the county court shall be entitled to receive the following fees: Upon the filing of a petition for the appointment of a guardian, twenty-two dollars; upon the filing of a petition for the appointment of a conservator, twenty-two dollars; upon the filing of one petition for a consolidated appointment of both a guardian and conservator, twenty-two dollars; for the appointment of a successor guardian or conservator, twenty-two dollars; for the appointment of a temporary guardian or temporary or special conservator, twenty-two dollars; and for proceedings for a protective order in the absence of a guardianship or conservatorship, twenty-two dollars. If there is more than one ward listed in a petition for appointment of a guardian or conservator or both, only one filing fee shall be assessed. Two dollars of each twenty-two-dollar fee shall be remitted to the State Treasurer for credit to the Nebraska Retirement Fund for Judges through June 30, 2021. Beginning July 1, 2021, four dollars of each twenty-two-dollar fee shall be remitted to the State Treasurer for credit to the Nebraska Retirement Fund for Judges. While such guardianship or conservatorship is pending, the court shall receive five dollars for filing and recording each report. When the appointment of a custodian as provided for in the Nebraska Uniform Transfers to Minors Act is made, the county court shall be entitled to receive a fee of twenty dollars.

Source: R.S.1866, c. 19, § 8, p. 164; Laws 1887, c. 41, § 1, p. 460; Laws 1907, c. 56, § 1, p. 231; Laws 1909, c. 58, § 1, p. 288; R.S.1913, § 2449; Laws 1915, c. 39, § 1, p. 111; Laws 1917, c. 45, § 1, p. 127; Laws 1921, c. 95, § 1, p. 359; C.S.1922, § 2388; Laws 1925,

c. 98, § 1, p. 286; C.S.1929, § 33-127; Laws 1931, c. 64, § 1, p. 173; Laws 1937, c. 86, § 1, p. 286; C.S.Supp.,1941, § 33-127; R.S.1943, § 33-126; Laws 1945, c. 74, § 4, p. 278; Laws 1949, c. 95, § 1(2), p. 255; Laws 1951, c. 103, § 1, p. 508; Laws 1963, c. 189, § 1, p. 633; Laws 1975, LB 481, § 23; Laws 1982, LB 928, § 33; Laws 1984, LB 492, § 2; Laws 1988, LB 790, § 5; Laws 1989, LB 233, § 5; Laws 1992, LB 907, § 27; Laws 2005, LB 348, § 13; Laws 2021, LB17, § 9.

Cross References

Nebraska Uniform Transfers to Minors Act, see section 43-2701.

33-126.03 County court; inheritance tax proceedings; fees; by whom paid.

In all matters for the determination of inheritance tax under Chapter 77, article 20, the county court shall be entitled to receive fees of twenty-two dollars. Fees under this section shall not be charged if fees have been imposed pursuant to subdivision (1)(b) of section 33-125. Except in cases instituted by the county attorney, such fee shall be paid by the person petitioning for such determination. Two dollars of such fee shall be remitted to the State Treasurer for credit to the Nebraska Retirement Fund for Judges through June 30, 2021. Beginning July 1, 2021, four dollars of such fee shall be remitted to the State Treasurer for credit to the Nebraska Retirement Fund for Judges.

Source: R.S.1866, c. 19, § 8, p. 164; Laws 1887, c. 41, § 1, p. 460; Laws 1907, c. 56, § 1, p. 231; Laws 1909, c. 58, § 1, p. 288; R.S.1913, § 2449; Laws 1915, c. 39, § 1, p. 111; Laws 1917, c. 45, § 1, p. 127; Laws 1921, c. 95, § 1, p. 359; C.S.1922, § 2388; Laws 1925, c. 98, § 1, p. 286; C.S.1929, § 33-127; Laws 1931, c. 64, § 1, p. 173; Laws 1937, c. 86, § 1, p. 286; C.S.Supp.,1941, § 33-127; R.S.1943, § 33-126; Laws 1945, c. 74, § 4, p. 278; Laws 1949, c. 95, § 1(3), p. 256; Laws 1959, c. 376, § 1, p. 1316; Laws 1975, LB 481, § 24; Laws 1982, LB 928, § 34; Laws 1984, LB 373, § 3; Laws 1989, LB 233, § 6; Laws 2005, LB 348, § 14; Laws 2021, LB17, § 10.

33-126.06 County court; matters relating to trusts; fees.

The county court shall be entitled to collect the following fees: For the registration of any trust, whether testamentary or not, twenty-two dollars; for each proceeding initiated in county court concerning the administration and distribution of trusts, the declaration of rights, and the determination of other matters involving trustees and beneficiaries of trusts, twenty-two dollars; for the appointment of a successor trustee, twenty-two dollars; and for filing and recording each report, five dollars. Two dollars of each twenty-two-dollar fee shall be remitted to the State Treasurer for credit to the Nebraska Retirement Fund for Judges through June 30, 2021. Beginning July 1, 2021, four dollars of each twenty-two-dollar fee shall be remitted to the State Treasurer for credit to the Nebraska Retirement Fund for Judges.

Source: Laws 1975, LB 481, § 27; Laws 1982, LB 928, § 37; Laws 1989, LB 233, § 9; Laws 2005, LB 348, § 16; Laws 2021, LB17, § 11.

33-131 County officers; records; duties.

The sheriffs, county judges, county treasurers, county clerks, and registers of deeds of the several counties of the state shall each keep a book, unless authorized to use a computerized system, which shall be provided by the county, which shall be known as the fee book, which shall be a part of the records of such office, and in which shall be entered each and every item of fees collected showing in separate columns the name of the party from whom received, the date of receiving the same, the amount received, and for what service the same was charged. The clerks of the district court shall use the court's electronic case management system provided by the state which shall be the record of receipts and reimbursements.

Source: Laws 1877, § 3, p. 216; R.S.1913, § 2455; C.S.1922, § 2397; Laws 1925, c. 88, § 1, p. 267; C.S.1929, § 33-136; R.S.1943, § 33-131; Laws 1984, LB 679, § 12; Laws 2018, LB193, § 72.

33-138 Juror; compensation; mileage.

(1) Each member of a grand or petit jury in a district court or county court shall receive for his or her services thirty-five dollars for each day employed in the discharge of his or her duties and mileage at the rate provided in section 81-1176 for each mile necessarily traveled. No juror is entitled to pay for the days he or she is voluntarily absent or excused from service by order of the court. No juror is entitled to pay for nonjudicial days unless actually employed in the discharge of his or her duties as a juror on such days.

(2) In the event that any temporary release from service, other than that obtained by the request of a juror, occasions an extra trip or trips to and from the residence of any juror or jurors the court may, by special order, allow mileage for such extra trip or trips.

(3) Payment of jurors for service in the district and county courts shall be made by the county.

(4) A juror may voluntarily waive payment under this section for his or her service as a juror.

Source: Laws 1867, § 2, p. 90; Laws 1911, c. 51, § 1, p. 234; R.S.1913, § 2463; Laws 1919, c. 115, § 1, p. 280; C.S.1922, § 2404; Laws 1929, c. 105, § 1, p. 395; C.S.1929, § 33-143; Laws 1933, c. 62, § 1, p. 296; C.S.Supp.,1941, § 33-143; R.S.1943, § 33-138; Laws 1947, c. 125, § 1, p. 364; Laws 1957, c. 134, § 1, p. 450; Laws 1965, c. 187, § 1, p. 578; Laws 1969, c. 278, § 1, p. 1045; Laws 1974, LB 736, § 1; Laws 1981, LB 204, § 54; Laws 1984, LB 13, § 75; Laws 1991, LB 147, § 1; Laws 2003, LB 760, § 14; Laws 2012, LB865, § 3; Laws 2020, LB387, § 46.

33-140.03 Unclaimed witness fees; duty of county board to make examination; failure of clerk to pay; suit authorized to recover.

The county board shall examine the books and records of the clerk of the county and district courts of the county. If the board finds that a clerk has failed to report or pay over any of the fees required by section 33-140 to be paid over or reported, the board shall notify the clerk to pay over the fees at once. If the clerk fails to pay over such fees to the county treasurer, the county board shall commence suit in any court having jurisdiction against the clerk and the

person who issued the clerk's bond. The action shall be commenced in the name of the county for the benefit of the common schools of the county.

Source: Laws 1877, § 3, p. 226; R.S.1913, § 6678; C.S.1922, § 6215; C.S.1929, § 77-2604; R.S.1943, § 77-2404; R.S.1943, (1986), § 77-2404; Laws 1989, LB 11, § 4; Laws 2018, LB193, § 73.

33-141 Legal notices; rates.

(1) Until one year after September 9, 1995, the legal rate for the publication of all legal notices other than those exceptional legal notices described in section 33-142 shall be forty-one cents per line, single column, standard newspaper measurements of eight-point type and pica width of eleven for the first insertion and thirty-five and nine-tenths cents per line, single column, standard newspaper measurements of eight-point type and pica width of eleven for each subsequent insertion. Publication of such notices may be in any type selected by the publisher. For the purpose of uniformity, the calculation of fees for such publication shall be based on the official conversion table that follows:

CONVERSION TABLE

Five-and-One-Half-Point Type

Pica Width	First Insertion	Subsequent Insertions
9	48.791 ¢	42.721 ¢
9 1/2	51.502	45.095
10	54.213	47.469
10 1/2	56.924	49.843
11	59.635	52.217
11 1/2	62.346	54.591
12	65.057	56.965
12 1/2	67.768	59.339
13	70.479	61.713
13 1/2	73.190	64.087
14	75.901	66.461
14 1/2	78.612	68.835
15	81.323	71.209
15 1/2	84.034	73.583
16	86.745	75.957

Six-Point Type

Pica Width	First Insertion	Subsequent Insertions
9	44.725 ¢	39.161 ¢
9 1/2	47.210	41.337
10	49.695	43.513
10 1/2	52.180	45.689
11	54.665	47.865
11 1/2	57.150	50.041
12	59.635	52.217
12 1/2	62.120	54.393
13	64.605	56.569
13 1/2	67.090	58.745
14	69.575	60.921
14 1/2	72.060	63.097
15	74.545	65.273

15 1/2	77.030	67.449
16	79.515	69.625

Seven-Point Type

Pica Width	First Insertion	Subsequent Insertions
9	38.339 ¢	33.570 ¢
9 1/2	40.469	35.435
10	42.599	37.300
10 1/2	44.729	39.165
11	46.859	41.030
11 1/2	48.989	42.895
12	51.119	44.760
12 1/2	53.249	46.625
13	55.379	48.490
13 1/2	57.509	50.355
14	59.639	52.220
14 1/2	61.769	54.085
15	63.899	55.950
15 1/2	66.029	57.815
16	68.159	59.680

Eight-Point Type

Pica Width	First Insertion	Subsequent Insertions
9	33.544 ¢	29.372 ¢
9 1/2	35.408	31.004
10	37.272	32.636
10 1/2	39.136	34.268
11	41.000	35.900
11 1/2	42.864	37.532
12	44.728	39.164
12 1/2	46.592	40.796
13	48.456	42.428
13 1/2	50.320	44.060
14	52.184	45.692
14 1/2	54.048	47.324
15	55.912	48.956
15 1/2	57.776	50.588
16	59.640	52.220

Nine-Point Type

Pica Width	First Insertion	Subsequent Insertions
9	29.817 ¢	26.108 ¢
9 1/2	31.474	27.559
10	33.131	29.010
10 1/2	34.788	30.461
11	36.445	31.912
11 1/2	38.102	33.363
12	39.759	34.814
12 1/2	41.416	36.265
13	43.073	37.716
13 1/2	44.730	39.167
14	46.387	40.618
14 1/2	48.044	42.069

15	49.701	43.520
15 1/2	51.358	44.971
16	53.015	46.422

Ten-Point Type

Pica Width	First Insertion	Subsequent Insertions
9	26.836 ¢	23.496 ¢
9 1/2	28.327	24.802
10	29.818	26.108
10 1/2	31.309	27.414
11	32.800	28.720
11 1/2	34.291	30.026
12	35.782	31.332
12 1/2	37.273	32.638
13	38.764	33.944
13 1/2	40.255	35.250
14	41.746	36.556
14 1/2	43.237	37.862
15	44.728	39.168
15 1/2	46.219	40.474
16	47.710	41.780.

(2) Until October 1, 2022, the legal rate for the publication of all legal notices other than those exceptional legal notices described in section 33-142 shall be forty-five cents per line, single column, standard newspaper measurements of eight-point type and pica width of eleven for the first insertion and thirty-nine and four-tenths cents per line, single column, standard newspaper measurements of eight-point type and pica width of eleven for each subsequent insertion. Publication of such notices may be in any type selected by the publisher. For the purpose of uniformity, the calculation of fees for such publication shall be based on the official conversion table that follows:

CONVERSION TABLE

Five-and-One-Half-Point Type

Pica Width	First Insertion	Subsequent Insertions
9	53.553 ¢	46.887 ¢
9 1/2	56.528	49.492
10	59.503	52.097
10 1/2	62.478	54.702
11	65.453	57.307
11 1/2	68.428	59.912
12	71.403	62.517
12 1/2	74.378	65.122
13	77.353	67.727
13 1/2	80.328	70.332
14	83.303	72.937
14 1/2	86.278	75.542
15	89.253	78.147
15 1/2	92.228	80.752
16	95.203	83.357

Six-Point Type

Pica Width	First Insertion	Subsequent Insertions
9	49.087 ¢	42.980 ¢
9 1/2	51.815	45.368
10	54.543	47.756
10 1/2	57.271	50.144
11	59.999	52.532
11 1/2	62.727	54.920
12	65.455	57.308
12 1/2	68.183	59.696
13	70.911	62.084
13 1/2	73.639	64.472
14	76.367	66.860
14 1/2	79.095	69.248
15	81.823	71.636
15 1/2	84.551	74.024
16	87.279	76.412

Seven-Point Type

Pica Width	First Insertion	Subsequent Insertions
9	42.079 ¢	36.842 ¢
9 1/2	44.417	38.889
10	46.755	40.936
10 1/2	49.093	42.983
11	51.431	45.030
11 1/2	53.769	47.077
12	56.107	49.124
12 1/2	58.445	51.171
13	60.783	53.218
13 1/2	63.121	55.265
14	65.459	57.312
14 1/2	67.797	59.359
15	70.135	61.406
15 1/2	72.473	63.453
16	74.811	65.500

Eight-Point Type

Pica Width	First Insertion	Subsequent Insertions
9	36.816 ¢	32.236 ¢
9 1/2	38.862	34.027
10	40.908	35.818
10 1/2	42.954	37.609
11	45.000	39.400
11 1/2	47.046	41.191
12	49.092	42.982
12 1/2	51.138	44.773
13	53.184	46.564
13 1/2	55.230	48.355
14	57.276	50.146
14 1/2	59.322	51.937
15	61.368	53.728
15 1/2	63.414	55.519
16	65.460	57.310

Nine-Point Type

Pica Width	First Insertion	Subsequent Insertions
9	32.724 ¢	28.655 ¢
9 1/2	34.543	30.247
10	36.362	31.839
10 1/2	38.181	33.431
11	40.000	35.023
11 1/2	41.819	36.615
12	43.638	38.207
12 1/2	45.457	39.799
13	47.276	41.391
13 1/2	49.095	42.983
14	50.914	44.575
14 1/2	52.733	46.167
15	54.552	47.759
15 1/2	56.371	49.351
16	58.190	50.943

Ten-Point Type

Pica Width	First Insertion	Subsequent Insertions
9	29.452 ¢	25.788 ¢
9 1/2	31.089	27.221
10	32.726	28.654
10 1/2	34.363	30.087
11	36.000	31.520
11 1/2	37.637	32.953
12	39.274	34.386
12 1/2	40.911	35.819
13	42.548	37.252
13 1/2	44.185	38.685
14	45.822	40.118
14 1/2	47.459	41.551
15	49.096	42.984
15 1/2	50.733	44.417
16	52.370	45.850.

(3) Beginning October 1, 2022, and until October 1, 2023, the legal rate for the publication of all legal notices other than those exceptional legal notices described in section 33-142 shall be forty-eight cents per line, single column, standard newspaper measurements of eight-point type and pica width of eleven for the first insertion and thirty-nine and four-tenths cents per line, single column, standard newspaper measurements of eight-point type and pica width of eleven for each subsequent insertion. Publication of such notices may be in any type selected by the publisher. For the purpose of uniformity, the calculation of fees for such publication shall be based on the official conversion table that follows:

CONVERSION TABLE

Five-and-One-Half-Point Type

Pica Width	First Insertion	Subsequent Insertions
9	57.102 ¢	49.700 ¢

9 1/2	60.296	52.462
10	63.469	55.223
10 1/2	66.643	57.984
11	69.816	60.745
11 1/2	72.989	63.507
12	76.163	66.268
12 1/2	79.336	69.029
13	82.509	71.791
13 1/2	85.683	74.552
14	88.856	77.313
14 1/2	92.029	80.075
15	95.203	82.836
15 1/2	98.376	85.597
16	101.549	88.358

Six-Point Type

Pica Width	First Insertion	Subsequent Insertions
9	52.359 ¢	45.559 ¢
9 1/2	55.269	48.090
10	58.179	50.621
10 1/2	61.089	53.153
11	63.999	55.684
11 1/2	66.908	58.215
12	69.818	60.746
12 1/2	72.728	63.278
13	75.638	65.809
13 1/2	78.548	68.340
14	81.458	94.192
14 1/2	84.367	73.403
15	87.277	75.934
15 1/2	90.187	78.465
16	93.097	80.997

Seven-Point Type

Pica Width	First Insertion	Subsequent Insertions
9	44.884 ¢	39.053 ¢
9 1/2	47.378	41.222
10	49.872	43.392
10 1/2	52.366	45.562
11	54.859	47.732
11 1/2	57.353	49.902
12	59.847	52.071
12 1/2	62.341	54.241
13	64.835	56.411
13 1/2	67.329	58.581
14	69.819	60.751
14 1/2	72.316	62.921
15	74.810	65.090
15 1/2	77.304	67.260
16	79.798	69.430

Eight-Point Type

Pica Width	First Insertion	Subsequent Insertions

9	39.270 ¢	34.170 ¢
9 1/2	41.453	36.069
10	43.635	37.967
10 1/2	45.817	39.866
11	48.000	41.764
11 1/2	50.182	43.662
12	52.364	45.561
12 1/2	54.547	47.459
13	56.729	49.358
13 1/2	58.912	51.256
14	61.094	53.155
14 1/2	63.276	55.053
15	65.459	56.952
15 1/2	67.641	58.850
16	69.824	60.749

Nine-Point Type

Pica Width	First Insertion	Subsequent Insertions
9	34.905 ¢	30.374 ¢
9 1/2	36.846	32.062
10	38.786	33.749
10 1/2	40.726	35.437
11	42.666	37.124
11 1/2	44.607	38.812
12	46.547	40.499
12 1/2	48.487	42.187
13	50.427	43.874
13 1/2	52.368	45.562
14	54.308	47.250
14 1/2	56.248	48.937
15	58.188	50.625
15 1/2	60.129	52.312
16	62.069	54.000

Ten-Point Type

Pica Width	First Insertion	Subsequent Insertions
9	31.415 ¢	27.335 ¢
9 1/2	33.161	28.854
10	34.908	30.373
10 1/2	36.654	31.892
11	38.400	33.411
11 1/2	40.146	34.930
12	41.892	36.449
12 1/2	43.638	37.968
13	45.384	39.487
13 1/2	47.130	41.006
14	48.876	42.525
14 1/2	50.623	44.044
15	52.369	45.563
15 1/2	54.115	47.082
16	55.861	48.601.

(4) Beginning October 1, 2023, the legal rate for the publication of all legal notices other than those exceptional legal notices described in section 33-142

shall be fifty cents per line, single column, standard newspaper measurements of eight-point type and pica width of eleven for the first insertion and thirty-nine and four-tenths cents per line, single column, standard newspaper measurements of eight-point type and pica width of eleven for each subsequent insertion. Publication of such notices may be in any type selected by the publisher. For the purpose of uniformity, the calculation of fees for such publication shall be based on the official conversion table that follows:

CONVERSION TABLE

Five-and-One-Half-Point Type

Pica Width	First Insertion	Subsequent Insertions
9	59.481 ¢	51.576 ¢
9 1/2	62.808	54.441
10	66.114	57.307
10 1/2	69.419	60.172
11	72.725	63.038
11 1/2	76.030	65.903
12	79.336	68.769
12 1/2	82.641	71.634
13	85.947	74.500
13 1/2	89.552	77.365
14	92.558	80.231
14 1/2	95.863	83.096
15	99.169	85.962
15 1/2	102.475	88.827
16	105.780	91.693

Six-Point Type

Pica Width	First Insertion	Subsequent Insertions
9	54.541 ¢	47.278 ¢
9 1/2	57.572	49.905
10	60.603	52.532
10 1/2	63.634	55.158
11	66.665	57.785
11 1/2	69.696	60.412
12	72.727	63.039
12 1/2	75.758	65.666
13	78.789	68.292
13 1/2	81.820	70.919
14	84.851	97.746
14 1/2	87.882	76.173
15	90.914	78.800
15 1/2	93.945	81.426
16	96.976	84.053

Seven-Point Type

Pica Width	First Insertion	Subsequent Insertions
9	46.754 ¢	40.526 ¢
9 1/2	49.352	42.778
10	51.949	45.030
10 1/2	54.547	47.281
11	57.145	49.533

11 1/2	59.743	51.785
12	62.340	54.036
12 1/2	64.938	56.288
13	67.536	58.540
13 1/2	70.134	60.792
14	72.728	63.043
14 1/2	75.329	65.295
15	77.927	67.547
15 1/2	80.525	69.798
16	83.123	72.050

Eight-Point Type

Pica Width	First Insertion	Subsequent Insertions
9	40.906 ¢	35.460 ¢
9 1/2	43.180	37.430
10	45.453	39.400
10 1/2	47.726	41.370
11	50.000	43.340
11 1/2	52.273	45.310
12	54.546	47.280
12 1/2	56.819	49.250
13	59.093	51.220
13 1/2	61.366	53.191
14	63.639	55.161
14 1/2	65.913	57.131
15	68.186	59.101
15 1/2	70.459	61.071
16	72.733	63.041

Nine-Point Type

Pica Width	First Insertion	Subsequent Insertions
9	36.360 ¢	31.521 ¢
9 1/2	38.381	33.272
10	40.402	35.023
10 1/2	42.423	36.774
11	44.444	38.525
11 1/2	46.465	40.277
12	48.486	42.028
12 1/2	50.507	43.779
13	52.528	45.530
13 1/2	54.549	47.281
14	56.571	49.033
14 1/2	58.592	50.784
15	60.613	52.535
15 1/2	62.634	54.286
16	64.655	56.037

Ten-Point Type

Pica Width	First Insertion	Subsequent Insertions
9	32.721 ¢	28.367 ¢
9 1/2	34.540	29.943
10	36.359	31.519
10 1/2	38.177	33.096

11	39.996	34.672
11 1/2	41.815	36.248
12	43.633	37.825
12 1/2	45.452	39.401
13	47.271	40.977
13 1/2	49.090	42.554
14	50.908	44.130
14 1/2	52.727	45.706
15	54.546	47.282
15 1/2	56.364	48.859
16	58.183	50.453.

Source: R.S.1866, c. 19, § 17, p. 168; Laws 1869, § 1, p. 159; R.S.1913, § 2466; Laws 1921, c. 181, § 1, p. 682; C.S.1922, § 2407; C.S. 1929, § 33-146; R.S.1943, § 33-141; Laws 1951, c. 105, § 1, p. 511; Laws 1965, c. 189, § 1, p. 580; Laws 1971, LB 401, § 1; Laws 1982, LB 629, § 1; Laws 1989, LB 298, § 1; Laws 1995, LB 418, § 1; Laws 2022, LB840, § 2.
Effective date July 21, 2022.

CHAPTER 34
FENCES, BOUNDARIES, AND LANDMARKS

ARTICLE 1
DIVISION FENCES

34-112.02 Division fence; construction, maintenance, or repair; notice; court action authorized; hearing; mediation; costs.

(1) Whenever a landowner desires to construct a division fence or perform maintenance or repairs to an existing division fence, such landowner shall give written notice of such intention to any person who is liable for the construction, maintenance, or repair of the division fence. Such notice may be served upon any nonresident by delivering the written notice to the occupant of the land or the landowner's agent in charge of the land. The written notice shall request that the person liable for the construction, maintenance, or repair satisfy his or her obligation by performance or by other manner of contribution. After giving written notice, a landowner may commence construction of a division fence, or commence maintenance or repair upon an existing division fence, in which cases any cause of action under this section and sections 34-102, 34-112, and 34-112.01 shall be an action for contribution.

(2) If notice is given prior to commencing construction, maintenance, or repair of a division fence and the person so notified either fails to respond to such request or refuses such request, the landowner sending notice may commence an action in the county court of the county where the land is located. If the landowners cannot agree what proportion of a division fence each shall construct, maintain, or repair, whether by performance or by contribution, either landowner may commence an action, without further written notice, in the county court of the county where the land is located. An action shall be commenced by filing a fence dispute complaint on a form prescribed by the State Court Administrator and provided to the plaintiff by the clerk of the county court. The complaint shall be executed by the plaintiff in the presence of a judge, a clerk or deputy or assistant clerk of a county court, or a notary public or other person authorized by law to take acknowledgments and be accompanied by the fee provided in section 33-123. A party shall not commence an action under this subsection until thirty days after giving notice under subsection (1) of this section and shall commence the action within one year after giving such notice.

(3) Upon filing of a fence dispute complaint, the court shall set a time for hearing and shall cause notice to be served upon the defendant. Notice shall be served not less than five days before the time set for hearing. Notice shall

consist of a copy of the complaint and a summons directing the defendant to appear at the time set for hearing and informing the defendant that if he or she fails to appear, judgment will be entered against him or her. Notice shall be served in the manner provided for service of a summons in a civil action. If the notice is to be served by certified mail, the clerk shall provide the plaintiff with written instructions, prepared and provided by the State Court Administrator, regarding the proper procedure for service by certified mail. The cost of service shall be paid by the plaintiff, but such cost and filing fee shall be added to any judgment awarded to the plaintiff.

(4) In any proceeding under this section, subsequent to the initial filing, the parties shall receive from the clerk of the court information regarding availability of mediation through the farm mediation service of the Department of Agriculture or the state mediation centers as established through the Office of Dispute Resolution. Development of the informational materials and the implementation of this subsection shall be accomplished through the State Court Administrator. With the consent of both parties, a court may refer a case to mediation and may state a date for the case to return to court, but such date shall be no longer than ninety days from the date the order is signed unless the court grants an extension. If the parties consent to mediate and if a mediation agreement is reached, the court shall enter the agreement as the judgment in the action. The costs of mediation shall be shared by the parties according to the schedule of fees established by the mediation service and collected directly by the mediation service.

(5) If the case is not referred to mediation or if mediation is terminated or fails to reach an agreement between the parties, the action shall proceed as a civil action subject to the rules of civil procedure.

Source: Laws 2007, LB108, § 6; Laws 2018, LB766, § 1.

CHAPTER 35
FIRE COMPANIES AND FIREFIGHTERS

Article.
1. Volunteer Fire Companies. 35-102.
5. Rural and Suburban Fire Protection Districts. 35-506 to 35-540.
10. Death or Disability.
    (a) Cause of Death or Disability. 35-1001.
    (b) Firefighter Cancer Benefits Act. 35-1002 to 35-1010.
12. Mutual Finance Assistance Act. 35-1204 to 35-1207.

ARTICLE 1
VOLUNTEER FIRE COMPANIES

Section
35-102. Volunteer fire department; number of members; apparatus.

35-102 Volunteer fire department; number of members; apparatus.

No volunteer fire department shall have upon its rolls at one time more than twenty-five persons, for each engine and hose company in such fire department, and no hook and ladder company shall have upon its rolls at any one time more than twenty-five members. No organization shall be deemed to be a bona fide fire or hook and ladder company until it has procured for active service apparatus for the extinguishment or prevention of fires, in case of a hose company, to the value of seven hundred dollars, and of a hook and ladder company to the value of five hundred dollars.

Source: Laws 1867 (Ter.), § 2, p. 16; G.S.1873, c. 24, § 2, p. 390; R.S.1913, § 2497; Laws 1915, c. 44, § 1, p. 122; C.S.1922, § 2435; C.S.1929, § 35-102; R.S.1943, § 35-102; Laws 2018, LB193, § 74.

ARTICLE 5
RURAL AND SUBURBAN FIRE PROTECTION DISTRICTS

Section
35-506. District; vote on organization; officers; terms; compensation.
35-507. District; meeting; when held.
35-509. District; budget; tax to support; limitation; how levied; county treasurer; duties.
35-514. District; annexation of territory; procedure.
35-537. Annexation of territory by a city or village; effect on certain contracts.
35-538. Annexation; board of directors; accounting; effect.
35-539. Annexation; when effective; board of directors; duties.
35-540. Annexation; obligations and assessments; agreement to divide; approval; decree.

35-506 District; vote on organization; officers; terms; compensation.

(1) After formation of a district by merger or reorganization under section 35-517, at the time and place fixed by the county board for public hearing as provided in section 35-514, the registered voters who are residing within the

boundaries of the district shall have the opportunity to decide by majority vote of those present whether the organization of the district shall be completed. Permanent organization shall be effected by the election of a board of directors consisting of five residents of the district. Such directors shall at the first regular meeting after their election select from the board a president, a vice president, and a secretary-treasurer who shall serve as the officers of the board of directors for one year. The board shall reorganize itself annually. The elected member of the board of directors receiving the highest number of votes in the election shall preside over the first regular meeting until the officers of such board have been selected. The three members receiving the highest number of votes shall serve for a term of four years and the other two members for a term of two years; and this provision shall apply to directors elected at the organizational meeting of the district.

(2) The board shall reorganize itself annually. Election of directors of existing districts shall be held by the registered voters present at the regular annual meeting provided for in section 35-507 which is held in the calendar year during which the terms of directors are scheduled to expire. As the terms of these members expire, their successors shall be elected for four years and hold office until their successors have been elected. If the district contains more than one township, each township may be represented on the board of directors unless there are more than five townships within the district, and in such event there shall be only five directors on the board and no township shall have more than one member elected to such board of directors. In case of a vacancy on account of resignation, death, malfeasance, or nonfeasance of a member, the remaining members of the board shall fill the vacancy for the unexpired term. The person appointed to fill the vacancy shall be from the same area as the person whose office is vacated, if possible, otherwise from the district at large.

(3) The members of the board of directors of a rural or suburban fire protection district may receive up to fifty dollars for each meeting of the board, but not to exceed twelve meetings in any calendar year, and reimbursement for any actual expenses necessarily incurred as a direct result of their responsibilities and duties as members of the board engaged upon the business of the district. When it is necessary for any member of the board of directors to travel on business of the district and to attend meetings of the district, he or she shall be allowed mileage at the rate provided in section 81-1176 for each mile actually and necessarily traveled.

Source: Laws 1939, c. 38, § 4, p. 193; C.S.Supp.,1941, § 35-604; R.S. 1943, § 35-404; Laws 1949, c. 98, § 6, p. 264; Laws 1967, c. 208, § 1, p. 567; Laws 1969, c. 283, § 1, p. 1051; Laws 1969, c. 257, § 36, p. 950; Laws 1981, LB 204, § 56; Laws 1995, LB 756, § 1; Laws 1998, LB 1120, § 9; Laws 2019, LB63, § 1.

35-507 District; meeting; when held.

A regular meeting of the registered voters who are residing within the boundaries of a district shall be held at the time of the budget hearing as provided by the Nebraska Budget Act, and special meetings may be called by the board of directors at any time. Notice of a meeting shall be given by the secretary-treasurer by one publication in a legal newspaper of general circulation in each county in which such district is situated. Notice of the place and time of a meeting shall be published at least four calendar days prior to the date

set for meeting. For purposes of such notice, the four calendar days shall include the day of publication but not the day of the meeting.

Source: Laws 1949, c. 98, § 7, p. 265; Laws 1971, LB 713, § 1; Laws 1992, LB 1063, § 34; Laws 1992, Second Spec. Sess., LB 1, § 34; Laws 1998, LB 1120, § 10; Laws 2017, LB151, § 4.

Cross References

Nebraska Budget Act, see section 13-501.

35-509 District; budget; tax to support; limitation; how levied; county treasurer; duties.

(1) The board of directors shall have the power and duty to determine a general fire protection and rescue policy for the district and shall annually fix the amount of money for the proposed budget statement as may be deemed sufficient and necessary in carrying out such contemplated program for the ensuing fiscal year, including the amount of principal and interest upon the indebtedness of the district for the ensuing year.

(2)(a) For any rural or suburban fire protection district that has levy authority pursuant to subsection (10) of section 77-3442, after the adoption of the budget statement, the president and secretary of the district shall certify the amount of tax to be levied which the district requires for the adopted budget statement for the ensuing year to the proper county clerk or county clerks on or before September 30 of each year. The county board shall levy a tax not to exceed ten and one-half cents on each one hundred dollars upon the taxable value of all the taxable property in such district for the maintenance of the fire protection district for the fiscal year, plus such levy as is authorized to be made under subdivision (13)(a) of section 35-508, all such levies being subject to subsection (10) of section 77-3442. The tax shall be collected as other taxes are collected in the county, deposited with the county treasurer, and placed to the credit of the rural or suburban fire protection district so authorizing the same on or before the fifteenth day of each month or more frequently as provided in section 77-1759 or be remitted to the county treasurer of the county in which the greatest portion of the valuation of the district is located as is provided for by subsection (3) of this section.

(b) For any rural or suburban fire protection district that does not have levy authority pursuant to subsection (10) of section 77-3442, after the adoption of the budget statement, the president and secretary of the district shall request the amount of tax to be levied which the district requires for the adopted budget statement for the ensuing year to the proper county clerk or county clerks on or before August 1 of each year pursuant to subsection (3) of section 77-3443. The county board shall levy a tax not to exceed ten and one-half cents on each one hundred dollars upon the taxable value of all the taxable property in such district for the maintenance of the fire protection district for the fiscal year, plus such levy as is authorized to be made under subdivision (13)(b) of section 35-508, all such levies being subject to section 77-3443. The tax shall be collected as other taxes are collected in the county, deposited with the county treasurer, and placed to the credit of the rural or suburban fire protection district so authorizing the same on or before the fifteenth day of each month or more frequently as provided in section 77-1759 or be remitted to the county treasurer of the county in which the greatest portion of the valuation of the district is located as is provided for by subsection (3) of this section. For

purposes of section 77-3443, the county board of the county in which the greatest portion of the valuation of the district is located shall approve the levy.

(3) All such taxes collected or received for the district by the treasurer of any other county than the one in which the greatest portion of the valuation of the district is located shall be remitted to the treasurer of the county in which the greatest portion of the valuation of the district is located at least quarterly. All such taxes collected or received shall be placed to the credit of such district in the treasury of the county in which the greatest portion of the valuation of the district is located.

(4) In no case shall the amount of tax levy exceed the amount of funds to be received from taxation according to the adopted budget statement of the district.

Source: Laws 1939, c. 38, § 5, p. 193; C.S.Supp.,1941, § 35-605; R.S. 1943, § 35-405; Laws 1947, c. 128, § 1, p. 368; Laws 1949, c. 98, § 9, p. 266; Laws 1953, c. 121, § 1, p. 383; Laws 1953, c. 287, § 54, p. 962; Laws 1955, c. 127, § 1, p. 360; Laws 1955, c. 128, § 4, p. 365; Laws 1969, c. 145, § 34, p. 693; Laws 1972, LB 849, § 3; Laws 1975, LB 375, § 2; Laws 1979, LB 187, § 150; Laws 1990, LB 918, § 3; Laws 1992, LB 719A, § 131; Laws 1996, LB 1114, § 55; Laws 1998, LB 1120, § 12; Laws 2007, LB334, § 5; Laws 2015, LB325, § 4; Laws 2019, LB63, § 2; Laws 2021, LB644, § 16.

35-514 District; annexation of territory; procedure.

(1) Any territory which is outside the limits of any incorporated city may be annexed to an adjacent district in the manner provided in this section, whether or not the territory is in an existing rural or suburban fire protection district.

(2) The proceedings for the annexation may be initiated by either (a) the presentation to the county clerk of a petition signed by sixty percent or more of the registered voters who are residing within the boundaries of the territory to be annexed stating the desires and purposes of such petitioners or (b) the presentation to the county clerk of certified copies of resolutions passed by the board of directors of the annexing district and any other district from which the property would be annexed supporting the proposed annexation. The petition or resolutions shall contain a description of the boundaries of the territory proposed to be annexed. The petition or resolutions shall be accompanied by a map or plat and a deposit for publication costs.

(3) The county clerk shall verify the petition as provided in section 32-631 and determine and certify whether or not such petition or resolution complies with the requirements of subsection (2) of this section and that the persons signing the petition appear to reside at the addresses indicated by such petition. Thereafter, the county clerk shall forward any petition, map or plat, and certificate to the board of directors of the districts concerned.

(4) Within thirty days after receiving the petition, map or plat, and certificate of the county clerk, in accordance with subsection (3) of this section, from the county clerk, the board of directors of all affected districts shall transmit the same to the proper county board, accompanied by a report in writing approving or disapproving the proposal contained in the petition, or approving such proposal in part and disapproving it in part. If the annexation is proposed by

resolutions of the affected districts, the resolutions shall be transmitted to the proper county board.

(5) The county board shall promptly designate a time and place for a hearing upon the annexation. Notice of such hearing shall be given by publication two weeks in a newspaper of general circulation in the county, the last publication appearing at least seven days prior to the hearing. The notice shall be addressed to ''all registered voters residing in the following boundaries'' and shall include a description of the proposed boundaries as set forth in the petition or resolutions. At such hearing, any person shall have the opportunity to be heard respecting the proposed annexation.

(6) The county board shall, within forty-five days after the hearing referred to in subsection (5) of this section, determine whether such territory should be annexed and shall fix the boundaries of the territory to be annexed. No annexation shall be approved which would leave any district with less than the minimum valuation of two million eight hundred sixty thousand dollars. The determination of the county board shall be set forth in a written order which shall describe the boundaries determined upon and shall be filed in the office of the county clerk.

(7) Any area annexed from a rural or suburban fire protection district, except areas duly incorporated within the boundaries of a municipality, shall be subject to assessment and be otherwise chargeable for the payment and discharge of all the obligations of the rural or suburban fire protection district outstanding at the time of the filing of the petition or resolution for the annexation of the area as fully as though the area had not been annexed. All procedures which could be used to compel the annexed area, except for areas duly incorporated within the boundaries of a municipality, to pay its portion of the outstanding obligations had the annexation not occurred may be used to compel such payment. Areas duly incorporated within the boundaries of a municipality shall be automatically annexed from the boundaries of the district notwithstanding the provisions of section 35-540 and shall not be subject to further tax levy or other charges by the district, except that before the annexation is complete, the municipality shall assume and pay that portion of all outstanding obligations of the district which would otherwise constitute an obligation of the area annexed or incorporated. An area annexed from a rural or suburban fire protection district shall not be subject to assessment or otherwise chargeable for any obligation of any nature or kind incurred by the district after the annexation of the area from the district.

Source: Laws 1949, c. 98, § 14, p. 268; Laws 1953, c. 120, § 2, p. 379; Laws 1955, c. 128, § 9, p. 368; Laws 1957, c. 136, § 1, p. 454; Laws 1981, LB 310, § 1; Laws 1998, LB 1120, § 15; Laws 2018, LB130, § 9.

35-537 Annexation of territory by a city or village; effect on certain contracts.

Whenever any city or village annexes all the territory within the boundaries of any rural or suburban fire protection district authorized under Chapter 35, article 5, the district shall merge with the city or village and the city or village shall succeed to all the property and property rights of every kind, contracts, obligations, and choses in action of every kind, held by or belonging to the district, and the city or village shall be liable for and recognize, assume, and carry out all valid contracts and obligations of the district. All taxes, assess-

ments, claims, and demands of every kind due or owing to the district shall be paid to and collected by the city or village. Nothing in this section shall authorize the annexing city or village to revoke any resolution, order, or finding made by the district in regard to special benefits or increase any assessments made by the district, but such city or village shall be bound by all such findings or orders and assessments to the same extent as the district would be bound.

Source: Laws 2018, LB130, § 5.

35-538 Annexation; board of directors; accounting; effect.

The board of directors of a rural or suburban fire protection district shall, within thirty days after the effective date of the merger, submit to the city or village a written accounting of all assets and liabilities, contingent or fixed, of the district. Unless the city or village within six months thereafter brings an action against the board of directors of the district for an accounting or for damages for breach of duty, the board of directors shall be discharged of all further duties and liabilities and their bonds exonerated. If the city or village brings such an action and does not recover judgment in its favor, the taxable costs may include reasonable expenses incurred by the board of directors in connection with such suit and a reasonable attorney's fee for the board's attorney. The city or village shall represent the district and all parties who might be interested in such an action. The city or village and such board shall be the only necessary parties to such action.

Source: Laws 2018, LB130, § 6.

35-539 Annexation; when effective; board of directors; duties.

The merger shall be effective thirty days after the effective date of the ordinance annexing the territory within the rural or suburban fire protection district. If the validity of the ordinance annexing the territory is challenged by a proceeding in a court of competent jurisdiction, the effective date of the merger shall be thirty days after the final determination of the validity of the ordinance. The board of directors of the district of the rural or suburban fire protection district shall continue in possession and conduct the affairs of the district until the effective date of the merger.

Source: Laws 2018, LB130, § 7.

35-540 Annexation; obligations and assessments; agreement to divide; approval; decree.

If only a part of the territory within any rural or suburban fire protection district is annexed by a city or village, the fire protection district acting through its board of directors and the city or village acting through its governing body may agree between themselves as to the division of the assets, liabilities, maintenance, contracts, or other obligations of the district for a change in the boundaries of the district so as to exclude the portion annexed by the city or village or may agree upon a merger of the district with the city or village. The division of assets, liabilities, maintenance, contracts, or other obligations of the district shall be equitable, shall be proportionate to the valuation of the portion of the district annexed and to the valuation of the portion of the district remaining following annexation, and shall, to the greatest extent feasible, reflect the actual impact of the annexation on the ability of the district to perform its duties and responsibilities within its new boundaries following

annexation. In the event a merger is agreed upon, the city or village shall have all the rights, privileges, duties, and obligations as provided in sections 35-537 to 35-539 when the city or village annexes the entire territory within the district, and the board of directors shall be relieved of all further duties and liabilities and their bonds exonerated as provided in section 35-538. No agreement between the district and the city or village shall be effective until submitted to and approved by the district court of the county in which the major portion of the district is located. No agreement shall be approved which may prejudice the rights of any bondholder or creditor of the district or employee under contract to the district. The court may authorize or direct amendments to the agreement before approving the same. If the district and city or village do not agree upon the proper adjustment of all matters growing out of the annexation of a part of the territory located within the district, the district, the annexing city or village, any bondholder or creditor of the district, or any employee under contract to the district may apply to the district court of the county where the major portion of the district is located for an adjustment of all matters growing out of or in any way connected with the annexation of such territory, and after a hearing thereon the court may enter an order or decree fixing the rights, duties, and obligations of the parties. In every case such decree or order shall require a change of the district boundaries so as to exclude from the district that portion of the territory of the district which has been annexed. Such change of boundaries shall become effective on the date of entry of such decree. Only the district and the city or village shall be necessary parties to such an action. Any bondholder or creditor of the district or any employee under contract to the district whose interests may be adversely affected by the annexation may intervene in the action pursuant to section 25-328. The decree when entered shall be binding on the parties the same as though the parties had voluntarily agreed thereto.

Source: Laws 2018, LB130, § 8.

ARTICLE 10
DEATH OR DISABILITY

(a) CAUSE OF DEATH OR DISABILITY

(b) FIREFIGHTER CANCER BENEFITS ACT

(a) CAUSE OF DEATH OR DISABILITY

35-1001 Death or disability as a result of cancer; death or disability as a result of certain diseases; prima facie evidence.

(1) For a firefighter or firefighter-paramedic who is a member of a paid fire department of a municipality or a rural or suburban fire protection district in this state, including a municipality having a home rule charter or a municipal authority created pursuant to a home rule charter that has its own paid fire department, and who suffers death or disability as a result of cancer, including, but not limited to, breast cancer, ovarian cancer, and cancer affecting the skin or the central nervous, lymphatic, digestive, hematological, urinary, skeletal, oral, or prostate systems, evidence which demonstrates that (a) such firefighter or firefighter-paramedic successfully passed a physical examination upon entry into such service or subsequent to such entry, which examination failed to reveal any evidence of cancer, (b) such firefighter or firefighter-paramedic was exposed to a known carcinogen, as defined on July 19, 1996, by the International Agency for Research on Cancer, while in the service of the fire department, and (c) such carcinogen is reported by the agency to be a suspected or known cause of the type of cancer the firefighter or firefighter-paramedic has, shall be prima facie evidence that such death or disability resulted from injuries, accident, or other cause while in the line of duty for the purposes of sections 16-1020 to 16-1042, a firefighter's pension plan established pursuant to a home rule charter, and a firefighter's pension or disability plan established by a rural or suburban fire protection district.

(2) For a firefighter or firefighter-paramedic who is a member of a paid fire department of a municipality or a rural or suburban fire protection district in this state, including a municipality having a home rule charter or a municipal authority created pursuant to a home rule charter that has its own paid fire department, and who suffers death or disability as a result of a blood-borne infectious disease, tuberculosis, meningococcal meningitis, or methicillin-resistant Staphylococcus aureus, evidence which demonstrates that (a) such firefighter or firefighter-paramedic successfully passed a physical examination upon entry into such service or subsequent to such entry, which examination failed to reveal any evidence of such blood-borne infectious disease, tuberculosis, meningococcal meningitis, or methicillin-resistant Staphylococcus aureus, and (b) such firefighter or firefighter-paramedic has engaged in the service of the fire department within ten years before the onset of the disease, shall be prima facie evidence that such death or disability resulted from injuries, accident, or other cause while in the line of duty for the purposes of sections 16-1020 to 16-1042, a firefighter's pension plan established pursuant to a home rule charter, and a firefighter's pension or disability plan established by a rural or suburban fire protection district.

(3) The prima facie evidence presumed under this section shall extend to death or disability as a result of cancer as described in this section, a blood-borne infectious disease, tuberculosis, meningococcal meningitis, or methicillin-resistant Staphylococcus aureus after the firefighter or firefighter-paramedic separates from his or her service to the fire department if the death or disability occurs within three months after such separation.

(4) For purposes of this section, blood-borne infectious disease means human immunodeficiency virus, acquired immunodeficiency syndrome, and all strains of hepatitis.

Source: Laws 1996, LB 1076, § 45; Laws 2010, LB373, § 2; Laws 2020, LB643, § 1.

(b) FIREFIGHTER CANCER BENEFITS ACT

35-1002 Act, how cited.

Sections 35-1002 to 35-1010 shall be known and may be cited as the Firefighter Cancer Benefits Act.

Source: Laws 2021, LB432, § 1.

35-1003 Terms, defined.

For purposes of the Firefighter Cancer Benefits Act:

(1) Cancer means:

(a) A disease (i) caused by an uncontrolled division of abnormal cells in a part of the body or a malignant growth or tumor resulting from the division of abnormal cells and (ii) affecting the prostate, breast, or lung or the lymphatic, hematological, digestive, urinary, neurological, or reproductive system; or

(b) Melanoma; and

(2) Firefighter means:

(a) A firefighter or firefighter-paramedic who is a member of a paid fire department of a municipality or a rural or suburban fire protection district in this state, including a municipality having a home rule charter or a municipal authority created pursuant to a home rule charter that has its own paid fire department;

(b) A firefighter or firefighter-paramedic who is a member of a paid fire department of an airport authority; or

(c) A volunteer firefighter who has been deemed an employee under subdivision (3) of section 48-115.

Source: Laws 2021, LB432, § 2.

35-1004 Benefits; entitled, when.

Before any firefighter is entitled to benefits under the Firefighter Cancer Benefits Act, such firefighter shall (1) have successfully passed a physical examination which failed to reveal any evidence of cancer, (2) have served at least twenty-four consecutive months as a firefighter at any fire station within the State of Nebraska, (3) have been actively engaged in fire suppression at an actual fire or fire training event, and (4) wear all available personal protective equipment when fighting any fire, including a self-contained breathing apparatus when fighting structure fires. After serving at least twenty-four consecutive months as a firefighter, the firefighter shall be deemed to be in compliance with subdivision (2) of this section even with a break in service, so long as such break does not exceed six months.

Source: Laws 2021, LB432, § 3.

35-1005 Enhanced cancer benefits; provide and maintain; minimum benefits; additional payment upon death; conditions.

(1) Beginning on and after January 1, 2022, any rural or suburban fire protection district, airport authority, city, village, or nonprofit corporation may provide and maintain enhanced cancer benefits. If such benefits are provided, they shall include, at a minimum, the following:

(a) A lump-sum benefit of twenty-five thousand dollars for each diagnosis payable to a firefighter upon acceptable proof to the insurance carrier or other payor of a diagnosis by a board-certified physician in the medical specialty appropriate for the type of cancer diagnosed that there are one or more malignant tumors characterized by the uncontrollable and abnormal growth and spread of malignant cells with invasion of normal tissue, and that either:

(i) There is metastasis and:

(A) Surgery, radiotherapy, or chemotherapy is medically necessary; or

(B) There is a tumor of the prostate, provided that it is treated with radical prostatectomy or external beam therapy; or

(ii) Such firefighter has terminal cancer, his or her life expectancy is twenty-four months or less from the date of diagnosis, and he or she will not benefit from, or has exhausted, curative therapy;

(b) A lump-sum benefit of six thousand two hundred fifty dollars for each diagnosis payable to a firefighter upon acceptable proof to the insurance carrier or other payor of a diagnosis by a board-certified physician in the medical specialty appropriate for the type of cancer involved that either:

(i) There is carcinoma in situ such that surgery, radiotherapy, or chemotherapy has been determined to be medically necessary;

(ii) There are malignant tumors which are treated by endoscopic procedures alone; or

(iii) There are malignant melanomas; and

(c)(i) A monthly benefit of one thousand five hundred dollars payable to a firefighter, of which the first payment shall be made six months after total disability and submission of acceptable proof of such disability to the insurance carrier or other payor that such disability is caused by cancer and that such cancer precludes the firefighter from serving as a firefighter. Such benefit shall continue for up to thirty-six consecutive monthly payments.

(ii) Such monthly benefit shall be subordinate to any other benefit actually paid to the firefighter solely for such disability from any other source, not including private insurance purchased solely by the firefighter, and shall be limited to the difference between the amount of such other pay benefit and the amount specified in this section.

(iii) Any firefighter receiving such monthly benefit may be required to have his or her condition reevaluated. In the event any such reevaluation reveals that such person has regained the ability to perform duties as a firefighter, then his or her monthly benefits shall cease the last day of the month of the reevaluation.

(iv) In the event that there is a subsequent reoccurrence of a disability caused by cancer which precludes the firefighter from serving as a firefighter, he or she shall be entitled to receive any remaining monthly benefits.

(2) A firefighter shall also be entitled to an additional payment of enhanced cancer death benefits in the amount of fifty thousand dollars payable to his or her beneficiary or, if no beneficiary is named, to such firefighter's estate upon acceptable proof by a board-certified physician that such firefighter's death resulted from complications associated with cancer.

(3) A firefighter shall be ineligible for benefits under the Firefighter Cancer Benefits Act if he or she is already provided paid firefighter cancer benefits pursuant to section 35-1001.

Source: Laws 2021, LB432, § 4.

35-1006 Benefits; maximum amount.

The combined total of all benefits received by any firefighter pursuant to subdivisions (1)(a) and (b) of section 35-1005 during his or her lifetime shall not exceed fifty thousand dollars.

Source: Laws 2021, LB432, § 5.

35-1007 Firefighter; cessation of status; eligibility for benefits; rural or suburban fire protection district, airport authority, city, village, or nonprofit corporation; responsible for payment of premiums or other costs.

A firefighter shall remain eligible for benefits pursuant to subsections (1) and (2) of section 35-1005 for thirty-six months after the formal cessation of the firefighter's status as a firefighter. If a firefighter has a physical examination during the thirty-six months of eligibility that reveals evidence of cancer, the firefighter shall be eligible for benefits under subsections (1) and (2) of section 35-1005 even if such benefits are paid after the thirty-six-month eligibility period ends. The rural or suburban fire protection district, airport authority, city, village, or nonprofit corporation for which such firefighter served shall be responsible for payment of all premiums or other costs associated with benefits that may be provided under subsections (1) and (2) of section 35-1005 throughout the duration of the firefighter's coverage.

Source: Laws 2021, LB432, § 6.

35-1008 Benefits; proof of insurance coverage or ability to pay; documentation.

A rural or suburban fire protection district, airport authority, city, village, or nonprofit corporation, if it provides benefits pursuant to subsections (1) and (2) of section 35-1005, shall maintain proof of insurance coverage that meets the requirements of the Firefighter Cancer Benefits Act or shall maintain satisfactory proof of the ability to pay such compensation to ensure adequate coverage for all firefighters. Sufficient documentation of satisfactory proof of the ability to pay such compensation to ensure adequate coverage for all firefighters shall be required and shall comply with rules and regulations adopted and promulgated by the State Fire Marshal. Such coverage shall remain in effect until thirty-six months after the rural or suburban fire protection district, airport authority, city, village, or nonprofit corporation no longer has any firefighters who could qualify for benefits under the act.

Source: Laws 2021, LB432, § 7.

35-1009 Reports; requirements.

(1) Any rural or suburban fire protection district, airport authority, city, village, or nonprofit corporation that has had a firefighter file a claim for or receive cancer benefits under the Firefighter Cancer Benefits Act shall report such claims filed, claims paid, and types of claims to the State Fire Marshal. On or before December 1, 2023, and on or before December 1 of each year

thereafter, the State Fire Marshal shall submit electronically an annual report to the Legislature and Governor stating the number of firefighters who have filed claims pursuant to the act and the number of firefighters who have received benefits under the act.

(2) If the firefighters in a fire department are being provided cancer benefits under the Firefighter Cancer Benefits Act, the fire chief of such fire department, or his or her designee, shall submit an annual report to the governing body of the rural or suburban fire protection district, airport authority, city, or village served by such fire department listing the total number of fire suppression incidents occurring during the most recently completed calendar year. Such report shall be submitted on or before February 15, 2023, and on or before February 15 of each year thereafter.

Source: Laws 2021, LB432, § 8.

35-1010 Rules and regulations.

The State Fire Marshal may adopt and promulgate rules and regulations necessary to carry out the Firefighter Cancer Benefits Act.

Source: Laws 2021, LB432, § 9.

ARTICLE 12

MUTUAL FINANCE ASSISTANCE ACT

Section
35-1204. Mutual finance organization; creation by agreement; tax levy.
35-1206. Distributions from fund; amount; disqualification; when.
35-1207. Application for distribution; financial information required; State Treasurer; duties.

35-1204 Mutual finance organization; creation by agreement; tax levy.

(1) A mutual finance organization may be created by agreement among its members pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act. The agreement shall:

(a) Have a duration of three years;

(b) Require that each member of the mutual finance organization levy the same agreed-upon property tax rate within their boundaries for one out of the three tax years covered by the agreement. The members need not levy such agreed-upon property tax rate during the same year;

(c) Require that all members of the mutual finance organization levy no more than such agreed-upon property tax rate for the remaining tax years covered by the agreement; and

(d) Contain a statement of the agreed-upon maximum property tax rate.

(2) The property tax rates described in subsection (1) of this section shall be levied for the purpose of jointly funding the operations of all members of the mutual finance organization. All such property tax rates shall exclude levies for bonded indebtedness and lease-purchase contracts in existence on July 1, 1998.

(3) The changes made to this section by Laws 2020, LB1130, do not affect eligibility for funding pursuant to the Mutual Finance Assistance Act that is to be paid on or before May 1, 2021.

Source: Laws 1998, LB 1120, § 4; Laws 1999, LB 87, § 70; Laws 2019, LB63, § 3; Laws 2020, LB1130, § 1.

Cross References

Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.

35-1206 Distributions from fund; amount; disqualification; when.

(1)(a) Rural and suburban fire protection districts or mutual finance organizations which qualify for assistance under section 35-1205 shall receive ten dollars times the assumed population of the fire protection district or mutual finance organization as calculated in subsection (3) of such section plus the population of any city of the first class that is part of the district or mutual finance organization, not to exceed three hundred thousand dollars for any one district or mutual finance organization;

(b) Each village or city of the second class that is a member of a mutual finance organization which qualifies for assistance under section 35-1205 shall receive ten thousand dollars; and

(c) Each rural or suburban fire protection district which qualifies for assistance under section 35-1205 shall receive ten thousand dollars, regardless of whether such district is a member in a mutual finance organization which qualifies for assistance under section 35-1205.

(2) If the district or mutual finance organization is located in more than one county and meets the threshold for qualification in subsection (1) or (2) of section 35-1205 in one of such counties, the district or mutual finance organization shall receive assistance under this section for all of its assumed population, including that which is assumed population in counties for which the threshold is not reached by the district or mutual finance organization.

(3) If a mutual finance organization qualifies for assistance under this section and one or more rural or suburban fire protection districts or cities or villages fail to levy a tax rate that complies with subsection (1) of section 35-1204, as required under the mutual finance organization agreement, the mutual finance organization shall be disqualified for assistance in the following year and each subsequent year until the year following any year for which all districts and cities and villages in the mutual finance organization levy a tax rate that complies with subsection (1) of section 35-1204, as required by a mutual finance organization agreement.

Source: Laws 1998, LB 1120, § 6; Laws 1999, LB 141, § 8; Laws 2019, LB63, § 4; Laws 2021, LB664, § 1.

Note: The Revisor of Statutes, as authorized by section 49-705(1)(g), has corrected a manifest clerical error in Laws 2021, LB664, section 1, by changing two references to section 32-1205 which should have been section 35-1205 in subdivision (1)(c) of section 35-1206.

35-1207 Application for distribution; financial information required; State Treasurer; duties.

(1) Any rural or suburban fire protection district or mutual finance organization seeking funds pursuant to the Mutual Finance Assistance Act shall submit an application and any forms required by the State Treasurer. Such application and forms shall be submitted to the State Treasurer by September 20. The State Treasurer shall develop the application which requires calculations showing assumed population eligibility under section 35-1205 and the distribution amount under section 35-1206. If the applicant is a mutual finance organization, it shall attach to its first application a copy of the agreement pursuant to section 35-1204 and attach to any subsequent application a copy of an amended

agreement or an affidavit stating that the previously submitted agreement is still accurate and effective. Any mutual finance organization making application pursuant to this section shall include with the application additional financial information regarding the manner in which any funds received by the mutual finance organization based upon the prior year's application pursuant to the act have been expended or distributed by that mutual finance organization. The State Treasurer shall provide electronic copies of such reports on mutual finance organization expenditures and distributions to the Clerk of the Legislature by December 1 of each year in which any reports are filed.

(2) The State Treasurer shall review all applications for eligibility for funds under the act and approve any application which is accurate and demonstrates that the applicant is eligible for funds. On or before November 4, the State Treasurer shall notify the applicant of approval or denial of the application and certify the amount of funds for which an approved applicant is eligible. The decision of the State Treasurer may be appealed as provided in the Administrative Procedure Act.

(3)(a) Except as provided in subsection (5) of this section, funds shall be disbursed by the State Treasurer in two payments which are as nearly equal as possible. Such payments shall be made as follows:

(i) For applications received by the State Treasurer by July 1, 2020, such payments shall be made on or before November 1, 2020, and May 1, 2021;

(ii) For applications received by the State Treasurer after July 1, 2020, and by September 20, 2021, such payments shall be made on or before January 20, 2022, and May 20, 2022; and

(iii) For applications received by the State Treasurer by September 20 of any year thereafter, such payments shall be made on or before the next following January 20 and May 20.

(b) If the Mutual Finance Assistance Fund is insufficient to make all payments to all applicants in the amounts provided in section 35-1206, the State Treasurer shall prorate payments to approved applicants.

(4) Funds remaining in the Mutual Finance Assistance Fund on June 20 shall be transferred to the General Fund before July 1.

(5) No funds shall be disbursed to an eligible mutual finance organization until it has provided to the State Treasurer the financial information regarding the manner in which it has expended or distributed prior disbursements made pursuant to the Mutual Finance Assistance Act as provided in subsection (1) of this section.

Source: Laws 1998, LB 1120, § 7; Laws 2006, LB 1175, § 6; Laws 2012, LB782, § 34; Laws 2019, LB63, § 5; Laws 2020, LB1130, § 2.

Cross References

Administrative Procedure Act, see section 84-920.

CHAPTER 36
FRAUD AND VOIDABLE TRANSACTIONS

Article.
7. Uniform Fraudulent Transfer Act. Repealed.
8. Uniform Voidable Transactions Act. 36-801 to 36-815.

ARTICLE 7
UNIFORM FRAUDULENT TRANSFER ACT

Section
36-701. Repealed. Laws 2019, LB70, § 20.
36-702. Repealed. Laws 2019, LB70, § 20.
36-703. Repealed. Laws 2019, LB70, § 20.
36-704. Repealed. Laws 2019, LB70, § 20.
36-705. Repealed. Laws 2019, LB70, § 20.
36-706. Repealed. Laws 2019, LB70, § 20.
36-707. Repealed. Laws 2019, LB70, § 20.
36-708. Repealed. Laws 2019, LB70, § 20.
36-709. Repealed. Laws 2019, LB70, § 20.
36-710. Repealed. Laws 2019, LB70, § 20.
36-711. Repealed. Laws 2019, LB70, § 20.
36-712. Repealed. Laws 2019, LB70, § 20.

36-701 Repealed. Laws 2019, LB70, § 20.

36-702 Repealed. Laws 2019, LB70, § 20.

36-703 Repealed. Laws 2019, LB70, § 20.

36-704 Repealed. Laws 2019, LB70, § 20.

36-705 Repealed. Laws 2019, LB70, § 20.

36-706 Repealed. Laws 2019, LB70, § 20.

36-707 Repealed. Laws 2019, LB70, § 20.

36-708 Repealed. Laws 2019, LB70, § 20.

36-709 Repealed. Laws 2019, LB70, § 20.

36-710 Repealed. Laws 2019, LB70, § 20.

36-711 Repealed. Laws 2019, LB70, § 20.

36-712 Repealed. Laws 2019, LB70, § 20.

ARTICLE 8
UNIFORM VOIDABLE TRANSACTIONS ACT

Section
36-801. Short title.
36-802. Definitions.

36-801 Short title.

Sections 36-801 to 36-815 shall be known and may be cited as the Uniform Voidable Transactions Act.

Source: Laws 2019, LB70, § 1.

36-802 Definitions.

As used in the Uniform Voidable Transactions Act:

(1) Affiliate means:

(i) a person that directly or indirectly owns, controls, or holds with power to vote, twenty percent or more of the outstanding voting securities of the debtor, other than a person that holds the securities:

(A) as a fiduciary or agent without sole discretionary power to vote the securities; or

(B) solely to secure a debt, if the person has not in fact exercised the power to vote;

(ii) a corporation twenty percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor or a person that directly or indirectly owns, controls, or holds, with power to vote, twenty percent or more of the outstanding voting securities of the debtor, other than a person that holds the securities:

(A) as a fiduciary or agent without sole discretionary power to vote the securities; or

(B) solely to secure a debt, if the person has not in fact exercised the power to vote;

(iii) a person whose business is operated by the debtor under a lease or other agreement, or a person substantially all of whose assets are controlled by the debtor; or

(iv) a person that operates the debtor's business under a lease or other agreement or controls substantially all of the debtor's assets.

(2) Asset means property of a debtor, but the term does not include:

(i) property to the extent it is encumbered by a valid lien;

(ii) property to the extent it is generally exempt under nonbankruptcy law; or

(iii) an interest in property held in tenancy by the entireties to the extent it is not subject to process by a creditor holding a claim against only one tenant.

(3) Claim, except as used in claim for relief, means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

(4) Creditor means a person that has a claim.

(5) Debt means liability on a claim.

(6) Debtor means a person that is liable on a claim.

(7) Electronic means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(8) Insider includes:

(i) if the debtor is an individual:

(A) a relative of the debtor or of a general partner of the debtor;

(B) a partnership in which the debtor is a general partner;

(C) a general partner in a partnership described in subdivision (8)(i)(B) of this section; or

(D) a corporation of which the debtor is a director, officer, or person in control;

(ii) if the debtor is a corporation:

(A) a director of the debtor;

(B) an officer of the debtor;

(C) a person in control of the debtor;

(D) a partnership in which the debtor is a general partner;

(E) a general partner in a partnership described in subdivision (8)(ii)(D) of this section; or

(F) a relative of a general partner, director, officer, or person in control of the debtor;

(iii) if the debtor is a partnership:

(A) a general partner in the debtor;

(B) a relative of a general partner in, a general partner of, or a person in control of the debtor;

(C) another partnership in which the debtor is a general partner;

(D) a general partner in a partnership described in subdivision (8)(iii)(C) of this section; or

(E) a person in control of the debtor;

(iv) an affiliate, or an insider of an affiliate as if the affiliate were the debtor; and

(v) a managing agent of the debtor.

(9) Lien means a charge against or an interest in property to secure payment of a debt or performance of an obligation, and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common-law lien, or a statutory lien.

(10) Organization means a person other than an individual.

(11) Person means an individual, estate, partnership, association, trust, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal or commercial entity.

(12) Property means anything that may be the subject of ownership.

(13) Record means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(14) Relative means an individual related by consanguinity within the third degree as determined by the common law, a spouse, or an individual related to a spouse within the third degree as so determined, and includes an individual in an adoptive relationship within the third degree.

(15) Sign means, with present intent to authenticate or adopt a record:

(i) to execute or adopt a tangible symbol; or

(ii) to attach to or logically associate with the record an electronic symbol, sound, or process.

(16) Transfer means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, license, and creation of a lien or other encumbrance.

(17) Valid lien means a lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process or proceedings.

Source: Laws 2019, LB70, § 2.

36-803 Insolvency.

(a) A debtor is insolvent if, at a fair valuation, the sum of the debtor's debts is greater than the sum of the debtor's assets.

(b) A debtor that is generally not paying the debtor's debts as they become due other than as a result of a bona fide dispute is presumed to be insolvent. The presumption imposes on the party against which the presumption is directed the burden of proving that the nonexistence of insolvency is more probable than its existence.

(c) Assets under this section do not include property that has been transferred, concealed, or removed with intent to hinder, delay, or defraud creditors or that has been transferred in a manner making the transfer voidable under the Uniform Voidable Transactions Act.

(d) Debts under this section do not include an obligation to the extent it is secured by a valid lien on property of the debtor not included as an asset.

Source: Laws 2019, LB70, § 3.

36-804 Value.

(a) Value is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred or an antecedent debt is secured or satisfied, but value does not include an unperformed promise made otherwise than in the ordinary course of the promisor's business to furnish support to the debtor or another person.

(b) For the purposes of subdivision (a)(2) of section 36-805 and section 36-806, a person gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly conducted, noncollusive foreclosure sale or execution of a power of sale for the acquisition or disposition of the interest of the debtor upon default under a mortgage, deed of trust, or security agreement.

(c) A transfer is made for present value if the exchange between the debtor and the transferee is intended by them to be contemporaneous and is in fact substantially contemporaneous.

Source: Laws 2019, LB70, § 4.

36-805 Transfer or obligation voidable as to present or future creditor.

(a) A transfer made or obligation incurred by a debtor is voidable as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

(1) with actual intent to hinder, delay, or defraud any creditor of the debtor; or

(2) without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:

(i) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

(ii) intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due.

(b) In determining actual intent under subdivision (a)(1) of this section, consideration may be given, among other factors, to whether:

(1) the transfer or obligation was to an insider;

(2) the debtor retained possession or control of the property transferred after the transfer;

(3) the transfer or obligation was disclosed or concealed;

(4) before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;

(5) the transfer was of substantially all the debtor's assets;

(6) the debtor absconded;

(7) the debtor removed or concealed assets;

(8) the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;

(9) the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;

(10) the transfer occurred shortly before or shortly after a substantial debt was incurred; and

(11) the debtor transferred the essential assets of the business to a lienor that transferred the assets to an insider of the debtor.

(c) A creditor making a claim for relief under subsection (a) of this section has the burden of proving the elements of the claim for relief by a preponderance of the evidence.

Source: Laws 2019, LB70, § 5.

36-806 Transfer or obligation voidable as to present creditor.

(a) A transfer made or obligation incurred by a debtor is voidable as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

(b) A transfer made by a debtor is voidable as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent.

(c) Subject to subsection (b) of section 36-803, a creditor making a claim for relief under subsection (a) or (b) of this section has the burden of proving the elements of the claim for relief by a preponderance of the evidence.

Source: Laws 2019, LB70, § 6.

36-807 When transfer is made or obligation is incurred.

For the purposes of the Uniform Voidable Transactions Act:

(1) a transfer is made:

(i) with respect to an asset that is real property other than a fixture, but including the interest of a seller or purchaser under a contract for the sale of the asset, when the transfer is so far perfected that a good-faith purchaser of the asset from the debtor against which applicable law permits the transfer to be perfected cannot acquire an interest in the asset that is superior to the interest of the transferee; and

(ii) with respect to an asset that is not real property or that is a fixture, when the transfer is so far perfected that a creditor on a simple contract cannot acquire a judicial lien otherwise than under the Uniform Voidable Transactions Act that is superior to the interest of the transferee;

(2) if applicable law permits the transfer to be perfected as provided in subdivision (1) of this section and the transfer is not so perfected before the commencement of an action for relief under the act, the transfer is deemed made immediately before the commencement of the action;

(3) if applicable law does not permit the transfer to be perfected as provided in subdivision (1) of this section, the transfer is made when it becomes effective between the debtor and the transferee;

(4) a transfer is not made until the debtor has acquired rights in the asset transferred; and

(5) an obligation is incurred:

(i) if oral, when it becomes effective between the parties; or

(ii) if evidenced by a record, when the record signed by the obligor is delivered to or for the benefit of the obligee.

Source: Laws 2019, LB70, § 7.

36-808 Remedies of creditor.

(a) In an action for relief against a transfer or obligation under the Uniform Voidable Transactions Act, a creditor, subject to the limitations in section 36-809, may obtain:

(1) avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim;

(2) an attachment or other provisional remedy against the asset transferred or other property of the transferee if available under applicable law; and

(3) subject to applicable principles of equity and in accordance with applicable rules of civil procedure:

(i) an injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property;

(ii) appointment of a receiver to take charge of the asset transferred or of other property of the transferee; or

(iii) any other relief the circumstances may require.

(b) If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court so orders, may levy execution on the asset transferred or its proceeds.

Source: Laws 2019, LB70, § 8.

36-809 Defenses, liability, and protection of transferee or obligee.

(a) A transfer or obligation is not voidable under subdivision (a)(1) of section 36-805 against a person that took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee.

(b) To the extent a transfer is avoidable in an action by a creditor under subdivision (a)(1) of section 36-808, the following rules apply:

(1) Except as otherwise provided in this section, the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection (c) of this section, or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:

(i) the first transferee of the asset or the person for whose benefit the transfer was made; or

(ii) an immediate or mediate transferee of the first transferee, other than:

(A) a good-faith transferee that took for value; or

(B) an immediate or mediate good-faith transferee of a person described in subdivision (b)(1)(ii)(A) of this section.

(2) Recovery pursuant to subdivision (a)(1) or subsection (b) of section 36-808 of or from the asset transferred or its proceeds, by levy or otherwise, is available only against a person described in subdivision (b)(1)(i) or (ii) of this section.

(c) If the judgment under subsection (b) of this section is based upon the value of the asset transferred, the judgment must be for an amount equal to the value of the asset at the time of the transfer, subject to adjustment as the equities may require.

(d) Notwithstanding voidability of a transfer or an obligation under the Uniform Voidable Transactions Act, a good faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to:

(1) a lien on or a right to retain an interest in the asset transferred;

(2) enforcement of an obligation incurred; or

(3) a reduction in the amount of the liability on the judgment.

(e) A transfer is not voidable under subdivision (a)(2) of section 36-805 or section 36-806 if the transfer results from:

(1) termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law; or

(2) enforcement of a security interest in compliance with article 9, Uniform Commercial Code, other than acceptance of collateral in full or partial satisfaction of the obligation it secures.

(f) A transfer is not voidable under subsection (b) of section 36-806:

(1) to the extent the insider gave new value to or for the benefit of the debtor after the transfer was made, except to the extent the new value was secured by a valid lien;

(2) if made in the ordinary course of business or financial affairs of the debtor and the insider; or

(3) if made pursuant to a good-faith effort to rehabilitate the debtor and the transfer secured present value given for that purpose as well as an antecedent debt of the debtor.

(g) The following rules determine the burden of proving matters referred to in this section:

(1) A party that seeks to invoke subsection (a), (d), (e), or (f) of this section has the burden of proving the applicability of that subsection.

(2) Except as otherwise provided in subdivisions (g)(3) and (4) of this section, the creditor has the burden of proving each applicable element of subsection (b) or (c) of this section.

(3) The transferee has the burden of proving the applicability to the transferee of subdivision (b)(1)(ii)(A) or (B) of this section.

(4) A party that seeks adjustment under subsection (c) of this section has the burden of proving the adjustment.

(h) The standard of proof required to establish matters referred to in this section is preponderance of the evidence.

Source: Laws 2019, LB70, § 9.

36-810 Extinguishment of claim for relief.

A claim for relief with respect to a transfer or obligation under the Uniform Voidable Transactions Act is extinguished unless action is brought:

(1) under subdivision (a)(1) of section 36-805, not later than four years after the transfer was made or the obligation was incurred or, if later, not later than one year after the transfer or obligation was or could reasonably have been discovered by the claimant;

(2) under subdivision (a)(2) of section 36-805 or subsection (a) of section 36-806, not later than four years after the transfer was made or the obligation was incurred; or

(3) under subsection (b) of section 36-806, not later than one year after the transfer was made.

Source: Laws 2019, LB70, § 10.

36-811 Governing law.

(a) In this section, the following rules determine a debtor's location:

(1) A debtor who is an individual is located at the individual's principal residence.

(2) A debtor that is an organization and has only one place of business is located at its place of business.

(3) A debtor that is an organization and has more than one place of business is located at its chief executive office.

(b) A claim for relief in the nature of a claim for relief under the Uniform Voidable Transactions Act is governed by the local law of the jurisdiction in which the debtor is located when the transfer is made or the obligation is incurred.

Source: Laws 2019, LB70, § 11.

36-812 Application to series organization.

(a) In this section:

(1) Protected series means an arrangement, however denominated, created by a series organization that, pursuant to the law under which the series organization is organized, has the characteristics set forth in subdivision (2) of this subsection.

(2) Series organization means an organization that, pursuant to the law under which it is organized, has the following characteristics:

(i) The organic record of the organization provides for creation by the organization of one or more protected series, however denominated, with respect to specified property of the organization, and for records to be maintained for each protected series that identify the property of or associated with the protected series;

(ii) Debt incurred or existing with respect to the activities of, or property of or associated with, a particular protected series is enforceable against the property of or associated with the protected series only, and not against the property of or associated with the organization or other protected series of the organization; and

(iii) Debt incurred or existing with respect to the activities or property of the organization is enforceable against the property of the organization only, and not against the property of or associated with a protected series of the organization.

(b) A series organization and each protected series of the organization is a separate person for purposes of the Uniform Voidable Transactions Act, even if for other purposes a protected series is not a person separate from the organization or other protected series of the organization.

Source: Laws 2019, LB70, § 12.

36-813 Supplementary provisions.

Unless displaced by the provisions of the Uniform Voidable Transactions Act, the principles of law and equity, including the law merchant and the law relating to principal and agent, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency, or other validating or invalidating cause, supplement its provisions.

Source: Laws 2019, LB70, § 13.

36-814 Uniformity of application and construction.

The Uniform Voidable Transactions Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of the act among states enacting it.

Source: Laws 2019, LB70, § 14.

36-815 Relation to Electronic Signatures in Global and National Commerce Act.

The Uniform Voidable Transactions Act modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq., as the act existed on September 1, 2019, but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. 7003(b).

Source: Laws 2019, LB70, § 15.

CHAPTER 37
GAME AND PARKS

ARTICLE 1
GAME AND PARKS COMMISSION

37-105 Game and Parks Commission; expenses; per diem.

The members of the Game and Parks Commission, other than the secretary, shall be reimbursed for expenses incurred in the discharge of their official duties as provided in sections 81-1174 to 81-1177 and shall be allowed a per diem of thirty-five dollars for days actually away from home on business of the commission, not exceeding forty-five days in any one year.

Source: Laws 1929, c. 113, § 4, p. 444; C.S.1929, § 81-6504; Laws 1933, c. 96, § 17, p. 396; Laws 1941, c. 180, § 7, p. 704; C.S.Supp.,1941, § 81-6504; R.S.1943, § 81-804; Laws 1947, c. 315, § 3, p. 954; Laws 1967, c. 584, § 1, p. 1973; Laws 1977, LB 482, § 1; Laws 1981, LB 204, § 172; Laws 1988, LB 864, § 13; R.S.1943, (1996), § 81-804; Laws 1998, LB 922, § 5; Laws 2020, LB381, § 26.

37-106 Game and Parks Commission; secretary; qualifications; terms; compensation; expenses; duties; removal.

The Game and Parks Commission shall appoint a secretary, who will act as its director and chief conservation officer and be in charge of its activities. He or she shall be a person with knowledge of and experience in the requirements of the protection, propagation, conservation, and restoration of the wildlife resources of the state. The secretary shall serve for a term of six years. The secretary shall not hold any other public office and shall devote his or her entire time to the service of the state in the discharge of his or her official duties. The secretary shall receive such compensation as the commission may determine and shall be reimbursed for expenses incurred by him or her in the discharge of his or her official duties as provided in sections 81-1174 to 81-1177. Before entering upon the duties of his or her office, the secretary shall take and subscribe to the constitutional oath of office, and shall, in addition thereto, swear or affirm that he or she holds no other public office, nor any position under any political committee or party. Such oath or affirmation shall be filed in the office of the Secretary of State. Under the direction of the commission, the secretary shall have general supervision and control of all activities and functions of the commission, shall enforce all the provisions of the law of the state relating to wild animals, birds, fish, parks, and recreational areas, and shall exercise all necessary powers incident thereto not specifically conferred on the commission. The secretary may be removed by the commission for inefficiency, neglect of duty, or misconduct in office, but only by a majority vote of the commissioners after delivering to the secretary a copy of the charges and affording him or her an opportunity of being publicly heard in person or by counsel in his or her own defense. If the secretary is removed, the commission shall place in its minutes a complete statement of all charges made against the secretary and its findings thereon, together with a complete record of the proceedings and the recorded vote thereon.

Source: Laws 1929, c. 113, § 10, p. 446; C.S.1929, § 81-6510; Laws 1935, c. 174, § 7, p. 642; C.S.Supp.,1941, § 81-6510; R.S.1943, § 81-807; Laws 1967, c. 36, § 7, p. 163; Laws 1967, c. 585, § 10, p. 1979; Laws 1981, LB 204, § 173; R.S.1943, (1996), § 81-807; Laws 1998, LB 922, § 6; Laws 2020, LB381, § 27.

Cross References

For provisions relating to oath of office and bond approval generally, see Article XV, section 1, Constitution of Nebraska, and Chapter 11.

37-111 Water safety education; grants; powers and duties.

The Game and Parks Commission shall create a program for the purpose of providing financial support for the education of persons about water safety in general and specifically for the education of children about staying away from water unless accompanied by an adult. The commission shall use the Josh the Otter-Be Safe Around Water Cash Fund to award grants to nonprofit organizations that are dedicated to educating children about water safety. The grants shall be used by the recipient organization to support educating persons about water safety in general and specifically for the education of children about water safety.

Source: Laws 2021, LB166, § 9.

37-112 Josh the Otter-Be Safe Around Water Cash Fund; created; use; investment.

The Josh the Otter-Be Safe Around Water Cash Fund is created for the purpose of funding the program set forth in section 37-111. The fund shall consist of any money credited to the fund pursuant to section 60-3,258. The fund may also receive gifts, bequests, grants, or other contributions or donations from public or private entities. The state investment officer shall invest any money in the fund available for investment pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2021, LB166, § 10.

Cross References

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

ARTICLE 2
GAME LAW GENERAL PROVISIONS

Section
37-201. Law, how cited.
37-202. Definitions, where found.
37-208.01. Bonus point, defined.
37-237.02. Preference point, defined.
37-247.01. Wildlife abatement, defined.

37-201 Law, how cited.

Sections 37-201 to 37-811 and 37-1501 to 37-1510 and the State Park System Construction Alternatives Act shall be known and may be cited as the Game Law.

Source: Laws 1929, c. 112, I, § 2, p. 408; C.S.1929, § 37-102; R.S.1943, § 37-102; Laws 1989, LB 34, § 2; Laws 1989, LB 251, § 1; Laws 1991, LB 403, § 2; Laws 1993, LB 830, § 7; Laws 1994, LB 1088, § 2; Laws 1994, LB 1165, § 6; Laws 1995, LB 274, § 1; Laws 1996, LB 923, § 2; Laws 1997, LB 19, § 2; R.S.Supp.,1997, § 37-102; Laws 1998, LB 922, § 11; Laws 1999, LB 176, § 2; Laws 2000, LB 788, § 2; Laws 2002, LB 1003, § 14; Laws 2003, LB 305, § 1; Laws 2004, LB 826, § 1; Laws 2005, LB 121, § 2; Laws 2005, LB 162, § 1; Laws 2007, LB504, § 1; Laws 2009, LB105, § 2; Laws 2010, LB743, § 3; Laws 2010, LB836, § 1; Laws 2012, LB391, § 1; Laws 2012, LB928, § 1; Laws 2014, LB699, § 1; Laws 2014, LB814, § 1; Laws 2015, LB142, § 1; Laws 2016, LB474, § 1; Laws 2018, LB775, § 1; Laws 2019, LB374, § 1; Laws 2020, LB287, § 1; Laws 2021, LB507, § 1; Laws 2022, LB1082, § 1.
Effective date July 21, 2022.

Cross References

State Park System Construction Alternatives Act, see section 37-1701.

37-202 Definitions, where found.

For purposes of the Game Law, unless the context otherwise requires, the definitions found in sections 37-203 to 37-247.01 are used.

Source: Laws 1929, c. 112, I, § 1, p. 407; C.S.1929, § 37-101; Laws 1931, c. 75, § 1, p. 199; Laws 1937, c. 89, § 1, p. 290; Laws 1941, c. 72,

§ 1, p. 300; C.S.Supp.,1941, § 37-101; Laws 1943, c. 94, § 1, p. 321; R.S.1943, § 37-101; Laws 1949, c. 100, § 1, p. 275; Laws 1953, c. 123, § 1, p. 386; Laws 1957, c. 139, § 1, p. 464; Laws 1959, c. 148, § 2, p. 563; Laws 1963, c. 200, § 1, p. 647; Laws 1965, c. 194, § 1, p. 592; Laws 1967, c. 216, § 1, p. 578; Laws 1971, LB 733, § 8; Laws 1973, LB 331, § 1; Laws 1975, LB 195, § 1; Laws 1975, LB 142, § 1; Laws 1976, LB 861, § 1; Laws 1981, LB 72, § 1; Laws 1985, LB 557, § 1; Laws 1987, LB 154, § 1; Laws 1989, LB 34, § 1; Laws 1993, LB 121, § 201; Laws 1993, LB 830, § 6; Laws 1994, LB 884, § 57; Laws 1994, LB 1088, § 1; Laws 1994, LB 1165, § 5; Laws 1995, LB 259, § 1; Laws 1997, LB 173, § 1; R.S.Supp.,1997, § 37-101; Laws 1998, LB 922, § 12; Laws 1999, LB 176, § 3; Laws 2002, LB 1003, § 15; Laws 2012, LB391, § 2; Laws 2019, LB374, § 2; Laws 2020, LB287, § 2.

37-208.01 Bonus point, defined.

Bonus point means a point or points accrued by an applicant for preference in a random permit drawing in which the number of points determines the number of entries in the permit drawing.

Source: Laws 2020, LB287, § 3.

37-237.02 Preference point, defined.

Preference point means a point or points accrued by an applicant for preference in a structured random permit drawing in which the draw is structured by the number of preference points and the applicants with the most points are drawn first.

Source: Laws 2020, LB287, § 4.

37-247.01 Wildlife abatement, defined.

Wildlife abatement means the use of a trained raptor to frighten, flush, haze, take, or kill certain wildlife to manage depredation, damage, or other threats to human health and safety or commerce caused by such wildlife.

Source: Laws 2019, LB374, § 3.

ARTICLE 3
COMMISSION POWERS AND DUTIES

(a) GENERAL PROVISIONS

(a) GENERAL PROVISIONS

37-317 Commission; disseminate information and promotional materials.

The commission may disseminate information and promotional materials regarding the state park system and the wildlife resources of the state in order

to inform the public of the outdoor recreation opportunities to be found in Nebraska.

Source: Laws 1998, LB 922, § 75; Laws 2020, LB287, § 5.

(b) FUNDS

37-327.02 Game and Parks Commission Capital Maintenance Fund; created; use; investment; projects; report.

(1) The Game and Parks Commission Capital Maintenance Fund is created. The fund shall consist of money credited to the fund pursuant to section 77-27,132, transfers authorized by the Legislature, and any gifts, grants, bequests, or donations to the fund. The fund shall be administered by the commission and shall be used to build, repair, renovate, rehabilitate, restore, modify, or improve any infrastructure within the statutory authority and administration of the commission. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) On or before December 1, 2021, and on or before December 1 of each year thereafter through 2027, the commission shall electronically submit a report to the Clerk of the Legislature and the Revenue Committee of the Legislature. The report shall include (a) a list of each project that received funding from the Game and Parks Commission Capital Maintenance Fund under subsection (1) of this section during the most recently completed fiscal year and (b) a list of projects that will receive such funding during the current fiscal year.

(3) Transfers may be made from the Game and Parks Commission Capital Maintenance Fund to the General Fund at the direction of the Legislature through June 30, 2019. The State Treasurer shall transfer four million five hundred thousand dollars from the Game and Parks Commission Capital Maintenance Fund to the General Fund between June 1, 2018, and June 30, 2018, on such date as directed by the budget administrator of the budget division of the Department of Administrative Services. The State Treasurer shall transfer eight million five hundred thousand dollars from the Game and Parks Commission Capital Maintenance Fund to the General Fund between June 1, 2019, and June 30, 2019, on such date as directed by the budget administrator of the budget division of the Department of Administrative Services.

Source: Laws 2014, LB814, § 2; Laws 2017, LB331, § 22; Laws 2018, LB945, § 10; Laws 2021, LB595, § 1.

Cross References

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

37-327.03 Game and Parks State Park Improvement and Maintenance Fund; created; use; investment.

The Game and Parks State Park Improvement and Maintenance Fund is created. The fund shall consist of transfers made by the Legislature, money credited to the fund pursuant to section 60-3,254, and any gifts, grants, bequests, or donations to the fund. The money credited to the fund pursuant to section 60-3,254 shall be used only for the improvement and maintenance of state recreational trails as defined in section 37-338. Any other money in the

fund shall be used to build, repair, renovate, rehabilitate, restore, modify, or improve any infrastructure in the state park system. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2014, LB906, § 4; Laws 2020, LB944, § 3.

Cross References

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

ARTICLE 4
PERMITS AND LICENSES

(a) GENERAL PERMITS

Section
37-406.01. Organ and tissue donation; commission; distribute brochure; permit application; request status as donor; change; procedure; commission powers and duties; anatomical gift; when effective.
37-407. Hunting, fishing, and fur-harvesting permits; fees.
37-409. Hunting, fishing, and fur-harvesting permits; lost permit; replacement; fee.
37-415. Lifetime fur-harvesting, fishing, hunting, or combination permit; fees; replacement; rules and regulations.
37-426. Taking birds, animals, and aquatic organisms; stamps; when required; exhibit on request; fees.
37-438. Annual, temporary, and disabled veteran permits; fees.

(b) SPECIAL PERMITS AND LICENSES

37-447. Permit to hunt deer; commission; powers; issuance; fee; violation; penalty.
37-448. Special deer, antelope, and elk depredation season; extension of existing hunting season; permit; issuance; fees.
37-449. Permit to hunt antelope; regulation and limitation by commission; issuance; fees; violation; penalty.
37-450. Permit to hunt elk; regulation and limitation by commission; issuance; fee; violation; penalty.
37-455. Limited deer, antelope, wild turkey, or elk permit; conditions; fee.
37-456. Limited antelope or elk permit; issuance; limitation.
37-456.01. Free-earned landowner elk permit; issuance; conditions.
37-478. Captive wildlife auction permit; issuance; fee; prohibited acts.
37-479. Captive wildlife permit; issuance; fee; prohibited acts; violation; penalty.
37-497. Raptors; protection; management; raptor permit; raptor permit for wildlife abatement; captive propagation permit; raptor collecting permit; fees.
37-498. Raptors; take or maintain; permit required.
37-4,111. Permit to take paddlefish; issuance; fee.

(a) GENERAL PERMITS

37-406.01 Organ and tissue donation; commission; distribute brochure; permit application; request status as donor; change; procedure; commission powers and duties; anatomical gift; when effective.

(1) Beginning January 1, 2023, when a Nebraska resident at least sixteen years of age applies for an annual hunting permit or annual fishing permit, the commission shall distribute a brochure provided by an organ and tissue procurement organization approved by the Department of Health and Human Services containing a description and explanation of the Revised Uniform Anatomical Gift Act to each person applying for a permit who has not previous-

ly provided a response under subsection (2) of this section. If the application for a permit is made through the Internet, a link to an electronic copy of the brochure shall be provided.

(2) The application for an annual hunting permit or annual fishing permit shall contain the following question: Do you wish to include your name in the Donor Registry of Nebraska and donate your organs and tissues at the time of your death? The commission shall record such response in an electronic database if the permit applicant is at least sixteen years of age and indicates on the application whether he or she wishes to be an organ and tissue donor. Submitting an application indicating that the permit applicant wishes to be a donor shall constitute an authorization under subsection (b) of section 71-4828.

(3) A person may change his or her status as a donor by (a) Internet access to the Donor Registry of Nebraska, (b) telephone request to the registry, or (c) other methods approved by the federally designated organ procurement organization for Nebraska. The commission shall provide information on its website on how a person may change such person's donor status.

(4) The commission shall electronically transfer to the federally designated organ procurement organization for Nebraska the first and last name, date of birth, gender, address, city, state, zip code, email address if provided, date of registration, and the unique user identification number of each person who agreed to make an anatomical gift under subsection (2) of this section.

(5) An anatomical gift made through the process described in subsection (2) of this section shall be considered made at the time the application is submitted regardless of when the information described in subsection (4) of this section is transferred.

(6) No person shall obtain information about an applicant's response as described in subsection (2) of this section except to facilitate the donation process. General statistical information may be provided upon request to the federally designated organ procurement organization for Nebraska.

(7) The commission may adopt and promulgate rules and regulations necessary to carry out the provisions of this section.

Source: Laws 2022, LB1082, § 2.
Effective date July 21, 2022.

Cross References

Revised Uniform Anatomical Gift Act, see section 71-4824.

37-407 Hunting, fishing, and fur-harvesting permits; fees.

(1) The commission may offer multiple-year permits or combinations of permits at reduced rates and may establish fees pursuant to section 37-327 to be paid to the state for resident and nonresident annual hunting permits, annual fishing permits, three-day fishing permits, one-day fishing permits, combination hunting and fishing permits, fur-harvesting permits, and nonresident two-day hunting permits issued for periods of two consecutive days, as provided in this section.

(2) The fee for a multiple-year permit shall be established by the commission pursuant to section 37-327 and shall not be more than the number of years the permit will be valid times the fee required for an annual permit as provided in subsection (3) or (4) of this section. Payment for a multiple-year permit shall be

made in a lump sum at the time of application. A replacement multiple-year permit may be issued under section 37-409 if the original is lost or destroyed.

(3) Resident fees shall be (a) not more than eighteen dollars for an annual hunting permit, (b) not more than twenty-four dollars for an annual fishing permit, (c) not more than fifteen dollars for a three-day fishing permit, (d) not more than nine dollars for a one-day fishing permit, (e) not more than thirty-nine dollars for an annual fishing and hunting permit, and (f) not more than twenty dollars for an annual fur-harvesting permit.

(4) Nonresident fees shall be (a) not more than two hundred sixty dollars for a period of time specified by the commission for fur harvesting one thousand or less fur-bearing animals and not more than seventeen dollars and fifty cents additional for each one hundred or part of one hundred fur-bearing animals harvested, (b)(i) for persons sixteen years of age and older, not more than one hundred six dollars for an annual hunting permit and (ii) for persons under sixteen years of age, not less than the fee required pursuant to subdivision (3)(a) of this section for an annual hunting permit, (c) not more than seventy-three dollars for a two-day hunting permit plus the cost of a habitat stamp, (d) not more than twelve dollars for a one-day fishing permit, (e) not more than twenty-two dollars for a three-day fishing permit, (f) not more than sixty-six dollars for an annual fishing permit, and (g)(i) for persons sixteen years of age and older, not more than one hundred fifty-nine dollars for an annual fishing and hunting permit and (ii) for persons under sixteen years of age, not less than the fee required pursuant to subdivision (3)(e) of this section for an annual fishing and hunting permit.

(5) The commission may offer permits or combinations of permits at temporarily reduced rates for specific events or during specified timeframes.

Source: Laws 1929, c. 112, II, § 4, p. 410; C.S.1929, § 37-204; Laws 1935, c. 84, § 2, p. 275; Laws 1939, c. 44, § 1, p. 203; C.S.Supp.,1941, § 37-204; Laws 1943, c. 94, § 3, p. 323; R.S.1943, § 37-204; Laws 1945, c. 78, § 1, p. 288; Laws 1947, c. 132, § 1, p. 374; Laws 1949, c. 101, § 1, p. 278; Laws 1955, c. 130, § 1, p. 376; Laws 1957, c. 140, § 2, p. 475; Laws 1959, c. 150, § 1, p. 568; Laws 1963, c. 203, § 1, p. 654; Laws 1963, c. 202, § 2, p. 652; Laws 1965, c. 195, § 1, p. 594; Laws 1967, c. 215, § 1, p. 576; Laws 1969, c. 290, § 1, p. 1060; Laws 1972, LB 777, § 1; Laws 1974, LB 811, § 4; Laws 1975, LB 489, § 1; Laws 1976, LB 861, § 4; Laws 1977, LB 129, § 1; Laws 1979, LB 78, § 1; Laws 1979, LB 553, § 1; Laws 1981, LB 72, § 4; Laws 1987, LB 105, § 2; Laws 1989, LB 34, § 5; Laws 1993, LB 235, § 6; Laws 1995, LB 579, § 1; Laws 1995, LB 583, § 1; R.S.Supp.,1996, § 37-204; Laws 1998, LB 922, § 117; Laws 2001, LB 111, § 1; Laws 2002, LB 1003, § 19; Laws 2003, LB 306, § 1; Laws 2005, LB 162, § 2; Laws 2007, LB299, § 2; Laws 2009, LB105, § 5; Laws 2011, LB41, § 4; Laws 2016, LB745, § 4; Laws 2020, LB287, § 6.

37-409 Hunting, fishing, and fur-harvesting permits; lost permit; replacement; fee.

The commission may issue a replacement permit for hunting, fishing, both hunting and fishing, or fur harvesting or for such other permits as may be issued by the commission to any person who has lost his or her original permit

upon receipt from such person of satisfactory proof of purchase and an affidavit of loss of such original permit. The commission shall prescribe the procedures for applying for a replacement permit and may authorize electronic issuance. The commission may also designate agents to issue replacement permits pursuant to section 37-406. A fee of not more than five dollars, as established by the commission, shall be charged for the issuance of each replacement permit, except that no such fee shall be charged for replacement of any permits exempt from the payment of fees, lifetime permits, or permits issued under section 37-421 or 37-421.01.

Source: Laws 1959, c. 151, § 1, p. 576; Laws 1967, c. 216, § 3, p. 580; Laws 1981, LB 72, § 5; Laws 1993, LB 235, § 7; R.S.1943, (1993), § 37-204.01; Laws 1998, LB 922, § 119; Laws 1999, LB 176, § 21; Laws 2001, LB 111, § 2; Laws 2020, LB287, § 7.

37-415 Lifetime fur-harvesting, fishing, hunting, or combination permit; fees; replacement; rules and regulations.

(1) The commission may issue to any Nebraska resident a lifetime fur-harvesting, fishing, hunting, or combination hunting and fishing permit upon application and payment of the appropriate fee. The fee for a resident lifetime fur-harvesting permit shall be not more than two hundred ninety-nine dollars, the fee for a resident lifetime hunting permit shall be not more than three hundred ninety-six dollars, the fee for a resident lifetime fishing permit shall be not more than four hundred fifty-seven dollars plus the cost of a lifetime aquatic habitat stamp, and the fee for a resident lifetime combination hunting and fishing permit shall be not more than seven hundred ninety-two dollars plus the cost of a lifetime aquatic habitat stamp, as such fees are established by the commission pursuant to section 37-327. Payment of the fee shall be made in a lump sum at the time of application.

(2) A resident lifetime permit shall not be made invalid by reason of the holder subsequently residing outside the state.

(3) The commission may issue to any nonresident a lifetime fishing, hunting, or combination hunting and fishing permit upon application and payment of the appropriate fee. The fee for a nonresident lifetime hunting permit shall be not more than one thousand five hundred sixty-two dollars, the fee for a nonresident lifetime fishing permit shall be not more than one thousand one hundred twenty-five dollars plus the cost of a lifetime aquatic habitat stamp, and the fee for a nonresident lifetime combination hunting and fishing permit shall be not more than two thousand three hundred forty-two dollars plus the cost of a lifetime aquatic habitat stamp, as such fees are established by the commission pursuant to section 37-327. Payment of the fee shall be made in a lump sum at the time of application.

(4) A replacement resident or nonresident lifetime permit may be issued if the original has been lost or destroyed for no additional fee. This subsection applies only to a paper permit and not a commemorative brass plate permit.

(5) The commission may adopt and promulgate rules and regulations to carry out this section and sections 37-416 and 37-417. Such rules and regulations may include, but need not be limited to, establishing fees which vary based on the age of the applicant.

Source: Laws 1983, LB 173, § 1; Laws 1993, LB 235, § 4; R.S.1943, (1993), § 37-202.01; Laws 1998, LB 922, § 125; Laws 1999, LB

176, § 24; Laws 2001, LB 111, § 5; Laws 2003, LB 306, § 2; Laws 2005, LB 162, § 4; Laws 2008, LB1162, § 1; Laws 2009, LB105, § 8; Laws 2016, LB745, § 5; Laws 2020, LB287, § 8.

37-426 Taking birds, animals, and aquatic organisms; stamps; when required; exhibit on request; fees.

(1) Except as provided in subsection (4) of this section:

(a) No resident of Nebraska sixteen years of age or older and no nonresident of Nebraska regardless of age shall hunt, harvest, or possess any game bird, upland game bird, game animal, or fur-bearing animal unless, at the time of such hunting, harvesting, or possessing, such person has an unexpired habitat stamp as prescribed by the rules and regulations of the commission prior to the time of hunting, harvesting, or possessing such bird or animal;

(b) No resident or nonresident of Nebraska shall take or possess any aquatic organism requiring a Nebraska fishing permit, including any fish, bullfrog, snapping turtle, tiger salamander, or mussel, unless, at the time of such taking or possessing, such person has an unexpired aquatic habitat stamp as prescribed by the rules and regulations of the commission prior to the time of taking or possessing a fish, bullfrog, snapping turtle, tiger salamander, or mussel; and

(c) No resident of Nebraska sixteen years of age or older and no nonresident of Nebraska regardless of age shall hunt, harvest, or possess any migratory waterfowl unless, at the time of such hunting, harvesting, or possessing, such person has an unexpired Nebraska migratory waterfowl stamp as prescribed by the rules and regulations of the commission prior to the time of hunting, harvesting, or possessing such migratory waterfowl.

(2) The commission may issue a lifetime habitat stamp, lifetime Nebraska migratory waterfowl stamp, or lifetime aquatic habitat stamp upon application and payment of the appropriate fee. The fee for a lifetime stamp shall be not more than twenty times the fee required in subsection (5) of this section for an annual habitat stamp, annual Nebraska migratory waterfowl stamp, or annual aquatic habitat stamp. Payment of such fee shall be made in a lump sum at the time of application. A replacement lifetime stamp may be issued if the original is lost or destroyed at no additional fee. This subsection applies only to a paper permit and not a commemorative brass plate permit.

(3) The commission may issue a multiple-year habitat stamp, multiple-year Nebraska migratory waterfowl stamp, or multiple-year aquatic habitat stamp upon application and payment of the appropriate fee. The fee for such multiple-year stamps shall be established by the commission pursuant to section 37-327 and shall not be more than the number of years the stamp is valid times the fee required in subsection (5) of this section for an annual habitat stamp, annual Nebraska migratory waterfowl stamp, or annual aquatic habitat stamp. Payment of such fee shall be made in a lump sum at the time of application. A replacement multiple-year stamp may be issued if the original is lost or destroyed at no additional fee.

(4) Habitat stamps are not required for holders of limited permits issued under section 37-455. Aquatic habitat stamps are not required (a) when a fishing permit is not required, (b) for holders of permits pursuant to section 37-424, or (c) for holders of lifetime fishing permits or lifetime combination hunting and fishing permits purchased prior to January 1, 2006. Nebraska

migratory waterfowl stamps are not required for hunting, harvesting, or possessing any species other than ducks, geese, or brant. For purposes of this section, a showing of proof of the electronic issuance of a stamp by the commission shall fulfill the requirements of this section.

(5)(a) Any person to whom a stamp has been issued shall, immediately upon request, exhibit evidence of issuance of the stamp to any officer. Any person hunting, fishing, harvesting, or possessing any game bird, upland game bird, game animal, or fur-bearing animal or any aquatic organism requiring a fishing permit in this state without evidence of issuance of the appropriate stamp shall be deemed to be without such stamp.

(b) An annual habitat stamp shall be issued upon the payment of a fee of not more than twenty-five dollars per stamp. A multiple-year habitat stamp shall be issued in conjunction with a multiple-year hunting permit or a multiple-year combination hunting and fishing permit at a fee of not more than twenty-five dollars times the number of years the multiple-year permit is valid.

(c) An aquatic habitat stamp shall be issued in conjunction with each fishing permit for a fee of not more than fifteen dollars per stamp for annual fishing permits, three-day fishing permits, or combination hunting and fishing permits, a fee of not more than fifteen dollars times the number of years the multiple-year fishing permit or a multiple-year combination hunting and fishing permit is valid, and a fee of not more than twenty times the fee required for an annual aquatic habitat stamp for lifetime fishing or combination hunting and fishing permits. The fee established under section 37-407 for a one-day fishing permit shall include an aquatic habitat stamp. One dollar from the sale of each one-day fishing permit shall be remitted to the State Treasurer for credit to the Nebraska Aquatic Habitat Fund.

(d) An annual Nebraska migratory waterfowl stamp shall be issued upon the payment of a fee of not more than sixteen dollars per stamp. A multiple-year Nebraska migratory waterfowl stamp may only be issued in conjunction with a multiple-year hunting permit or a multiple-year combination hunting and fishing permit at a fee of not more than the annual fee times the number of years the multiple-year permit is valid.

(e) The commission shall establish the fees pursuant to section 37-327.

(6) The commission may offer stamps or combinations of stamps at temporarily reduced rates for specific events or during specified timeframes in conjunction with other permit sales.

Source: Laws 1976, LB 861, § 7; Laws 1981, LB 72, § 12; Laws 1983, LB 170, § 3; Laws 1991, LB 340, § 1; Laws 1993, LB 235, § 15; Laws 1996, LB 584, § 9; Laws 1997, LB 19, § 3; R.S.Supp.,1997, § 37-216.01; Laws 1998, LB 922, § 136; Laws 1999, LB 176, § 27; Laws 2001, LB 111, § 6; Laws 2002, LB 1003, § 20; Laws 2003, LB 305, § 11; Laws 2003, LB 306, § 3; Laws 2005, LB 162, § 8; Laws 2007, LB299, § 4; Laws 2008, LB1162, § 2; Laws 2009, LB105, § 10; Laws 2011, LB41, § 9; Laws 2016, LB745, § 9; Laws 2020, LB287, § 9.

37-438 Annual, temporary, and disabled veteran permits; fees.

(1) The commission shall devise annual, temporary, and disabled veteran permits.

(2) The annual permit may be purchased by any person and shall be valid through December 31 in the year for which the permit is issued. The fee for the annual permit for a resident motor vehicle shall be not more than thirty-five dollars per permit. The fee for the annual permit for a nonresident motor vehicle shall be two times the fee for a resident motor vehicle or sixty dollars, whichever is greater. The commission shall establish such fees by the adoption and promulgation of rules and regulations.

(3) A temporary permit may be purchased by any person and shall be valid until noon of the day following the date of issue. The fee for the temporary permit for a resident motor vehicle shall be not more than seven dollars. The fee for the temporary permit for a nonresident motor vehicle shall be two times the fee for a resident motor vehicle or twelve dollars, whichever is greater. The commission shall establish such fees by the adoption and promulgation of rules and regulations. The commission may issue temporary permits which are either valid for any area or valid for a single area.

(4)(a) A veteran who is a resident of Nebraska shall, upon application and without payment of any fee, be issued one disabled veteran permit for a resident motor vehicle if the veteran:

(i) Was discharged or separated with a characterization of honorable or general (under honorable conditions); and

(ii)(A) Is rated by the United States Department of Veterans Affairs as fifty percent or more disabled as a result of service in the armed forces of the United States; or

(B) Is receiving a pension from the United States Department of Veterans Affairs as a result of total and permanent disability, which disability was not incurred in the line of duty in the military service.

(b) All disabled veteran permits issued pursuant to this subsection shall be perpetual and shall become void only upon termination of eligibility as provided in this subsection.

(c) The commission may adopt and promulgate rules and regulations necessary to carry out this subsection.

(5) The commission may offer permits or combinations of permits at temporarily reduced rates for specific events or during specified timeframes.

Source: Laws 1977, LB 81, § 5; Laws 1978, LB 742, § 7; Laws 1980, LB 723, § 3; Laws 1981, LB 74, § 1; Laws 1983, LB 199, § 1; Laws 1993, LB 235, § 32; R.S.1943, (1993), § 37-1105; Laws 1998, LB 922, § 148; Laws 1999, LB 176, § 35; Laws 2003, LB 122, § 1; Laws 2005, LB 162, § 14; Laws 2008, LB1162, § 3; Laws 2011, LB421, § 1; Laws 2016, LB745, § 10; Laws 2020, LB287, § 10; Laws 2020, LB770, § 1; Laws 2021, LB336, § 1.

(b) SPECIAL PERMITS AND LICENSES

37-447 Permit to hunt deer; commission; powers; issuance; fee; violation; penalty.

(1) The commission may issue permits for the hunting of deer and adopt and promulgate rules and regulations and pass commission orders pursuant to section 37-314 to prescribe limitations for the hunting, transportation, and possession of deer. The commission may offer permits or combinations of

permits at temporarily reduced rates for specific events or during specified timeframes. The commission may specify by rule and regulation the information to be required on applications for such permits. Rules and regulations for the hunting, transportation, and possession of deer may include, but not be limited to, rules and regulations as to the type, caliber, and other specifications of firearms and ammunition used and specifications for bows and arrows used. Such rules and regulations may further specify and limit the method of hunting deer and may provide for dividing the state into management units or areas, and the commission may enact different deer hunting regulations for the different management units pertaining to sex, species, and age of the deer hunted.

(2) The number of such permits may be limited as provided by the rules and regulations of the commission, and except as provided in section 37-454, the permits shall be allocated in an impartial manner. Whenever the commission deems it advisable to limit the number of permits issued for any or all management units, the commission shall, by rules and regulations, determine eligibility to obtain such permits. In establishing eligibility, the commission may give preference to persons who did not receive a permit or a specified type of permit during the previous year or years.

(3) Such permits may be issued to allow deer hunting in the Nebraska National Forest and other game reserves and such other areas as the commission may designate whenever the commission deems that permitting such hunting will not be detrimental to the proper preservation of wildlife in Nebraska in such forest, reserves, or areas.

(4)(a) The commission may, pursuant to section 37-327, establish and charge a nonrefundable application fee of not more than seven dollars for deer permits in those management units awarded on the basis of a random drawing. The commission shall, pursuant to section 37-327, establish and charge a fee of not more than thirty-nine dollars for residents and not more than two hundred eighty-four dollars for nonresidents for each permit issued under this section except as otherwise provided in subdivision (b) of this subsection and subsection (6) of this section. The commission may, pursuant to section 37-327, establish and charge a fee of not more than twenty-four dollars for residents and not more than seventy-two dollars for nonresidents for the issuance of a preference point, in addition to any application fee, in lieu of entering the draw for a deer permit during the application period for the random drawing.

(b) The fee for a statewide buck-only permit limited to white-tailed deer shall be no more than two and one-half times the amount of a regular deer permit. The fee for a statewide buck-only deer permit that allows harvest of mule deer shall be no more than five times the amount of a regular deer permit.

(5)(a) The commission may issue nonresident permits after preference has been given for the issuance of resident permits as provided in rules and regulations adopted and promulgated by the commission.

(b) In management units specified by the commission, the commission may issue nonresident permits after resident preference has been provided by allocating at least eighty-five percent of the available permits to residents. The commission may require a predetermined application period for permit applications in specified management units. Such permits shall be issued after a reasonable period for making application, as established by the commission, has expired. When more valid applications are received for a designated

management unit than there are permits available, such permits shall be allocated on the basis of a random drawing. All valid applications received during the predetermined application period shall be considered equally in any such random drawing without regard to time of receipt of such applications by the commission.

(6) The commission shall, pursuant to section 37-327, establish and charge a fee of not more than twenty-five dollars for residents and not more than forty-five dollars for nonresidents for a youth deer permit.

(7) Any person violating the rules and regulations adopted and promulgated or commission orders passed pursuant to this section shall be guilty of a Class II misdemeanor and shall be fined at least one hundred dollars upon conviction.

Source: Laws 1945, c. 85, § 1, p. 305; Laws 1947, c. 133, § 1, p. 376; Laws 1949, c. 103, § 1(1), p. 282; Laws 1951, c. 109, § 1, p. 517; Laws 1953, c. 124, § 1, p. 389; Laws 1957, c. 141, § 1, p. 477; Laws 1959, c. 156, § 1, p. 584; Laws 1969, c. 292, § 1, p. 1063; Laws 1972, LB 777, § 3; Laws 1974, LB 767, § 1; Laws 1976, LB 861, § 6; Laws 1979, LB 437, § 1; Laws 1981, LB 72, § 11; Laws 1984, LB 1001, § 1; Laws 1985, LB 557, § 2; Laws 1993, LB 235, § 13; Laws 1994, LB 1088, § 4; Laws 1995, LB 583, § 2; Laws 1995, LB 862, § 1; Laws 1996, LB 584, § 6; Laws 1997, LB 107, § 2; R.S.Supp.,1997, § 37-215; Laws 1998, LB 922, § 157; Laws 1999, LB 176, § 42; Laws 2003, LB 306, § 4; Laws 2005, LB 162, § 15; Laws 2007, LB299, § 7; Laws 2009, LB105, § 15; Laws 2013, LB94, § 1; Laws 2013, LB499, § 5; Laws 2016, LB745, § 11; Laws 2020, LB287, § 11.

37-448 Special deer, antelope, and elk depredation season; extension of existing hunting season; permit; issuance; fees.

(1) Subject to rules and regulations adopted and promulgated by the commission, the secretary of the commission may designate, by order, special deer, antelope, and elk depredation seasons or extensions of existing hunting seasons. The secretary may designate a depredation season or an extension of an existing hunting season whenever he or she determines that deer, antelope, or elk are causing excessive property damage. The secretary shall specify the number of permits to be issued, the species, sex, and number or quota of animals allowed to be taken, the bag limit for such species, the beginning and ending dates for the depredation season or hunting season extension, shooting hours, the length of the depredation season or hunting season extension, and the geographic area in which hunting will be permitted. The rules and regulations shall allow use of any weapon permissible for use during the regular deer, antelope, or elk season.

(2) The depredation season may commence not less than five days after the first public announcement that the depredation season has been established. Permits shall be issued in an impartial manner at a location determined by the secretary. The commission shall, pursuant to section 37-327, establish and charge a fee of not more than twenty-five dollars for a resident special depredation season permit and a fee of not more than seventy-five dollars for a nonresident special depredation season permit. The commission shall, pursuant to section 37-327, establish and charge a fee of not more than ten dollars for a

landowner special depredation season permit for the taking of deer and antelope for any person owning or operating at least twenty acres of farm or ranch land within the geographic area in which hunting will be permitted and to any member of the immediate family of any such person as defined in subdivision (2)(a) of section 37-455, and for the taking of elk for any person owning or operating at least eighty acres of farm or ranch land within the geographic area in which hunting will be permitted and to any member of the immediate family of such person as defined in subdivision (2)(a) of section 37-455. A special depredation season permit shall be valid only within such area and only during the designated depredation season. The commission shall use the income from the sale of special depredation season permits for abatement of damage caused by deer, antelope, and elk. Receipt of a depredation season permit shall not in any way affect a person's eligibility for a permit issued under section 37-447, 37-449, 37-450, or 37-455.

Source: Laws 1998, LB 922, § 158; Laws 2008, LB1162, § 4; Laws 2010, LB836, § 2; Laws 2012, LB928, § 3; Laws 2013, LB499, § 6; Laws 2021, LB507, § 2.

37-449 Permit to hunt antelope; regulation and limitation by commission; issuance; fees; violation; penalty.

(1) The commission may issue permits for hunting antelope and may adopt and promulgate separate and, when necessary, different rules and regulations therefor within the limitations prescribed in sections 37-447 and 37-452 for hunting deer. The commission may offer permits or combinations of permits at reduced rates for specific events or during specified timeframes.

(2) The commission may, pursuant to section 37-327, establish and charge a nonrefundable application fee of not more than seven dollars for antelope permits in those management units awarded on the basis of a random drawing. The commission shall, pursuant to section 37-327, establish and charge a fee of not more than thirty-nine dollars for residents and not more than one hundred ninety-eight dollars for nonresidents for each permit issued under this section except as provided in subsection (4) of this section. The commission may, pursuant to section 37-327, establish and charge a fee of not more than twenty-four dollars for residents and not more than seventy-two dollars for nonresidents for the issuance of a preference point, in addition to any application fee, in lieu of entering the draw for an antelope permit during the application period for the random drawing.

(3) The provisions for the distribution of deer permits and the authority of the commission to determine eligibility of applicants for permits as described in sections 37-447 and 37-452 shall also apply to the distribution of antelope permits.

(4) The commission shall, pursuant to section 37-327, establish and charge a fee of not more than twenty-five dollars for residents and not more than forty-five dollars for nonresidents for a youth antelope permit.

(5) Any person violating the rules and regulations adopted and promulgated pursuant to this section shall be guilty of a Class II misdemeanor and shall be fined at least one hundred dollars upon conviction.

Source: Laws 1998, LB 922, § 159; Laws 2003, LB 305, § 14; Laws 2003, LB 306, § 5; Laws 2007, LB299, § 8; Laws 2009, LB105, § 16; Laws 2016, LB745, § 12; Laws 2020, LB287, § 12.

37-450 Permit to hunt elk; regulation and limitation by commission; issuance; fee; violation; penalty.

(1) The commission may issue permits for hunting elk and may adopt and promulgate separate and, when necessary, different rules and regulations therefor within the limitations prescribed in sections 37-447 and 37-452 for hunting deer.

(2) The commission shall, pursuant to section 37-327, establish and charge (a) a nonrefundable application fee of not more than twelve dollars for a resident elk permit and not to exceed three times such amount for a nonresident elk permit and (b) a fee of not more than one hundred ninety-eight dollars for each resident elk permit issued and three times such amount for each nonresident elk permit issued. The commission may, pursuant to section 37-327, establish and charge a fee of not more than twenty-four dollars for residents and not more than seventy-two dollars for nonresidents for the issuance of a preference point or a bonus point, in addition to any application fee, in lieu of entering the draw for an elk permit during the application period for the random drawing.

(3) An applicant shall not be issued a resident elk permit that allows the harvest of an antlered elk more than once every five years. A person may only harvest one antlered elk in his or her lifetime except when harvesting an antlered elk with a limited permit to hunt elk pursuant to subdivision (1)(b) of section 37-455 or an auction or lottery permit pursuant to section 37-455.01.

(4) The provisions for the distribution of deer permits and the authority of the commission to determine eligibility of applicants for permits as described in sections 37-447 and 37-452 shall also apply to the distribution of elk permits.

(5) Any person violating the rules and regulations adopted and promulgated pursuant to this section shall be guilty of a Class III misdemeanor and shall be fined at least two hundred dollars upon conviction.

Source: Laws 1998, LB 922, § 160; Laws 2003, LB 306, § 6; Laws 2005, LB 162, § 16; Laws 2007, LB299, § 9; Laws 2009, LB105, § 17; Laws 2011, LB41, § 12; Laws 2013, LB94, § 2; Laws 2016, LB745, § 13; Laws 2020, LB287, § 13.

37-455 Limited deer, antelope, wild turkey, or elk permit; conditions; fee.

(1) The commission may issue a limited permit for deer, antelope, wild turkey, or elk to a person who is a qualifying landowner or leaseholder or a member of such person's immediate family as described in this section. The commission may issue nonresident landowner limited permits after preference has been given for the issuance of resident permits as provided in rules and regulations adopted and promulgated by the commission. Except as provided in subsection (4) of this section, a permit shall be valid during the predetermined period established by the commission pursuant to sections 37-447 to 37-450, 37-452, 37-456, or 37-457. Upon receipt of an application in proper form as prescribed by the rules and regulations of the commission, the commission may issue (a) a limited deer, antelope, or wild turkey permit valid for hunting on all of the land which is owned or leased by the qualifying landowner or leaseholder if such lands are identified in the application or (b) a limited elk permit valid for hunting on the entire elk management unit of which the land of the qualifying landowner or leaseholder included in the application is a part.

(2)(a) The commission shall adopt and promulgate rules and regulations prescribing procedures and forms and create requirements for documentation by an applicant or permittee to determine whether the applicant or permittee is a Nebraska resident and is a qualifying landowner or leaseholder of the described property or is a member of the immediate family of such qualifying landowner or leaseholder. The commission may adopt and promulgate rules and regulations that create requirements for documentation to designate one qualifying landowner among partners of a partnership or officers or shareholders of a corporation that owns or leases eighty acres or more of farm or ranch land for agricultural purposes and among beneficiaries of a trust that owns or leases eighty acres or more of farm or ranch land for agricultural purposes. Only a person who is a qualifying landowner or leaseholder or a member of such person's immediate family may apply for a limited permit. An applicant may apply for no more than one permit per species per year except as otherwise provided in subsection (4) of this section and the rules and regulations of the commission. For purposes of this section, member of a person's immediate family means and is limited to the spouse of such person, any child or stepchild of such person or of the spouse of such person, any spouse of any such child or stepchild, any grandchild or stepgrandchild of such person or of the spouse of such person, any spouse of such grandchild or stepgrandchild, any sibling of such person sharing ownership in the property, and any spouse of any such sibling.

(b) The conditions applicable to permits issued pursuant to sections 37-447 to 37-450, 37-452, 37-456, or 37-457, whichever is appropriate, shall apply to limited permits issued pursuant to this section, except that the commission may pass commission orders for species harvest allocation pertaining to the sex and age of the species harvested which are different for a limited permit than for other hunting permits. For purposes of this section, white-tailed deer and mule deer shall be treated as one species.

(3)(a) To qualify for a limited permit to hunt deer or antelope, the applicant shall be a Nebraska resident who (i) owns or leases eighty acres or more of farm or ranch land for agricultural purposes or a member of such person's immediate family or (ii) is the partner, officer, shareholder, or beneficiary designated as the qualifying landowner by a partnership, corporation, or trust as provided in the rules and regulations under subdivision (2)(a) of this section or a member of the immediate family of the partner, officer, shareholder, or beneficiary. The number of limited permits issued annually per species for each farm or ranch shall not exceed the total acreage of the farm or ranch divided by eighty. The fee for a limited permit to hunt deer or antelope shall be one-half the fee for the regular permit for such species.

(b) A nonresident of Nebraska who owns three hundred twenty acres or more of farm or ranch land in the State of Nebraska for agricultural purposes or a member of such person's immediate family may apply for a limited deer or antelope permit. The number of limited permits issued annually per species for each farm or ranch shall not exceed the total acreage of the farm or ranch divided by three hundred twenty. The fee for such a permit to hunt deer or antelope shall be one-half the fee for a nonresident permit to hunt such species.

(c) The commission may adopt and promulgate rules and regulations providing for the issuance of an additional limited deer permit to a qualified individual for the taking of a deer without antlers at a fee equal to or less than the fee for the original limited permit.

(4)(a) In addition to any limited permit to hunt deer issued to a qualifying landowner under subsection (3) of this section, the commission shall issue up to eight limited permits to hunt deer during the three days of Saturday through Monday immediately preceding the opening day of firearm deer hunting season to any qualifying landowner meeting the requirements of subdivision (b) of this subsection and designated members of his or her immediate family. The fee for each permit issued under this subsection shall be five dollars. Permits shall be issued subject to the following:

(i) No more than eight permits may be issued per qualifying landowner to the landowner or designated members of his or her immediate family, except that no more than one permit shall be issued per person for the qualifying landowner or any designated member of his or her immediate family;

(ii) Of the eight permits that may be issued, no more than six permits may be issued to persons who are younger than nineteen years of age and no more than two permits may be issued to persons who are nineteen years of age or older; and

(iii) For a Nebraska resident landowner, the number of permits issued shall not exceed the total acreage of the farm or ranch divided by eighty, and for a nonresident landowner, the number of permits issued shall not exceed the total acreage of the farm or ranch divided by three hundred twenty.

(b) For purposes of this subsection, the qualifying criteria for a Nebraska resident described in subdivisions (3)(a)(i) and (ii) of this section and the ownership criteria for a nonresident of Nebraska described in subdivision (3)(b) of this section apply.

(c) The commission may adopt and promulgate rules and regulations to carry out this subsection.

(5)(a) To qualify for a limited permit to hunt wild turkey, the applicant shall be a Nebraska resident who (i) owns or leases eighty acres or more of farm or ranch land for agricultural purposes or a member of such person's immediate family or (ii) is the partner, officer, shareholder, or beneficiary designated as the qualifying landowner by a partnership, corporation, or trust as provided in the rules and regulations under subdivision (2)(a) of this section or a member of the immediate family of the partner, officer, shareholder, or beneficiary. The number of limited permits issued annually per season for each farm or ranch shall not exceed the total acreage of the farm or ranch divided by eighty. An applicant may apply for no more than one limited permit per season. The fee for a limited permit to hunt wild turkey shall be one-half the fee for the regular permit to hunt wild turkey.

(b) A nonresident of Nebraska who owns three hundred twenty acres or more of farm or ranch land in the State of Nebraska for agricultural purposes or a member of such person's immediate family may apply for a limited permit to hunt wild turkey. Only one limited wild turkey permit per three hundred twenty acres may be issued annually for each wild turkey season under this subdivision. The fee for such a permit to hunt shall be one-half the fee for a nonresident permit to hunt wild turkey.

(6) To qualify for a limited permit to hunt elk, (a) the applicant shall be (i) a Nebraska resident who owns three hundred twenty acres or more of farm or ranch land for agricultural purposes, (ii) a Nebraska resident who leases six hundred forty acres or more of farm or ranch land for agricultural purposes or has a leasehold interest and an ownership interest in farm or ranch land used

for agricultural purposes which when added together totals at least six hundred forty acres, (iii) a nonresident of Nebraska who owns at least one thousand two hundred eighty acres of farm or ranch land for agricultural purposes, or (iv) a member of such owner's or lessee's immediate family and (b) the qualifying farm or ranch land of the applicant shall be within an area designated as an elk management zone by the commission in its rules and regulations. An applicant shall not be issued a limited bull elk permit more than once every three years, and the commission may give preference to a person who did not receive a limited elk permit or a specified type of limited elk permit during the previous years. The fee for a resident landowner limited permit to hunt elk shall not exceed one-half the fee for the regular permit to hunt elk. The fee for a nonresident landowner limited permit to hunt elk shall not exceed three times the cost of a resident elk permit. The number of applications allowed for limited elk permits for each farm or ranch shall not exceed the total acreage of the farm or ranch divided by the minimum acreage requirements established for the property. No more than one person may qualify for the same described property.

Source: Laws 1969, c. 761, § 1, p. 2878; Laws 1974, LB 767, § 2; Laws 1975, LB 270, § 1; Laws 1983, LB 170, § 2; Laws 1985, LB 557, § 5; Laws 1993, LB 235, § 14; Laws 1996, LB 584, § 7; Laws 1997, LB 107, § 3; Laws 1997, LB 173, § 3; R.S.Supp.,1997, § 37-215.03; Laws 1998, LB 922, § 165; Laws 2001, LB 111, § 9; Laws 2002, LB 1003, § 23; Laws 2003, LB 305, § 16; Laws 2004, LB 1149, § 1; Laws 2009, LB105, § 19; Laws 2013, LB94, § 3; Laws 2013, LB499, § 7; Laws 2019, LB127, § 1; Laws 2020, LB126, § 1; Laws 2022, LB809, § 1.
Effective date July 21, 2022.

37-456 Limited antelope or elk permit; issuance; limitation.

The issuance of limited antelope permits pursuant to section 37-455 in any management unit shall not exceed seventy-five percent of the regular permits authorized for such antelope management unit. The issuance of limited elk permits pursuant to section 37-455 in any management unit shall not exceed seventy-five percent of the regular permits authorized for such elk management unit.

Source: Laws 1974, LB 865, § 2; Laws 1975, LB 270, § 2; Laws 1985, LB 557, § 7; Laws 1996, LB 584, § 8; R.S.Supp.,1996, § 37-215.08; Laws 1998, LB 922, § 166; Laws 2009, LB105, § 21; Laws 2021, LB507, § 3.

37-456.01 Free-earned landowner elk permit; issuance; conditions.

(1) The commission may issue one free-earned landowner elk permit for the taking of either sex of elk to any person owning or leasing at least eighty acres of farm or ranch land used for agricultural purposes, or to any member of the immediate family of such person as defined in subdivision (2)(a) of section 37-455, when the qualifying number of antlerless elk have been harvested on such land by hunters with a permit issued under section 37-448 or 37-450. Such permit shall be limited to hunting on the lands owned or leased by the qualifying landowner. Receipt of a free-earned landowner elk permit shall not

in any way affect a person's eligibility for a permit issued under section 37-450 or 37-455.

(2) The commission shall adopt and promulgate rules and regulations prescribing procedures, forms, and requirements for documentation by landowners or lessees as described in subsection (1) of this section to annually report antlerless elk harvested on their property for eligibility, and the number of antlerless elk required to be harvested on such property to qualify for a free-earned landowner elk permit. The number of antlerless elk harvested to qualify shall accumulate each year until such time as a free-earned landowner elk permit is awarded.

Source: Laws 2021, LB507, § 4.

37-478 Captive wildlife auction permit; issuance; fee; prohibited acts.

(1) To conduct an auction in this state of captive wild birds, captive wild mammals, or captive wildlife as specified in subsection (1) of section 37-477, a person shall apply to the commission on a form prescribed by the commission for a captive wildlife auction permit. An applicant for a permit shall specify the dates of the auction and shall apply for a permit for each auction to be held in the state. The application for the permit shall include the applicant's social security number. The fee for such permit shall be not more than sixty-five dollars, as established by the commission pursuant to section 37-327. The commission shall adopt and promulgate rules and regulations specifying application requirements and procedures, reporting and inspection requirements, and other requirements related to auction activities.

(2) A permitholder shall not (a) take wild birds, wild mammals, or other wildlife from the wild in Nebraska or (b) purchase wild birds, wild mammals, or other wildlife from any person other than the commission or a person authorized to propagate and dispose of wild birds, wild mammals, or other wildlife. A permit under this section is not required for an auction of domesticated cervine animals as defined in section 54-2914.

Source: Laws 1957, c. 151, § 2, p. 490; Laws 1981, LB 72, § 20; Laws 1986, LB 558, § 2; Laws 1993, LB 235, § 26; R.S.1943, (1993), § 37-714; Laws 1998, LB 922, § 188; Laws 1999, LB 176, § 57; Laws 2008, LB1162, § 10; Laws 2020, LB344, § 59.

37-479 Captive wildlife permit; issuance; fee; prohibited acts; violation; penalty.

(1) To purchase, possess, propagate, or sell captive wild birds, captive wild mammals, or captive wildlife as specified in subsection (1) of section 37-477 or to sell parts thereof, except as provided in section 37-505, a person shall apply to the commission on a form prescribed by the commission for a captive wildlife permit. The commission shall adopt and promulgate rules and regulations specifying application requirements and procedures. The permit shall expire on December 31. The application for the permit shall include the applicant's social security number. The annual fee for such permit shall be not more than thirty dollars, as established by the commission pursuant to section 37-327. A holder of a captive wildlife permit shall report to the commission by January 15 for the preceding calendar year on forms provided by the commission. The commission shall adopt and promulgate rules and regulations specifying the requirements for the reports.

(2) A permitholder shall not (a) take wild birds, wild mammals, or wildlife from the wild in Nebraska or (b) purchase wild birds, wild mammals, or wildlife from any person other than the commission or a person authorized to propagate and dispose of wild birds, wild mammals, or wildlife. A permit under this section is not required for possession or production of domesticated cervine animals as defined in section 54-2914.

(3) It shall be unlawful to lure or entice wildlife into a domesticated cervine animal facility for the purpose of containing such wildlife. Any person violating this subsection shall be guilty of a Class II misdemeanor and upon conviction shall be fined at least one thousand dollars.

Source: Laws 1957, c. 151, § 3, p. 490; Laws 1981, LB 72, § 21; Laws 1987, LB 379, § 2; Laws 1993, LB 235, § 27; Laws 1997, LB 752, § 92; R.S.Supp.,1997, § 37-715; Laws 1998, LB 922, § 189; Laws 1999, LB 176, § 58; Laws 2008, LB1162, § 11; Laws 2009, LB105, § 24; Laws 2020, LB344, § 60.

37-497 Raptors; protection; management; raptor permit; raptor permit for wildlife abatement; captive propagation permit; raptor collecting permit; fees.

(1) The commission may take such steps as it deems necessary to provide for the protection and management of raptors. The commission may issue raptor permits for the taking and possession of raptors for the purpose of practicing falconry or wildlife abatement.

(2) A raptor permit for falconry may be issued only to a resident of the state who has paid the fees required in this subsection and has passed a written and oral examination concerning raptors given by the commission or an authorized representative of the commission. The commission shall charge a fee for each permit of not more than twenty-three dollars for persons between twelve and seventeen years of age and not more than sixty-one dollars for persons eighteen years of age and older, as established by the commission pursuant to section 37-327. If the applicant fails to pass the examination, he or she shall not be entitled to reapply for a raptor permit for falconry for a period of six months after the date of the examination. No person under twelve years of age shall be issued a raptor permit for falconry. A person between twelve and seventeen years of age may be issued a permit only if he or she is sponsored by an adult who has a valid raptor permit for falconry and appropriate experience. All raptor permits for falconry shall be nontransferable and shall expire three years after the date of issuance. If the commission is satisfied as to the competency and fitness of an applicant whose permit has expired, his or her permit may be renewed without requiring further examination subject to terms and conditions imposed by the commission. The commission shall adopt and promulgate rules and regulations outlining species of raptors which may be taken, captured, or held in possession.

(3) A raptor permit for wildlife abatement may be issued only to a resident of the state who has paid the fees required in this subsection and has agreed to comply with federal law concerning raptors used for wildlife abatement as attested to in his or her application. The commission shall charge a fee for each permit of not more than twenty-three dollars for persons between twelve and seventeen years of age and not more than sixty-one dollars for persons eighteen years of age and older, as established by the commission pursuant to section 37-327. No person under twelve years of age shall be issued a raptor permit for

wildlife abatement. A person between twelve and seventeen years of age may be issued a permit only if he or she is sponsored and supervised by an adult who has a valid raptor permit for wildlife abatement and appropriate experience. All raptor permits for wildlife abatement shall be nontransferable and shall expire three years after the date of issuance. The commission shall adopt and promulgate rules and regulations to carry out this subsection.

(4) The commission may issue captive propagation permits to allow the captive propagation of raptors. A permit may be issued to a resident of the state who has paid the fee required in this subsection. The fee for each permit shall be not more than three hundred five dollars, as established by the commission pursuant to section 37-327. The permit shall be nontransferable, shall expire three years after the date of issuance, and may be renewed under terms and conditions established by the commission. The commission shall authorize the species and the number of each such species which may be taken, captured, acquired, or held in possession. The commission shall adopt and promulgate rules and regulations governing the issuance and conditions of captive propagation permits.

(5) The commission may issue raptor collecting permits to nonresidents as prescribed by the rules and regulations of the commission. The fee for a permit shall be not more than two hundred sixty-five dollars, as established by the commission pursuant to section 37-327. A raptor collecting permit shall be nontransferable. The commission shall adopt and promulgate rules and regulations governing the issuance and conditions of raptor collecting permits.

Source: Laws 1971, LB 733, § 1; Laws 1987, LB 154, § 2; Laws 1990, LB 940, § 1; Laws 1993, LB 235, § 28; R.S.1943, (1993), § 37-720; Laws 1998, LB 922, § 207; Laws 2003, LB 306, § 14; Laws 2008, LB1162, § 14; Laws 2011, LB41, § 23; Laws 2016, LB745, § 18; Laws 2019, LB374, § 4.

37-498 Raptors; take or maintain; permit required.

(1) It shall be unlawful for any person to take or attempt to take or maintain a raptor in captivity, except as otherwise provided by law or by rule or regulation of the commission, unless he or she possesses a raptor permit for falconry, a raptor permit for wildlife abatement, a captive propagation permit, or a raptor collecting permit as required by section 37-497.

(2) No person shall sell, barter, purchase, or offer to sell, barter, or purchase any raptor, raptor egg, or raptor semen, except as permitted under a raptor permit for falconry, a raptor permit for wildlife abatement, or a captive propagation permit issued under section 37-497 or the rules and regulations adopted and promulgated by the commission. Nothing in this section shall be construed to permit any sale, barter, purchase, or offer to sell, barter, or purchase any raptor, raptor egg, or raptor semen taken from the wild.

Source: Laws 1971, LB 733, § 2; Laws 1987, LB 154, § 3; R.S.1943, (1993), § 37-721; Laws 1998, LB 922, § 208; Laws 2011, LB41, § 24; Laws 2019, LB374, § 5.

37-4,111 Permit to take paddlefish; issuance; fee.

The commission may adopt and promulgate rules and regulations to provide for the issuance of permits for the taking of paddlefish. The commission may, pursuant to section 37-327, establish and charge a fee of not more than thirty-

five dollars for residents. The fee for a nonresident permit to take paddlefish shall be two times the resident permit fee. In addition, the commission may, pursuant to section 37-327, establish and charge a nonrefundable application fee of not more than seven dollars. The commission may, pursuant to section 37-327, establish and charge a fee of not more than twenty-four dollars for residents and not more than seventy-two dollars for nonresidents for the issuance of a preference point, in addition to any application fee, in lieu of applying for a paddlefish permit during the application period. All fees collected under this section shall be remitted to the State Treasurer for credit to the State Game Fund.

Source: Laws 2002, LB 1003, § 30; Laws 2007, LB299, § 12; Laws 2009, LB105, § 26; Laws 2016, LB745, § 19; Laws 2020, LB287, § 14.

ARTICLE 5

REGULATIONS AND PROHIBITED ACTS

(a) GENERAL PROVISIONS

Section

(b) GAME, BIRDS, AND AQUATIC INVASIVE SPECIES

(a) GENERAL PROVISIONS

37-504 Violations; penalties; exception.

(1) Any person who at any time, except during an open season ordered by the commission as authorized in the Game Law, unlawfully hunts, traps, or has in his or her possession:

(a) Any deer, antelope, swan, or wild turkey shall be guilty of a Class III misdemeanor and, upon conviction, shall be fined at least five hundred dollars for each violation; or

(b) Any elk shall be guilty of a Class II misdemeanor and, upon conviction, shall be fined at least one thousand dollars for each violation.

(2) Any person who at any time, except during an open season ordered by the commission as authorized in the Game Law, unlawfully hunts, traps, or has in his or her possession any mountain sheep shall be guilty of a Class I misdemeanor and shall be fined at least one thousand dollars upon conviction.

(3) Any person who at any time, except during an open season ordered by the commission as authorized in the Game Law, unlawfully hunts, traps, or has in his or her possession any quail, pheasant, partridge, Hungarian partridge, curlew, grouse, mourning dove, sandhill crane, or waterfowl shall be guilty of a Class III misdemeanor and shall be fined at least five hundred dollars upon conviction.

(4) Any person who unlawfully takes any game or unlawfully has in his or her possession any such game shall be guilty of a Class III misdemeanor and,

except as otherwise provided in this section and section 37-501, shall be fined at least fifty dollars for each animal unlawfully taken or unlawfully possessed up to the maximum fine authorized by law upon conviction.

(5) Any person who, in violation of the Game Law, takes any mourning dove that is not flying shall be guilty of a Class V misdemeanor.

(6) Any person who, in violation of the Game Law, has in his or her possession any protected bird, or destroys or takes the eggs or nest of any such bird, shall be guilty of a Class V misdemeanor.

(7) The provisions of this section shall not render it unlawful for anyone operating a captive wildlife facility or an aquaculture facility, pursuant to the laws of this state, to at any time kill game or fish actually raised thereon or lawfully placed thereon by such person.

(8) A person holding a special permit pursuant to the Game Law for the taking of any game or any birds not included in the definition of game shall not be liable under this section while acting under the authority of such permit.

Source: Laws 1929, c. 112, III, § 9, p. 419; C.S.1929, § 37-309; Laws 1937, c. 89, § 10, p. 295; Laws 1941, c. 72, § 4, p. 302; C.S.Supp.,1941, § 37-309; Laws 1943, c. 94, § 8, p. 327; R.S. 1943, § 37-308; Laws 1947, c. 134, § 1, p. 377; Laws 1949, c. 104, § 1, p. 283; Laws 1953, c. 123, § 3, p. 387; Laws 1957, c. 139, § 10, p. 469; Laws 1975, LB 142, § 3; Laws 1977, LB 40, § 182; Laws 1981, LB 72, § 16; Laws 1989, LB 34, § 18; Laws 1997, LB 107, § 4; R.S.Supp.,1997, § 37-308; Laws 1998, LB 922, § 224; Laws 1999, LB 176, § 67; Laws 2009, LB105, § 28; Laws 2017, LB566, § 2.

37-505 Game animals, birds, or fish; possession or sale prohibited; exceptions; violation; penalty.

(1) It shall be unlawful to buy, sell, or barter the meat or flesh of game animals or game birds whether such animals or birds were killed or taken within or outside this state. Except as otherwise provided in this section, it shall be unlawful to buy, sell, or barter other parts of game animals or game birds.

(2) It shall be lawful to buy, sell, or barter only the following parts of legally taken antelope, deer, elk, rabbits, squirrels, and upland game birds: The hides, hair, hooves, bones, antlers, and horns of antelope, deer, or elk, the skins, tails, or feet of rabbits and squirrels, and the feathers or skins of upland game birds.

(3) It shall be lawful to pick up, possess, buy, sell, or barter antlers or horns which have been dropped or shed by antelope, deer, or elk. It shall be unlawful to pick up, possess, buy, sell, or barter mountain sheep or any part of a mountain sheep except (a) as permitted by law or rule or regulation of the commission and (b) for possession of mountain sheep or any part of a mountain sheep lawfully obtained in this state or another state or country.

(4) The commission may provide by rules and regulations for allowing, restricting, or prohibiting the acquisition, possession, purchase, sale, or barter of discarded parts, including, but not limited to, horns and antlers, or parts of dead game animals and upland game birds which have died from natural causes or causes which were not associated with any known illegal acts, which parts are discovered by individuals.

(5) Any domesticated cervine animal as defined in section 54-2914 or any part of such an animal may be bought, sold, or bartered if the animal or parts are appropriately marked for proof of ownership according to rules and regulations adopted and promulgated by the Department of Agriculture.

(6) It shall be unlawful to buy, sell, or barter any sport fish protected by the Game Law at any time whether the fish was killed or taken within or outside this state, except that game fish lawfully shipped in from outside this state by residents of this state or fish lawfully acquired from a person having an aquaculture permit or, in the case of bullheads, pursuant to section 37-545 may be sold in this state. The burden of proof shall be upon any such buyer, seller, or possessor to show by competent and satisfactory evidence that any game fish in his or her possession or sold by him or her was lawfully shipped in from outside this state or was lawfully acquired from one of such sources.

(7) Any person violating this section shall be guilty of a Class III misdemeanor and shall be fined at least fifty dollars.

Source: Laws 1929, c. 112, V, § 5, p. 427; C.S.1929, § 37-505; Laws 1931, c. 72, § 2, p. 194; Laws 1937, c. 89, § 12, p. 297; C.S.Supp.,1941, § 37-505; R.S.1943, § 37-505; Laws 1945, c. 81, § 1, p. 300; Laws 1945, c. 80, § 2, p. 299; Laws 1959, c. 154, § 2, p. 581; Laws 1961, c. 169, § 7, p. 506; Laws 1961, c. 174, § 2, p. 517; Laws 1963, c. 200, § 2, p. 648; Laws 1967, c. 216, § 12, p. 587; Laws 1972, LB 556, § 1; Laws 1981, LB 72, § 17; Laws 1985, LB 557, § 9; Laws 1989, LB 34, § 28; Laws 1989, LB 166, § 2; Laws 1989, LB 172, § 1; Laws 1991, LB 341, § 1; Laws 1993, LB 235, § 24; Laws 1994, LB 1165, § 10; Laws 1995, LB 718, § 1; Laws 1997, LB 107, § 5; Laws 1997, LB 752, § 90; R.S.Supp.,1997, § 37-505; Laws 1998, LB 922, § 225; Laws 2020, LB344, § 61.

(b) GAME, BIRDS, AND AQUATIC INVASIVE SPECIES

37-513 Shooting at wildlife from highway or roadway; violation; penalty; trapping in county road right-of-way; county; powers; limitation on traps.

(1) It shall be unlawful to shoot at any wildlife from any highway or roadway, which includes that area of land from the center of the traveled surface to the right-of-way on either side. Any person violating this subsection shall be guilty of a Class III misdemeanor and shall be fined at least five hundred dollars.

(2)(a) Any county may adopt a resolution having the force and effect of law to prohibit the trapping of wildlife in the county road right-of-way or in a certain area of the right-of-way as designated by the county.

(b) A person trapping wildlife in a county road right-of-way is not allowed to use traps in the county road right-of-way that are larger than those allowed by the commission as of February 1, 2009, on any land owned or controlled by the commission.

(c) For purposes of this subsection, county road right-of-way means the area which has been designated a part of the county road system and which has not been vacated pursuant to law.

Source: Laws 1929, c. 112, V, § 1, p. 426; C.S.1929, § 37-501; Laws 1937, c. 89, § 11, p. 296; Laws 1941, c. 72, § 6, p. 303; C.S.Supp.,1941, § 37-501; Laws 1943, c. 94, § 11, p. 329; R.S.1943, § 37-501; Laws 1947, c. 137, § 1, p. 382; Laws 1959, c. 150, § 6, p. 572;

Laws 1961, c. 169, § 5, p. 503; Laws 1963, c. 204, § 1, p. 656; Laws 1965, c. 203, § 1, p. 606; Laws 1967, c. 220, § 1, p. 594; Laws 1969, c. 294, § 1, p. 1066; Laws 1972, LB 1447, § 1; Laws 1974, LB 765, § 1; Laws 1974, LB 779, § 1; Laws 1975, LB 142, § 4; Laws 1975, LB 220, § 1; Laws 1989, LB 34, § 26; Laws 1989, LB 171, § 1; R.S.1943, (1993), § 37-501; Laws 1998, LB 922, § 233; Laws 2007, LB299, § 13; Laws 2008, LB865, § 1; Laws 2009, LB5, § 1; Laws 2009, LB105, § 30; Laws 2017, LB566, § 3.

37-524 Aquatic invasive species; wild or nonnative animals; importation, possession, or release; prohibition; violation; penalty.

(1) It shall be unlawful for any person, partnership, limited liability company, association, or corporation to import into the state or possess aquatic invasive species, the animal known as the San Juan rabbit, or any other species of wild vertebrate animal, including domesticated cervine animals as defined in section 54-2914, declared by the commission following public hearing and consultation with the Department of Agriculture to constitute a serious threat to economic or ecologic conditions, except that the commission may authorize by specific written permit the acquisition and possession of such species for educational or scientific purposes. It shall also be unlawful to release to the wild any nonnative bird or nonnative mammal without written authorization from the commission. Any person, partnership, limited liability company, association, or corporation violating the provisions of this subsection shall be guilty of a Class IV misdemeanor.

(2) Following public hearing and consultation with the Department of Agriculture, the commission may, by rule and regulation, regulate or limit the importation and possession of any aquatic invasive species or wild vertebrate animal, including a domesticated cervine animal as defined in section 54-2914, which is found to constitute a serious threat to economic or ecologic conditions.

Source: Laws 1957, c. 139, § 20, p. 474; Laws 1967, c. 222, § 1, p. 597; Laws 1973, LB 331, § 7; Laws 1977, LB 40, § 205; Laws 1993, LB 121, § 203; Laws 1993, LB 830, § 9; Laws 1995, LB 718, § 5; R.S.Supp.,1996, § 37-719; Laws 1998, LB 922, § 244; Laws 2012, LB391, § 8; Laws 2020, LB344, § 62.

Cross References

Domesticated Cervine Animal Act, possession of certain animals prohibited, see section 54-2324.

37-527 Hunter orange display required; exception; violation; penalty.

(1) For purposes of this section, hunter orange means a daylight fluorescent orange color with a dominant wave length between five hundred ninety-five and six hundred five nanometers, an excitation purity of not less than eighty-five percent, and a luminance factor of not less than forty percent.

(2) Any person hunting deer, antelope, wild turkey, elk, or mountain sheep during an authorized firearm season in this state shall display on his or her head, chest, and back a total of not less than four hundred square inches of hunter orange material except as exempted by rules and regulations of the commission.

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

(4) This section shall not apply to archery hunters hunting during a non-center-fire firearm season or in a management unit where a current center-fire firearm season is not open. The commission may adopt and promulgate rules and regulations allowing additional exceptions and establishing requirements for the display of hunter orange during other authorized hunting seasons.

Source: Laws 1972, LB 1216, § 1; R.S.1943, (1993), § 37-215.05; Laws 1998, LB 922, § 247; Laws 1999, LB 176, § 72; Laws 2007, LB299, § 14; Laws 2020, LB287, § 15.

ARTICLE 6

ENFORCEMENT

Section
37-613. Wildlife; prohibited acts; liquidated damages; schedule; disposition.
37-614. Revocation and suspension of permits; grounds.
37-615. Revoked or suspended permit; unlawful acts; violation; penalty.
37-617. Suspension, revocation, or conviction; court; duties.

37-613 Wildlife; prohibited acts; liquidated damages; schedule; disposition.

(1) Any person who sells, purchases, takes, or possesses contrary to the Game Law any wildlife shall be liable to the State of Nebraska for the damages caused thereby. Such damages shall be:

(a) Twenty-five thousand dollars for each mountain sheep;

(b) Ten thousand dollars for each elk with a minimum of twelve total points and three thousand dollars for any other elk;

(c) Ten thousand dollars for each whitetail deer with a minimum of eight total points and an inside spread between beams of at least sixteen inches, two thousand dollars for any other antlered whitetail deer, and five hundred dollars for each antlerless whitetail deer and whitetail doe deer;

(d) Ten thousand dollars for each mule deer with a minimum of eight total points and an inside spread between beams of at least twenty-two inches and two thousand dollars for any other mule deer;

(e) Five thousand dollars for each antelope with the shortest horn measuring a minimum of fourteen inches in length and one thousand dollars for any other antelope;

(f) One thousand five hundred dollars for each bear or moose or each individual animal of any threatened or endangered species of wildlife not otherwise listed in this subsection;

(g) Five thousand dollars for each mountain lion, lynx, bobcat, river otter, or raw pelt thereof;

(h) Twenty-five dollars for each raccoon, opossum, skunk, or raw pelt thereof;

(i) Five thousand dollars for each eagle;

(j) Five hundred dollars for each wild turkey;

(k) Twenty-five dollars for each dove;

(l) Seventy-five dollars for each other game bird, other game animal, other fur-bearing animal, raw pelt thereof, or nongame wildlife in need of conserva-

tion as designated by the commission pursuant to section 37-805, not otherwise listed in this subsection;

(m) Fifty dollars for each wild bird not otherwise listed in this subsection;

(n) Seven hundred fifty dollars for each swan or paddlefish;

(o) Two hundred dollars for each master angler fish measuring more than twelve inches in length;

(p) Fifty dollars for each game fish measuring more than twelve inches in length not otherwise listed in this subsection;

(q) Twenty-five dollars for each other game fish; and

(r) Fifty dollars for any other species of game not otherwise listed in this subsection.

(2) The commission shall adopt and promulgate rules and regulations to provide for a list of master angler fish which are subject to this section and to prescribe guidelines for measurements and point determinations as required by this section. The commission may adopt a scoring system which is uniformly recognized for this purpose.

(3) Such damages may be collected by the commission by civil action. In every case of conviction for any of such offenses, the court or magistrate before whom such conviction is obtained shall further enter judgment in favor of the State of Nebraska and against the defendant for liquidated damages in the amount set forth in this section and collect such damages by execution or otherwise. Failure to obtain conviction on a criminal charge shall not bar a separate civil action for such liquidated damages. Damages collected pursuant to this section shall be remitted to the secretary of the commission who shall remit them to the State Treasurer for credit to the State Game Fund.

Source: Laws 1929, c. 112, VI, § 14, p. 437; C.S.1929, § 37-614; R.S. 1943, § 37-614; Laws 1949, c. 105, § 1, p. 285; Laws 1957, c. 139, § 17, p. 472; Laws 1989, LB 34, § 43; Laws 1989, LB 43, § 1; R.S.1943, (1993), § 37-614; Laws 1998, LB 922, § 303; Laws 1999, LB 176, § 88; Laws 2001, LB 130, § 5; Laws 2009, LB105, § 34; Laws 2018, LB1008, § 1.

37-614 Revocation and suspension of permits; grounds.

(1) When a person pleads guilty to or is convicted of any violation listed in this subsection, the court shall, in addition to any other penalty, revoke and require the immediate surrender of all permits to hunt, fish, and harvest fur held by such person and suspend the privilege of such person to hunt, fish, and harvest fur and to purchase such permits for a period of not less than three years. The court shall consider the number and severity of the violations of the Game Law in determining the length of the revocation and suspension. The violations shall be:

(a) Carelessly or purposely killing or causing injury to livestock with a firearm or bow and arrow;

(b) Purposely taking or having in his or her possession a number of game animals, game fish, game birds, or fur-bearing animals exceeding twice the limit established pursuant to section 37-314;

(c) Taking any species of wildlife protected by the Game Law during a closed season in violation of section 37-502;

(d) Resisting or obstructing any officer or any employee of the commission in the discharge of his or her lawful duties in violation of section 37-609; and

(e) Being a habitual offender of the Game Law.

(2) When a person pleads guilty to or is convicted of any violation listed in this subsection, the court may, in addition to any other penalty, revoke and require the immediate surrender of all permits to hunt, fish, and harvest fur held by such person and suspend the privilege of such person to hunt, fish, and harvest fur and to purchase such permits for a period of not less than one year. The court shall consider the number and severity of the violations of the Game Law in determining the length of the revocation and suspension. The violations shall be:

(a) Hunting, fishing, or fur harvesting without a permit in violation of section 37-411;

(b) Hunting from a vehicle, aircraft, or boat in violation of section 37-513, 37-514, 37-515, 37-535, or 37-538; and

(c) Knowingly taking any wildlife on private land without permission in violation of section 37-722.

(3) When a person pleads guilty to or is convicted of any violation of the Game Law, the rules and regulations of the commission, or commission orders not listed in subsection (1) or (2) of this section, the court may, in addition to any other penalty, revoke and require the immediate surrender of all permits to hunt, fish, and harvest fur held by such person and suspend the privilege of such person to hunt, fish, and harvest fur and to purchase such permits for a period of not less than one year.

Source: Laws 1998, LB 922, § 304; Laws 1999, LB 176, § 89; Laws 2007, LB299, § 16; Laws 2009, LB5, § 2; Laws 2013, LB499, § 16; Laws 2017, LB566, § 4.

37-615 Revoked or suspended permit; unlawful acts; violation; penalty.

It shall be unlawful for any person to take any species of wildlife protected by the Game Law while his or her permits are revoked or suspended. It shall be unlawful for any person to apply for or purchase a permit to hunt, fish, or harvest fur in Nebraska while his or her permits are revoked and while the privilege to purchase such permits is suspended. Any person who violates this section shall be guilty of a Class I misdemeanor and in addition shall be suspended from hunting, fishing, and fur harvesting or purchasing permits to hunt, fish, and harvest fur for a period of not less than two years as the court directs. The court shall consider the number and severity of the violations of the Game Law in determining the length of the suspension.

Source: Laws 1998, LB 922, § 305; Laws 2011, LB41, § 28; Laws 2017, LB566, § 5.

37-617 Suspension, revocation, or conviction; court; duties.

The court shall notify the commission of any suspension, revocation, or conviction under sections 37-614 to 37-616.

Source: Laws 1998, LB 922, § 307; Laws 1999, LB 176, § 90; Laws 2017, LB566, § 6.

ARTICLE 8

NONGAME AND ENDANGERED SPECIES CONSERVATION ACT

37-806 Endangered or threatened species; how determined; commission; powers and duties; unlawful acts; exceptions; local law, regulation, or ordinance; effect.

(1) Any species of wildlife or wild plants determined to be an endangered species pursuant to the Endangered Species Act shall be an endangered species under the Nongame and Endangered Species Conservation Act, and any species of wildlife or wild plants determined to be a threatened species pursuant to the Endangered Species Act shall be a threatened species under the Nongame and Endangered Species Conservation Act. The commission may determine that any such threatened species is an endangered species throughout all or any portion of the range of such species within this state.

(2) In addition to the species determined to be endangered or threatened pursuant to the Endangered Species Act, the commission shall by regulation determine whether any species of wildlife or wild plants normally occurring within this state is an endangered or threatened species as a result of any of the following factors:

(a) The present or threatened destruction, modification, or curtailment of its habitat or range;

(b) Overutilization for commercial, sporting, scientific, educational, or other purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting its continued existence within this state.

(3)(a) The commission shall make determinations required by subsection (2) of this section on the basis of the best scientific, commercial, and other data available to the commission.

(b) Except with respect to species of wildlife or wild plants determined to be endangered or threatened species under subsection (1) of this section, the commission may not add a species to nor remove a species from any list published pursuant to subsection (5) of this section unless the commission has first:

(i) Provided public notice of such proposed action by publication in a newspaper of general circulation in each county in that portion of the subject species' range in which it is endangered or threatened or, if the subject species' range extends over more than five counties, in a newspaper of statewide circulation distributed in the county;

(ii) Provided notice of such proposed action to and allowed comment from the Department of Agriculture, the Department of Environment and Energy, and the Department of Natural Resources;

(iii) Provided notice of such proposed action to and allowed comment from each natural resources district and public power district located in that portion of the subject species' range in which it is endangered or threatened;

(iv) Notified the Governor of any state sharing a common border with this state, in which the subject species is known to occur, that such action is being proposed;

(v) Allowed at least sixty days following publication for comment from the public and other interested parties;

(vi) Held at least one public hearing on such proposed action in each game and parks commissioner district of the subject species' range in which it is endangered or threatened;

(vii) Submitted the scientific, commercial, and other data which is the basis of the proposed action to scientists or experts outside and independent of the commission for peer review of the data and conclusions. If the commission submits the data to a state or federal fish and wildlife agency for peer review, the commission shall also submit the data to scientists or experts not affiliated with such an agency for review. For purposes of this section, state fish and wildlife agency does not include a postsecondary educational institution; and

(viii) For species proposed to be added under this subsection but not for species proposed to be removed under this subsection, developed an outline of the potential impacts, requirements, or regulations that may be placed on private landowners, or other persons who hold state-recognized property rights on behalf of themselves or others, as a result of the listing of the species or the development of a proposed program for the conservation of the species as required in subsection (1) of section 37-807.

The inadvertent failure to provide notice as required by subdivision (3)(b) of this section shall not prohibit the listing of a species and shall not be deemed to be a violation of the Administrative Procedure Act or the Nongame and Endangered Species Conservation Act.

(c) When the commission is proposing to add or remove a species under this subsection, public notice under subdivision (3)(b)(i) of this section shall include, but not be limited to, (i) the species proposed to be listed and a description of that portion of its range in which the species is endangered or threatened, (ii) a declaration that the commission submitted the data which is the basis for the listing for peer review and developed an outline if required under subdivision (b)(viii) of this subsection, and (iii) a declaration of the availability of the peer review, including an explanation of any changes or modifications the commission has made to its proposal as a result of the peer review, and the outline required under subdivision (b)(viii) of this subsection, if applicable, for public examination.

(d) In cases when the commission determines that an emergency situation exists involving the continued existence of such species as a viable component of the wild fauna or flora of the state, the commission may add species to such lists after having first published a public notice that such an emergency situation exists together with a summary of facts which support such determination.

(4) In determining whether any species of wildlife or wild plants is an endangered or threatened species, the commission shall take into consideration those actions being carried out by the federal government, by other states, by

other agencies of this state or political subdivisions thereof, or by any other person which may affect the species under consideration.

(5) The commission shall issue regulations containing a list of all species of wildlife and wild plants normally occurring within this state which it determines, in accordance with subsections (1) through (4) of this section, to be endangered or threatened species and a list of all such species. Each list shall refer to the species contained therein by scientific and common name or names, if any, and shall specify with respect to each such species over what portion of its range it is endangered or threatened.

(6) Except with respect to species of wildlife or wild plants determined to be endangered or threatened pursuant to the Endangered Species Act, the commission shall, upon the petition of an interested person, conduct a review of any listed or unlisted species proposed to be removed from or added to the lists published pursuant to subsection (5) of this section, but only if the commission publishes a public notice that such person has presented substantial evidence which warrants such a review.

(7) Whenever any species of wildlife or wild plants is listed as a threatened species pursuant to subsection (5) of this section, the commission shall issue such regulations as are necessary to provide for the conservation of such species. The commission may prohibit, with respect to any threatened species of wildlife or wild plants, any act prohibited under subsection (8) or (9) of this section.

(8) With respect to any endangered species of wildlife, it shall be unlawful, except as provided in subsection (7) of this section, for any person subject to the jurisdiction of this state to:

(a) Export any such species from this state;

(b) Take any such species within this state;

(c) Possess, process, sell or offer for sale, deliver, carry, transport, or ship, by any means whatsoever except as a common or contract motor carrier under the jurisdiction of the Public Service Commission or the Interstate Commerce Commission, any such species; or

(d) Violate any regulation pertaining to the conservation of such species or to any threatened species of wildlife listed pursuant to this section and promulgated by the commission pursuant to the Nongame and Endangered Species Conservation Act.

(9) With respect to any endangered species of wild plants, it shall be unlawful, except as provided in subsection (7) of this section, for any person subject to the jurisdiction of this state to:

(a) Export any such species from this state;

(b) Possess, process, sell or offer for sale, deliver, carry, transport, or ship, by any means whatsoever, any such species; or

(c) Violate any regulation pertaining to such species or to any threatened species of wild plants listed pursuant to this section and promulgated by the commission pursuant to the act.

(10) Any endangered species of wildlife or wild plants which enters this state from another state or from a point outside the territorial limits of the United States and which is being transported to a point within or beyond this state may be so entered and transported without restriction in accordance with the

terms of any federal permit or permit issued under the laws or regulations of another state.

(11) The commission may permit any act otherwise prohibited by subsection (8) of this section for scientific purposes or to enhance the propagation or survival of the affected species.

(12) Any law, regulation, or ordinance of any political subdivision of this state which applies with respect to the taking, importation, exportation, possession, sale or offer for sale, processing, delivery, carrying, transportation other than under the jurisdiction of the Public Service Commission, or shipment of species determined to be endangered or threatened species pursuant to the Nongame and Endangered Species Conservation Act shall be void to the extent that it may effectively (a) permit that which is prohibited by the act or by any regulation which implements the act or (b) prohibit that which is authorized pursuant to an exemption or permit provided for in the act or in any regulation which implements the act. The Nongame and Endangered Species Conservation Act shall not otherwise be construed to void any law, regulation, or ordinance of any political subdivision of this state which is intended to conserve wildlife or wild plants.

Source: Laws 1975, LB 145, § 5; R.S.1943, (1993), § 37-434; Laws 1998, LB 922, § 356; Laws 2002, LB 1003, § 33; Laws 2019, LB302, § 19.

Cross References

Administrative Procedure Act, see section 84-920.

37-811 Wildlife Conservation Fund; created; use; investment.

There is hereby created the Wildlife Conservation Fund. The fund shall be used to assist in carrying out the Nongame and Endangered Species Conservation Act, to pay for research into and management of the ecological effects of the release, importation, commercial exploitation, and exportation of wildlife species pursuant to section 37-548, and to pay any expenses incurred by the Department of Revenue or any other agency in the administration of the income tax designation program required by section 77-27,119.01. The fund shall consist of money credited pursuant to section 60-3,238 and any other money as determined by the Legislature. The fund shall also consist of money transferred from the General Fund by the State Treasurer in an amount to be determined by the Tax Commissioner which shall be equal to the total amount of contributions designated pursuant to section 77-27,119.01. Any money in the Wildlife Conservation Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1984, LB 466, § 7; Laws 1989, LB 258, § 2; Laws 1994, LB 1066, § 23; R.S.Supp.,1996, § 37-439; Laws 1998, LB 922, § 361; Laws 1999, LB 176, § 98; Laws 2007, LB299, § 18; Laws 2019, LB356, § 1.

Cross References

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

ARTICLE 10
RECREATIONAL TRAILS

Section
37-1017. Trail Development and Maintenance Fund; created; use; investment.

37-1017 Trail Development and Maintenance Fund; created; use; investment.

The Trail Development and Maintenance Fund is hereby created. The fund shall consist of transfers at the direction of the Legislature and any gifts, bequests, or other contributions to such fund from public or private entities. The Game and Parks Commission shall administer the fund to provide grants to natural resources districts to assist in completing the Missouri-Pacific trail between the cities of Lincoln and Omaha. 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 2022, LB1012, § 6.
Effective date April 5, 2022.

Cross References

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

ARTICLE 12
STATE BOAT ACT

Section
37-1201. Act, how cited; declaration of policy.
37-1214. Motorboat; registration; period valid; application; registration fee; aquatic invasive species stamp.
37-1215. Motorboat; registration period already commenced; registration fee reduced; computation.
37-1219. Registration fees; remitted to commission; when; form; duplicate copy.
37-1278. Certificate of title; application; contents; issuance; transfer of motorboat.
37-1279. Certificate of title; issuance; form; county treasurer; duties; filing.
37-1280. Department of Motor Vehicles; powers and duties; rules and regulations; cancellation of certificate of title; removal of improperly noted lien on certificate of title; procedure.
37-1283. New certificate; when issued; proof required; processing of application.
37-1285. Certificate; surrender and cancellation; when required.
37-1285.01. Electronic certificate of title; changes authorized.
37-1287. Fees; disposition.
37-1292. Salvage certificate of title; terms, defined.
37-1293. Salvage branded certificate of title; when issued; procedure.

37-1201 Act, how cited; declaration of policy.

Sections 37-1201 to 37-12,110 shall be known and may be cited as the State Boat Act. It is the policy of this state to promote safety for persons and property in and connected with the use, operation, and equipment of vessels and to promote uniformity of laws relating thereto.

Source: Laws 1978, LB 21, § 1; Laws 2004, LB 560, § 3; Laws 2009, LB49, § 3; Laws 2009, LB202, § 1; Laws 2011, LB667, § 8; Laws 2017, LB263, § 2.

37-1214 Motorboat; registration; period valid; application; registration fee; aquatic invasive species stamp.

(1) Except as otherwise provided in section 37-1211, the owner of each motorboat shall register such vessel or renew the registration every three years as provided in section 37-1226. The owner of such vessel shall file an initial application for a certificate of number pursuant to section 37-1216 with a county treasurer on forms approved and provided by the commission. The application shall be signed by the owner of the vessel, shall contain the year manufactured, and shall be accompanied by a registration fee for the three-year period of twenty-eight dollars for Class 1 boats, fifty-one dollars for Class 2 boats, seventy-two dollars and fifty cents for Class 3 boats, and one hundred twenty dollars for Class 4 boats. Of each motorboat registration fee, not more than ten dollars may be used for the Aquatic Invasive Species Program.

(2) The owner of a motorboat not registered in Nebraska shall purchase an aquatic invasive species stamp for the Aquatic Invasive Species Program valid for one calendar year prior to launching into any waters of the state. The cost of such one-year stamp shall be established pursuant to section 37-327 and be not less than ten dollars and not more than fifteen dollars plus an issuance fee pursuant to section 37-406. Such one-year stamp may be purchased electronically or through any vendor authorized by the commission to sell other permits and stamps issued under the Game Law pursuant to section 37-406. The aquatic invasive species stamp shall be permanently affixed on the starboard and rearward side of the vessel. The proceeds from the sale of stamps shall be remitted to the State Game Fund.

(3) This subsection applies beginning on an implementation date designated by the Director of Motor Vehicles in cooperation with the commission. The director shall designate an implementation date on or before January 1, 2021, for motorboat registration. In addition to the information required under subsection (1) of this section, the application for registration shall contain (a)(i) the full legal name as defined in section 60-468.01 of each owner or (ii) the name of each owner as such name appears on the owner's motor vehicle operator's license or state identification card and (b)(i) the motor vehicle operator's license number or state identification card number of each owner, if applicable, and one or more of the identification elements as listed in section 60-484 of each owner, if applicable, and (ii) if any owner is a business entity, a nonprofit organization, an estate, a trust, or a church-controlled organization, its tax identification number.

Source: Laws 1978, LB 21, § 14; Laws 1993, LB 235, § 36; Laws 1994, LB 123, § 1; Laws 1995, LB 376, § 2; Laws 1996, LB 464, § 2; Laws 1997, LB 720, § 1; Laws 1998, LB 922, § 396; Laws 1999, LB 176, § 111; Laws 2003, LB 305, § 20; Laws 2003, LB 306, § 21; Laws 2012, LB801, § 6; Laws 2015, LB142, § 3; Laws 2015, LB642, § 1; Laws 2019, LB270, § 1; Laws 2020, LB287, § 16.

Cross References

Game Law, see section 37-201.

37-1215 Motorboat; registration period already commenced; registration fee reduced; computation.

In the event an application is made after the beginning of any registration period for registration of any vessel not previously registered by the applicant in this state, the registration fee on such vessel shall be reduced by one thirty-

sixth for each full month of the registration period already expired as of the date such vessel was acquired. The county treasurer shall compute the registration fee on forms and pursuant to rules of the commission.

Source: Laws 1978, LB 21, § 15; Laws 1996, LB 464, § 3; Laws 2012, LB801, § 7; Laws 2015, LB142, § 4; Laws 2020, LB287, § 17.

37-1219 Registration fees; remitted to commission; when; form; duplicate copy.

All registration fees received by the county treasurers shall be remitted on or before the thirtieth day of the following month to the secretary of the commission. All remittances shall be upon a form to be furnished by the commission and a duplicate copy shall be retained by the county treasurer.

Source: Laws 1978, LB 21, § 19; Laws 1996, LB 464, § 7; Laws 2012, LB801, § 11; Laws 2015, LB142, § 5; Laws 2020, LB287, § 18.

37-1278 Certificate of title; application; contents; issuance; transfer of motorboat.

(1) Application for a certificate of title shall be presented to the county treasurer, shall be made upon a form prescribed by the Department of Motor Vehicles, and shall be accompanied by the fee prescribed in section 37-1287. The owner of a motorboat for which a certificate of title is required shall obtain a certificate of title prior to registration required under section 37-1214. The buyer of a motorboat sold pursuant to section 76-1607 shall present documentation that such sale was completed in compliance with such section.

(2)(a) If a certificate of title has previously been issued for the motorboat in this state, the application for a new certificate of title shall be accompanied by the certificate of title duly assigned. If a certificate of title has not previously been issued for the motorboat in this state, the application shall be accompanied by a certificate of number from this state, a manufacturer's or importer's certificate, a duly certified copy thereof, proof of purchase from a governmental agency or political subdivision, a certificate of title from another state, or a court order issued by a court of record, a manufacturer's certificate of origin, or an assigned registration certificate, if the motorboat was brought into this state from a state which does not have a certificate of title law. The county treasurer shall retain the evidence of title presented by the applicant on which the certificate of title is issued. When the evidence of title presented by the applicant is a certificate of title or an assigned registration certificate issued by another state, the department shall notify the state of prior issuance that the certificate has been surrendered. If a certificate of title has not previously been issued for the motorboat in this state and the applicant is unable to provide such documentation, the applicant may apply for a bonded certificate of title as prescribed in section 37-1278.01.

(b) This subdivision applies beginning on an implementation date designated by the Director of Motor Vehicles. The director shall designate an implementation date which is on or before January 1, 2021. In addition to the information required under subdivision (2)(a) of this section, the application for a certificate of title shall contain (i)(A) the full legal name as defined in section 60-468.01 of each owner or (B) the name of each owner as such name appears on the owner's motor vehicle operator's license or state identification card and (ii)(A) the motor vehicle operator's license number or state identification card number

of each owner, if applicable, and one or more of the identification elements as listed in section 60-484 of each owner, if applicable, and (B) if any owner is a business entity, a nonprofit organization, an estate, a trust, or a church-controlled organization, its tax identification number.

(3) The county treasurer shall use reasonable diligence in ascertaining whether or not the statements in the application for a certificate of title are true by checking the application and documents accompanying the same with the records of motorboats in his or her office. If he or she is satisfied that the applicant is the owner of the motorboat and that the application is in the proper form, the county treasurer shall issue a certificate of title over his or her signature and sealed with his or her seal.

(4)(a) In the case of the sale of a motorboat, the certificate of title shall be obtained in the name of the purchaser upon application signed by the purchaser, except that for titles to be held by a married couple, applications may be accepted by the county treasurer upon the signature of either spouse as a signature for himself or herself and as an agent for his or her spouse.

(b) This subdivision applies beginning on an implementation date designated by the Director of Motor Vehicles. The director shall designate an implementation date which is on or before January 1, 2021. If the purchaser of a motorboat does not apply for a certificate of title in accordance with subdivision (4)(a) of this section within thirty days after the sale of the motorboat, the seller of such motorboat may request the department to update the electronic certificate of title record to reflect the sale. The department shall update such record upon receiving evidence of a sale satisfactory to the director.

(5) In all cases of transfers of motorboats, the application for a certificate of title shall be filed within thirty days after the delivery of the motorboat. A dealer need not apply for a certificate of title for a motorboat in stock or acquired for stock purposes, but upon transfer of a motorboat in stock or acquired for stock purposes, the dealer shall give the transferee a reassignment of the certificate of title on the motorboat or an assignment of a manufacturer's or importer's certificate. If all reassignments printed on the certificate of title have been used, the dealer shall obtain title in his or her name prior to any subsequent transfer.

Source: Laws 1994, LB 123, § 6; Laws 1996, LB 464, § 14; Laws 1997, LB 635, § 14; Laws 1997, LB 720, § 5; Laws 2000, LB 1317, § 1; Laws 2012, LB801, § 15; Laws 2015, LB642, § 2; Laws 2017, LB492, § 10; Laws 2019, LB111, § 1; Laws 2019, LB270, § 2.

Cross References

Certificate of title, negligent execution by government employee, see sections 13-910 and 81-8,219.

37-1279 Certificate of title; issuance; form; county treasurer; duties; filing.

(1) The county treasurer shall issue the certificate of title. The county treasurer shall sign and affix his or her seal to the original certificate of title and deliver the certificate to the applicant if there are no liens on the motorboat. If there are one or more liens on the motorboat, the certificate of title shall be handled as provided in section 37-1282. The county treasurer shall keep on hand a sufficient supply of blank forms which shall be furnished and distributed without charge to manufacturers, dealers, or other persons residing within the county, except that certificates of title shall only be issued by the county treasurer or the Department of Motor Vehicles. Each county shall issue

and file certificates of title using the Vehicle Title and Registration System which shall be provided and maintained by the department.

(2) Each county treasurer of the various counties shall provide his or her seal without charge to the applicant on any certificate of title, application for certificate of title, duplicate copy, assignment or reassignment, power of attorney, statement, or affidavit pertaining to the issuance of a certificate of title. The department shall prescribe a uniform method of numbering certificates of title.

(3) The county treasurer shall (a) file all certificates of title according to rules and regulations of the department, (b) maintain in the office indices for such certificates of title, (c) be authorized to destroy all previous records five years after a subsequent transfer has been made on a motorboat, and (d) be authorized to destroy all certificates of title and all supporting records and documents which have been on file for a period of five years or more from the date of filing the certificate or a notation of lien, whichever occurs later.

Source: Laws 1994, LB 123, § 7; Laws 1996, LB 464, § 16; Laws 2009, LB202, § 4; Laws 2012, LB801, § 16; Laws 2017, LB263, § 4.

Cross References

Certificate of title, negligent execution by government employee, see sections 13-910 and 81-8,219.

37-1280 Department of Motor Vehicles; powers and duties; rules and regulations; cancellation of certificate of title; removal of improperly noted lien on certificate of title; procedure.

(1) The Department of Motor Vehicles may adopt and promulgate rules and regulations necessary to carry out sections 37-1275 to 37-1290. The county treasurers shall conform to any such rules and regulations and act at the direction of the department. The department shall also provide the county treasurers with the necessary training for the proper administration of such sections. The department shall receive and file in its office all instruments forwarded to it by the county treasurers under such sections and shall maintain indices covering the entire state for the instruments so filed. These indices shall be by hull identification number and alphabetically by the owner's name and shall be for the entire state and not for individual counties. The department shall provide and furnish the forms required by section 37-1286 to the county treasurers except manufacturers' or importers' certificates. The department shall check with its records all duplicate certificates of title received from the county treasurers. If it appears that a certificate of title has been improperly issued, the department shall cancel the certificate of title. Upon cancellation of any certificate of title, the department shall notify the county treasurer who issued the certificate, and the county treasurer shall enter the cancellation upon his or her records. The department shall also notify the person to whom such certificate of title was issued and any lienholders appearing on the certificate of the cancellation and shall demand the surrender of the certificate of title, but the cancellation shall not affect the validity of any lien noted on the certificate. The holder of the certificate of title shall return the certificate to the department immediately. If a certificate of number has been issued pursuant to section 37-1216 to the holder of a certificate of title so canceled, the department shall notify the commission. Upon receiving the notice, the commission shall immediately cancel the certificate of number and demand the return of the certificate

of number and the holder of the certificate of number shall return the certificate to the commission immediately.

(2) The department may remove a lien on a certificate of title when such lien was improperly noted if evidence of the improperly noted lien is submitted to the department and the department finds the evidence sufficient to support removal of the lien. The department shall send notification prior to removal of the lien to the last-known address of the lienholder. The lienholder must respond within thirty days after the date on the notice and provide sufficient evidence to support that the lien should not be removed. If the lienholder fails to respond to the notice, the lien may be removed by the department.

Source: Laws 1994, LB 123, § 8; Laws 1996, LB 464, § 17; Laws 2012, LB801, § 17; Laws 2018, LB909, § 2; Laws 2019, LB270, § 3.

37-1283 New certificate; when issued; proof required; processing of application.

(1)(a) This subsection applies prior to the implementation date designated by the Director of Motor Vehicles pursuant to subsection (2) of section 60-1508.

(b)(i) Whenever ownership of a motorboat is transferred by operation of law as upon inheritance, devise, bequest, order in bankruptcy, insolvency, replevin, or execution sale, (ii) whenever a motorboat is sold to satisfy storage or repair charges or under section 76-1607, or (iii) whenever repossession is had upon default in performance of the terms of a chattel mortgage, trust receipt, conditional sales contract, or other like agreement, the county treasurer of any county or the Department of Motor Vehicles, upon the surrender of the prior certificate of title or the manufacturer's or importer's certificate, or when that is not possible, upon presentation of satisfactory proof of ownership and right of possession to the motorboat, and upon payment of the fee prescribed in section 37-1287 and the presentation of an application for certificate of title, may issue to the applicant a certificate of title thereto.

(2)(a) This subsection applies beginning on the implementation date designated by the director pursuant to subsection (2) of section 60-1508.

(b)(i) Whenever ownership of a motorboat is transferred by operation of law as upon inheritance, devise, bequest, order in bankruptcy, insolvency, replevin, or execution sale, (ii) whenever a motorboat is sold to satisfy storage or repair charges or under section 76-1607, or (iii) whenever repossession is had upon default in performance of the terms of a chattel mortgage, trust receipt, conditional sales contract, or other like agreement, and upon acceptance of an electronic certificate of title record after repossession, in addition to the title requirements in this section, the county treasurer of any county or the Department of Motor Vehicles, upon the surrender of the prior certificate of title or the manufacturer's or importer's certificate, or when that is not possible, upon presentation of satisfactory proof of ownership and right of possession to the motorboat, and upon payment of the fee prescribed in section 37-1287 and the presentation of an application for certificate of title, may issue to the applicant a certificate of title thereto.

(3) If the prior certificate of title issued for the motorboat provided for joint ownership with right of survivorship, a new certificate of title shall be issued to a subsequent purchaser upon the assignment of the prior certificate of title by the surviving owner and presentation of satisfactory proof of death of the deceased owner.

(4) Only an affidavit by the person or agent of the person to whom possession of the motorboat has so passed, setting forth facts entitling him or her to such possession and ownership, together with a copy of a court order or an instrument upon which such claim of possession and ownership is founded shall be considered satisfactory proof of ownership and right of possession, except that if the applicant cannot produce such proof of ownership, he or she may submit to the department such evidence as he or she may have and the department may thereupon, if it finds the evidence sufficient, issue the certificate of title or authorize any county treasurer to issue a certificate of title, as the case may be. If from the records of the county treasurer or the department there appear to be any liens on the motorboat, the certificate of title shall comply with section 37-1282 regarding the liens unless the application is accompanied by proper evidence of their satisfaction or extinction.

Source: Laws 1994, LB 123, § 11; Laws 1996, LB 464, § 19; Laws 2009, LB202, § 7; Laws 2012, LB751, § 2; Laws 2012, LB801, § 19; Laws 2017, LB263, § 5; Laws 2017, LB492, § 11; Laws 2018, LB193, § 75; Laws 2018, LB909, § 3.

Cross References

Certificate of title, negligent execution by government employee, see sections 13-910 and 81-8,219.

37-1285 Certificate; surrender and cancellation; when required.

Each owner of a motorboat and each person mentioned as owner in the last certificate of title, when the motorboat is dismantled, destroyed, or changed in such a manner that it loses its character as a motorboat or changed in such a manner that it is not the motorboat described in the certificate of title, shall surrender his or her certificate of title to any county treasurer or to the Department of Motor Vehicles. If the certificate of title is surrendered to a county treasurer, he or she shall, with the consent of any holders of any liens noted on the certificate, enter a cancellation upon the records and shall notify the department of the cancellation. Beginning on the implementation date designated by the Director of Motor Vehicles pursuant to subsection (3) of section 60-1508, a wrecker or salvage dealer shall report electronically to the department using the electronic reporting system. If the certificate is surrendered to the department, it shall, with the consent of any holder of any lien noted on the certificate, enter a cancellation upon its records. Upon cancellation of a certificate of title in the manner prescribed by this section, the county treasurer and the department may cancel and destroy all certificates and all memorandum certificates in that chain of title.

Source: Laws 1994, LB 123, § 13; Laws 1996, LB 464, § 21; Laws 2012, LB751, § 4; Laws 2012, LB801, § 21; Laws 2018, LB909, § 4.

37-1285.01 Electronic certificate of title; changes authorized.

Beginning on the implementation date designated by the Director of Motor Vehicles pursuant to subsection (2) of section 60-1508, if a motorboat certificate of title is an electronic certificate of title record, upon application by an owner or a lienholder and payment of the fee prescribed in section 37-1287, the following changes may be made to a certificate of title electronically and without printing a certificate of title:

(1) Changing the name of an owner to reflect a legal change of name;

(2) Removing the name of an owner with the consent of all owners and lienholders;

(3) Adding an additional owner with the consent of all owners and lienholders; or

(4) Beginning on an implementation date designated by the director on or before January 1, 2022, adding, changing, or removing a transfer-on-death beneficiary designation.

Source: Laws 2017, LB263, § 3; Laws 2018, LB909, § 5; Laws 2021, LB113, § 1.

37-1287 Fees; disposition.

(1) The county treasurers or the Department of Motor Vehicles shall charge a fee of six dollars for each certificate of title and a fee of three dollars for each notation of any lien on a certificate of title. The county treasurers shall retain for the county four dollars of the six dollars charged for each certificate of title and two dollars for each notation of lien. The remaining amount of the fee charged for the certificate of title and notation of lien under this subsection shall be remitted to the State Treasurer for credit to the General Fund.

(2) The county treasurers or the department shall charge a fee of ten dollars for each replacement or duplicate copy of a certificate of title, and the duplicate copy issued shall show only those unreleased liens of record. Such fees shall be remitted by the county or the department to the State Treasurer for credit to the General Fund.

(3) In addition to the fees prescribed in subsections (1) and (2) of this section, the county treasurers or the department shall charge a fee of four dollars for each certificate of title, each replacement or duplicate copy of a certificate of title, and each notation of lien on a certificate of title. The county treasurers or the department shall remit the fee charged under this subsection to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

(4) The county treasurers shall remit fees due the State Treasurer under this section monthly and not later than the twentieth day of the month following collection. The county treasurers shall credit fees not due to the State Treasurer to their respective county general fund.

Source: Laws 1994, LB 123, § 15; Laws 1995, LB 467, § 1; Laws 1996, LB 464, § 23; Laws 2009, LB202, § 8; Laws 2011, LB135, § 1; Laws 2012, LB801, § 23; Laws 2017, LB263, § 6.

37-1292 Salvage certificate of title; terms, defined.

For purposes of this section and sections 37-1293 to 37-1298:

(1) Cost of repairs means the estimated or actual retail cost of parts needed to repair a motorboat plus the cost of labor computed by using the hourly labor rate and time allocations for repair that are customary and reasonable. Retail cost of parts and labor rates may be based upon collision estimating manuals or electronic computer estimating systems customarily used in the insurance industry;

(2) Late model motorboat means a motorboat which has (a) a manufacturer's model year designation of, or later than, the year in which the motorboat was wrecked, damaged, or destroyed, or any of the six preceding years, or (b) a retail value of more than ten thousand dollars until January 1, 2006, a retail

value of more than ten thousand five hundred dollars until January 1, 2010, and a retail value of more than ten thousand five hundred dollars increased by five hundred dollars every five years thereafter;

(3) Previously salvaged means the designation of a rebuilt motorboat which was previously required to be issued a salvage branded certificate of title;

(4) Retail value means the actual cash value, fair market value, or retail value of a motorboat as (a) set forth in a current edition of any nationally recognized compilation, including automated databases, of retail values or (b) determined pursuant to a market survey of comparable motorboats with respect to condition and equipment; and

(5) Salvage means the designation of a motorboat which is:

(a) A late model motorboat which has been wrecked, damaged, or destroyed to the extent that the estimated total cost of repair to rebuild or reconstruct the motorboat to its condition immediately before it was wrecked, damaged, or destroyed and to restore the motorboat to a condition for legal operation, meets or exceeds seventy-five percent of the retail value of the motorboat at the time it was wrecked, damaged, or destroyed; or

(b) Voluntarily designated by the owner of the motorboat as a salvage motorboat by obtaining a salvage branded certificate of title, without respect to the damage to, age of, or value of the motorboat.

Source: Laws 2004, LB 560, § 5; Laws 2019, LB270, § 4.

37-1293 Salvage branded certificate of title; when issued; procedure.

When an insurance company acquires a salvage motorboat through payment of a total loss settlement on account of damage, the company shall obtain the certificate of title from the owner, surrender such certificate of title to the county treasurer, and make application for a salvage branded certificate of title which shall be assigned when the company transfers ownership. An insurer shall take title to a salvage motorboat for which a total loss settlement is made unless the owner of the motorboat elects to retain the motorboat. If the owner elects to retain the motorboat, the insurance company shall notify the Department of Motor Vehicles of such fact in a format prescribed by the department. Beginning on the implementation date designated by the Director of Motor Vehicles pursuant to subsection (3) of section 60-1508, the insurance company shall report electronically to the department using the electronic reporting system. The department shall immediately enter the salvage brand onto the computerized record of the motorboat. The insurance company shall also notify the owner of the owner's responsibility to comply with this section. The owner shall, within thirty days after the settlement of the loss, forward the properly endorsed acceptable certificate of title to the county treasurer. Upon receipt of the certificate of title, the county treasurer shall issue a salvage branded certificate of title for the motorboat unless the motorboat has been rebuilt or reconstructed, in which case the county treasurer shall issue a previously salvaged branded certificate of title for the motorboat.

Source: Laws 2004, LB 560, § 6; Laws 2012, LB801, § 26; Laws 2018, LB909, § 6; Laws 2019, LB270, § 5.

ARTICLE 14
NEBRASKA INVASIVE SPECIES COUNCIL

Section
37-1402. Invasive species, defined.

37-1402 Invasive species, defined.

For purposes of sections 37-1401 to 37-1406, invasive species means aquatic or terrestrial organisms not native to the region that cause economic or biological harm and are capable of spreading to new areas, and invasive species does not include livestock as defined in sections 54-1902 and 54-2921, honey bees, domestic pets, intentionally planted agronomic crops, or nonnative organisms that do not cause economic or biological harm.

Source: Laws 2012, LB391, § 12; Laws 2020, LB344, § 63.

ARTICLE 16
INTERSTATE WILDLIFE VIOLATOR COMPACT

Section
37-1601. Interstate Wildlife Violator Compact.

37-1601 Interstate Wildlife Violator Compact.

The Legislature hereby adopts the Interstate Wildlife Violator Compact and enters into such compact with all states legally joining the compact in the form substantially as contained in this section.

Article I

Definitions

For purposes of the Interstate Wildlife Violator Compact:

(1) Citation means any summons, complaint, summons and complaint, ticket, penalty assessment, or other official document that is issued to a person by a wildlife officer or other peace officer for a wildlife violation and that contains an order requiring the person to respond;

(2) Collateral means any cash or other security deposited to secure an appearance for trial in connection with the issuance by a wildlife officer or other peace officer of a citation for a wildlife violation;

(3) Compliance means, with respect to a citation, the act of answering a citation through an appearance in a court or tribunal, or through the payment of fines, costs, and surcharges, if any;

(4) Conviction means a conviction, including any court conviction, for any offense that is related to the preservation, protection, management, or restoration of wildlife and that is prohibited by state statute, law, regulation, commission order, ordinance, or administrative rule. The term also includes the forfeiture of any bail, bond, or other security deposited to secure appearance by a person charged with having committed any such offense, the payment of a penalty assessment, a plea of nolo contendere, and the imposition of a deferred or suspended sentence by the court;

(5) Court means a court of law, including magistrate's court and the justice of the peace court, if any;

(6) Home state means the state of primary residence of a person;

(7) Issuing state means the participating state which issues a wildlife citation to the violator;

(8) License means any license, permit, or other public document that conveys to the person to whom it was issued the privilege of pursuing, possessing, or taking any wildlife regulated by statute, law, regulation, commission order, ordinance, or administrative rule of a participating state;

(9) Licensing authority means the Game and Parks Commission or the department or division within each participating state that is authorized by law to issue or approve licenses or permits to hunt, fish, trap, or possess wildlife;

(10) Participating state means any state that enacts legislation to become a member of the Interstate Wildlife Violator Compact;

(11) Personal recognizance means an agreement by a person made at the time of issuance of the wildlife citation that such person will comply with the terms of the citation;

(12) State means any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the provinces of Canada, and other countries;

(13) Suspension means any revocation, denial, or withdrawal of any or all license privileges, including the privilege to apply for, purchase, or exercise the benefits conferred by any license;

(14) Terms of the citation means those conditions and options expressly stated in the citation;

(15) Wildlife means all species of animals including mammals, birds, fish, reptiles, amphibians, mollusks, and crustaceans, which are defined as wildlife and are protected or otherwise regulated by statute, law, regulation, commission order, ordinance, or administrative rule in a participating state. Species included in the definition of wildlife for purposes of the Interstate Wildlife Violator Compact are based on state or local law;

(16) Wildlife law means the Game Law or any statute, law, regulation, commission order, ordinance, or administrative rule developed and enacted for the management of wildlife resources and the uses thereof;

(17) Wildlife officer means any conservation officer and any individual authorized by a participating state to issue a citation for a wildlife violation; and

(18) Wildlife violation means any cited violation of a statute, law, regulation, commission order, ordinance, or administrative rule developed and enacted for the management of wildlife resources and the uses thereof.

Article II

Procedures for Issuing State

When issuing a citation for a wildlife violation, a wildlife officer shall issue a citation to any person whose primary residence is in a participating state in the same manner as though the person were a resident of the issuing state and may not require such person to post collateral to secure appearance if the officer receives the personal recognizance of such person that the person will comply with the terms of the citation.

Personal recognizance is acceptable:

(1) If not prohibited by state or local law or the compact manual; and

(2) If the violator provides adequate proof of identification to the wildlife officer.

Upon conviction or failure of a person to comply with the terms of a wildlife citation, the appropriate official shall report the conviction or failure to comply to the licensing authority of the issuing state.

Upon receipt of the report of conviction or noncompliance, the licensing authority of the issuing state shall transmit such information to the licensing authority of the home state of the violator.

Article III

Procedures for Home State

Upon receipt of a report from the licensing authority of the issuing state reporting the failure of a violator to comply with the terms of a citation, the licensing authority of the home state shall notify the violator and may initiate a suspension action in accordance with the home state's suspension procedures and may suspend the violator's license privileges until satisfactory evidence of compliance with the terms of the wildlife citation has been furnished by the issuing state to the home state licensing authority. Due process safeguards shall be accorded.

Upon receipt of a report of conviction from the licensing authority of the issuing state, the licensing authority of the home state may enter such conviction in its records and may treat such conviction as though it had occurred in the home state for the purposes of the suspension of license privileges if the violation resulting in such conviction could have been the basis for suspension of license privileges in the home state.

The licensing authority of the home state shall maintain a record of actions taken and shall make reports to issuing states.

Article IV

Reciprocal Recognition of Suspension

All participating states may recognize the suspension of license privileges of any person by any participating state as though the violation resulting in the suspension had occurred in their state and could have been the basis for suspension of license privileges in their state.

Each participating state shall communicate suspension information to other participating states.

Article V

Applicability of Other Laws

Except as expressly required by the Interstate Wildlife Violator Compact, nothing in the compact may be construed to affect the right of any participating state to apply any of its laws relating to license privileges to any person or circumstance or to invalidate or prevent any agreement or other cooperative arrangement between a participating state and a nonparticipating state concerning wildlife law enforcement.

Article VI

Withdrawal from Compact

A participating state may withdraw from participation in the Interstate Wildlife Violator Compact by enacting a statute repealing the compact and by official written notice to each participating state. Withdrawal shall not become

effective until ninety days after the notice of withdrawal is given. The notice shall be directed to the compact administrator of each participating state. Withdrawal of any state does not affect the validity of the compact as to the remaining participating states.

Article VII

Construction and Severability

The Interstate Wildlife Violator Compact shall be liberally construed so as to effectuate its purposes. The provisions of the compact are severable, and if any phrase, clause, sentence, or provision of the compact is declared to be contrary to the constitution of any participating state or the United States, or the applicability thereof to any government, agency, individual, or circumstance is held invalid, the validity of the remainder of the compact is not affected thereby. If the compact is held contrary to the constitution of any participating state, the compact remains in full force and effect as to the remaining states and in full force and effect as to the participating state affected as to all severable matters.

Article VIII

Responsible State Entity

The Game and Parks Commission is authorized on behalf of the state to enter into the Interstate Wildlife Violator Compact. The commission shall enforce the compact and shall do all things within the jurisdiction of the commission that are appropriate in order to effectuate the purposes and the intent of the compact. The commission may adopt and promulgate rules and regulations necessary to carry out and consistent with the compact.

The commission may suspend the hunting, trapping, or fishing privileges of any resident of this state who has failed to comply with the terms of a citation issued for a wildlife violation in any participating state. The suspension shall remain in effect until the commission receives satisfactory evidence of compliance from the participating state. The commission shall send notice of the suspension to the resident, who shall surrender all current Nebraska hunting, trapping, or fishing licenses to the commission within ten days.

The resident may, within twenty days of the notice, request a review or hearing in accordance with section 37-618. Following the review or hearing, the commission, through its authorized agent, may, based on the evidence, affirm, modify, or rescind the suspension of privileges.

Source: Laws 2017, LB566, § 1.

Cross References

Game Law, see section 37-201.

ARTICLE 17

STATE PARK SYSTEM CONSTRUCTION ALTERNATIVES ACT

Section
37-1701. Act, how cited.
37-1702. Definitions, where found.
37-1703. Alternative technical concept, defined.
37-1704. Best value-based selection process, defined.
37-1705. Commission, defined.
37-1706. Construction manager, defined.

Section
37-1707. Construction manager-general contractor contract, defined.
37-1708. Construction services, defined.
37-1709. Design-build contract, defined.
37-1710. Design-builder, defined.
37-1711. Preconstruction services, defined.
37-1712. Project performance criteria, defined.
37-1713. Proposal, defined.
37-1714. Qualification-based selection process, defined.
37-1715. Request for proposals, defined.
37-1716. Request for qualifications, defined.
37-1717. Purpose.
37-1718. Contracts authorized.
37-1719. Architect; engineer; hiring authorized.
37-1720. Guidelines for entering into contracts.
37-1721. Process for selecting design-builder and entering into contract.
37-1722. Request for qualifications; prequalify design-builders; publication in newspaper; short list.
37-1723. Design-build contract; request for proposals; contents.
37-1724. Stipend.
37-1725. Alternative technical concepts; evaluation of proposals; commission; power to negotiate.
37-1726. Process for selection of construction manager and entering into construction manager-general contractor contract.
37-1727. Construction manager-general contractor contract; request for proposals; contents.
37-1728. Submission of proposals; procedure; evaluation of proposals; commission; power to negotiate.
37-1729. Commission; duties; powers.
37-1730. Contract changes authorized.
37-1731. Insurance requirements.
37-1732. Rules and regulations.

37-1701 Act, how cited.

Sections 37-1701 to 37-1732 shall be known and may be cited as the State Park System Construction Alternatives Act.

Source: Laws 2018, LB775, § 2.

37-1702 Definitions, where found.

For purposes of the State Park System Construction Alternatives Act, unless the context otherwise requires, the definitions found in sections 37-1703 to 37-1716 are used.

Source: Laws 2018, LB775, § 3.

37-1703 Alternative technical concept, defined.

Alternative technical concept means changes suggested by a qualified, eligible, short-listed design-builder to the commission's basic configurations, project scope, design, or construction criteria.

Source: Laws 2018, LB775, § 4.

37-1704 Best value-based selection process, defined.

Best value-based selection process means a process of selecting a design-builder using price, schedule, and qualifications for evaluation factors.

Source: Laws 2018, LB775, § 5.

37-1705 Commission, defined.

Commission means the Game and Parks Commission.

Source: Laws 2018, LB775, § 6.

37-1706 Construction manager, defined.

Construction manager means the legal entity which proposes to enter into a construction manager-general contractor contract pursuant to the State Park System Construction Alternatives Act.

Source: Laws 2018, LB775, § 7.

37-1707 Construction manager-general contractor contract, defined.

Construction manager-general contractor contract means a contract which is subject to a qualification-based selection process between the commission and a construction manager to furnish preconstruction services during the design development phase of the project and, if an agreement can be reached which is satisfactory to the commission, construction services for the construction phase of the project.

Source: Laws 2018, LB775, § 8.

37-1708 Construction services, defined.

Construction services means activities associated with building the project.

Source: Laws 2018, LB775, § 9.

37-1709 Design-build contract, defined.

Design-build contract means a contract between the commission and a design-builder which is subject to a best value-based selection process to furnish (1) architectural, engineering, and related design services and (2) labor, materials, supplies, equipment, and construction services.

Source: Laws 2018, LB775, § 10.

37-1710 Design-builder, defined.

Design-builder means the legal entity which proposes to enter into a design-build contract.

Source: Laws 2018, LB775, § 11.

37-1711 Preconstruction services, defined.

Preconstruction services means all nonconstruction-related services that a construction manager performs in relation to the design of the project before execution of a contract for construction services. Preconstruction services includes, but is not limited to, cost estimating, value engineering studies, constructability reviews, delivery schedule assessments, and life-cycle analysis.

Source: Laws 2018, LB775, § 12.

37-1712 Project performance criteria, defined.

Project performance criteria means the performance requirements of the project suitable to allow the design-builder to make a proposal. Performance requirements shall include, but are not limited to, the following, if required by

the project: Capacity, durability, standards, ingress and egress requirements, description of the site, surveys, soil and environmental information concerning the site, material quality standards, design and milestone dates, site development requirements, compliance with applicable law, and other criteria for the intended use of the project.

Source: Laws 2018, LB775, § 13.

37-1713 Proposal, defined.

Proposal means an offer in response to a request for proposals (1) by a design-builder to enter into a design-build contract or (2) by a construction manager to enter into a construction manager-general contractor contract.

Source: Laws 2018, LB775, § 14.

37-1714 Qualification-based selection process, defined.

Qualification-based selection process means a process of selecting a construction manager based on qualifications.

Source: Laws 2018, LB775, § 15.

37-1715 Request for proposals, defined.

Request for proposals means the documentation by which the commission solicits proposals.

Source: Laws 2018, LB775, § 16.

37-1716 Request for qualifications, defined.

Request for qualifications means the documentation or publication by which the commission solicits qualifications.

Source: Laws 2018, LB775, § 17.

37-1717 Purpose.

The purpose of the State Park System Construction Alternatives Act is to provide the commission alternative methods of contracting for public projects for buildings in the state park system. The alternative methods of contracting shall be available to the commission for use on any project regardless of the funding source. Notwithstanding any other provision of state law to the contrary, the State Park System Construction Alternatives Act shall govern the design-build and construction manager-general contractor procurement process for the commission.

Source: Laws 2018, LB775, § 18.

37-1718 Contracts authorized.

The commission, in accordance with the State Park System Construction Alternatives Act, may solicit and execute a design-build contract or a construction manager-general contractor contract for a public project in the state park system.

Source: Laws 2018, LB775, § 19.

37-1719 Architect; engineer; hiring authorized.

The commission may hire an architect licensed pursuant to the Engineers and Architects Regulation Act or an engineer licensed pursuant to the act to assist the commission with the development of project performance criteria and requests for proposals, with evaluation of proposals, with evaluation of the construction to determine adherence to the project performance criteria, and with any additional services requested by the commission to represent its interests in relation to a project. The procedures used to hire such person or organization shall comply with the Nebraska Consultants' Competitive Negotiation Act. The person or organization hired shall be ineligible to be included as a provider of other services in a proposal for the project for which he or she has been hired and shall not be employed by or have a financial or other interest in a design-builder or construction manager who will submit a proposal.

Source: Laws 2018, LB775, § 20.

Cross References

Engineers and Architects Regulation Act, see section 81-3401.
Nebraska Consultants' Competitive Negotiation Act, see section 81-1702.

37-1720 Guidelines for entering into contracts.

The commission shall adopt guidelines for entering into a design-build contract or construction manager-general contractor contract. The guidelines shall include the following:

(1) Preparation and content of requests for qualifications;

(2) Preparation and content of requests for proposals;

(3) Qualification and short-listing of design-builders and construction managers. The guidelines shall provide that the commission will evaluate prospective design-builders and construction managers based on the information submitted to the commission in response to a request for qualifications and will select a short list of design-builders or construction managers who shall be considered qualified and eligible to respond to the request for proposals;

(4) Preparation and submittal of proposals;

(5) Procedures and standards for evaluating proposals;

(6) Procedures for negotiations between the commission and the design-builders or construction managers submitting proposals prior to the acceptance of a proposal if any such negotiations are contemplated; and

(7) Procedures for the evaluation of construction under a design-build contract to determine adherence to the project performance criteria.

Source: Laws 2018, LB775, § 21.

37-1721 Process for selecting design-builder and entering into contract.

The process for selecting a design-builder and entering into a design-build contract shall be in accordance with sections 37-1722 to 37-1725.

Source: Laws 2018, LB775, § 22.

37-1722 Request for qualifications; prequalify design-builders; publication in newspaper; short list.

(1) The commission shall prepare a request for qualifications for design-build proposals and shall prequalify design-builders. The request for qualifications shall describe the project in sufficient detail to permit a design-builder to

respond. The request for qualifications shall identify the maximum number of design-builders the commission will place on a short list as qualified and eligible to receive a request for proposals.

(2) A person or organization hired by the commission under section 37-1719 shall be ineligible to compete for a design-build contract on the same project for which the person or organization was hired.

(3) The request for qualifications shall be (a) published in a newspaper of statewide circulation at least thirty days prior to the deadline for receiving the request for qualifications and (b) sent by first-class mail to any design-builder upon request.

(4) The commission shall create a short list of qualified and eligible design-builders in accordance with the guidelines adopted pursuant to section 37-1720. The commission shall select at least two prospective design-builders, except that if only one design-builder has responded to the request for qualifications, the commission may, in its discretion, proceed or cancel the procurement. The request for proposals shall be sent only to the design-builders placed on the short list.

Source: Laws 2018, LB775, § 23.

37-1723 Design-build contract; request for proposals; contents.

The commission shall prepare a request for proposals for each design-build contract. The request for proposals shall contain, at a minimum, the following elements:

(1) The guidelines adopted by the commission in accordance with section 37-1720. The identification of a publicly accessible location of the guidelines, either physical or electronic, shall be considered compliance with this subdivision;

(2) The proposed terms and conditions of the design-build contract, including any terms and conditions which are subject to further negotiation;

(3) A project statement which contains information about the scope and nature of the project;

(4) A statement regarding alternative technical concepts including the process and time period in which such concepts may be submitted, confidentiality of the concepts, and ownership of the rights to the intellectual property contained in such concepts;

(5) Project performance criteria;

(6) Budget parameters for the project;

(7) Any bonding and insurance required by law or as may be additionally required by the commission;

(8) The criteria for evaluation of proposals and the relative weight of each criterion. The criteria shall include, but are not limited to, the cost of the work, construction experience, design experience, and the financial, personnel, and equipment resources available for the project. The relative weight to apply to any criterion shall be at the discretion of the commission based on each project, except that in all cases, the cost of the work shall be given a relative weight of at least fifty percent;

(9) A requirement that the design-builder provide a written statement of the design-builder's proposed approach to the design and construction of the

project, which may include graphic materials illustrating the proposed approach to design and construction and shall include price proposals;

(10) A requirement that the design-builder agree to the following conditions:

(a) At the time of the design-build proposal, the design-builder must furnish to the commission a written statement identifying the architect or engineer who will perform the architectural or engineering work for the project. The architect or engineer engaged by the design-builder to perform the architectural or engineering work with respect to the project must have direct supervision of such work and may not be removed by the design-builder prior to the completion of the project without the written consent of the commission;

(b) At the time of the design-build proposal, the design-builder must furnish to the commission a written statement identifying the general contractor who will provide the labor, material, supplies, equipment, and construction services. The general contractor identified by the design-builder may not be removed by the design-builder prior to completion of the project without the written consent of the commission;

(c) A design-builder offering design-build services with its own employees who are design professionals licensed to practice in Nebraska must (i) comply with the Engineers and Architects Regulation Act by procuring a certificate of authorization to practice architecture or engineering and (ii) submit proof of sufficient professional liability insurance in the amount required by the commission; and

(d) The rendering of architectural or engineering services by a licensed architect or engineer employed by the design-builder must conform to the Engineers and Architects Regulation Act; and

(11) Other information or requirements which the commission, in its discretion, chooses to include in the request for proposals.

Source: Laws 2018, LB775, § 24.

Cross References

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

37-1724 Stipend.

The commission shall pay a stipend to qualified design-builders that submit responsive proposals but are not selected. Payment of the stipend shall give the commission ownership of the intellectual property contained in the proposals and alternative technical concepts. The amount of the stipend shall be at the discretion of the commission. The refusal to pay or accept the stipend shall leave the intellectual property contained in the proposals and alternative technical concepts in the possession of the creator of the proposals and alternative technical concepts.

Source: Laws 2018, LB775, § 25.

37-1725 Alternative technical concepts; evaluation of proposals; commission; power to negotiate.

(1) Design-builders shall submit proposals as required by the request for proposals. The commission may meet with individual design-builders prior to the time of submitting the proposal and may have discussions concerning alternative technical concepts. If an alternative technical concept provides a

solution that is equal to or better than the requirements in the request for proposals and the alternative technical concept is acceptable to the commission, it may be incorporated as part of the proposal by the design-builder. Notwithstanding any other provision of state law to the contrary, alternative technical concepts shall be confidential and not disclosed to other design-builders or members of the public from the time the proposals are submitted until such proposals are opened by the commission.

(2) Proposals shall be sealed and shall not be opened until expiration of the time established for making the proposals as set forth in the request for proposals.

(3) Proposals may be withdrawn at any time prior to the opening of such proposals in which case no stipend shall be paid. The commission shall have the right to reject any and all proposals at no cost to the commission other than any stipend for design-builders who have submitted responsive proposals. The commission may thereafter solicit new proposals using the same or different project performance criteria or may cancel the design-build solicitation.

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

(5) The commission may attempt to negotiate a design-build contract with the highest ranked design-builder selected by the commission and may enter into a design-build contract after negotiations. If the commission is unable to negotiate a satisfactory design-build contract with the highest ranked design-builder, the commission may terminate negotiations with that design-builder. The commission may then undertake negotiations with the second highest ranked design-builder and may enter into a design-build contract after negotiations. If the commission is unable to negotiate a satisfactory contract with the second highest ranked design-builder, the commission may undertake negotiations with the third highest ranked design-builder, if any, and may enter into a design-build contract after negotiations.

(6) If the commission is unable to negotiate a satisfactory contract with any of the ranked design-builders, the commission may either revise the request for proposals and solicit new proposals or cancel the design-build process under the State Park System Construction Alternatives Act.

Source: Laws 2018, LB775, § 26.

37-1726 Process for selection of construction manager and entering into construction manager-general contractor contract.

(1) The process for selecting a construction manager and entering into a construction manager-general contractor contract shall be in accordance with this section and sections 37-1727 to 37-1729.

(2) The commission shall prepare a request for qualifications for construction manager-general contractor contract proposals and shall prequalify construction managers. The request for qualifications shall describe the project in sufficient detail to permit a construction manager to respond. The request for qualifications shall identify the maximum number of eligible construction managers the commission will place on a short list as qualified and eligible to receive a request for proposals.

(3) The request for qualifications shall be (a) published in a newspaper of statewide circulation at least thirty days prior to the deadline for receiving the request for qualifications and (b) sent by first-class mail to any construction manager upon request.

(4) The commission shall create a short list of qualified and eligible construction managers in accordance with the guidelines adopted pursuant to section 37-1720. The commission shall select at least two construction managers, except that if only one construction manager has responded to the request for qualifications, the commission may, in its discretion, proceed or cancel the procurement. The request for proposals shall be sent only to the construction managers placed on the short list.

Source: Laws 2018, LB775, § 27.

37-1727 Construction manager-general contractor contract; request for proposals; contents.

The commission shall prepare a request for proposals for each construction manager-general contractor contract. The request for proposals shall contain, at a minimum, the following elements:

(1) The guidelines adopted by the commission in accordance with section 37-1720. The identification of a publicly accessible location of the guidelines, either physical or electronic, shall be considered compliance with this subdivision;

(2) The proposed terms and conditions of the contract, including any terms and conditions which are subject to further negotiation;

(3) Any bonding and insurance required by law or as may be additionally required by the commission;

(4) General information about the project which will assist the commission in its selection of the construction manager, including a project statement which contains information about the scope and nature of the project, the project site, the schedule, and the estimated budget;

(5) The criteria for evaluation of proposals and the relative weight of each criterion;

(6) A statement that the construction manager shall not be allowed to sublet, assign, or otherwise dispose of any portion of the contract without consent of the commission. In no case shall the commission allow the construction manager to sublet more than seventy percent of the work, excluding specialty items; and

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

Source: Laws 2018, LB775, § 28.

37-1728 Submission of proposals; procedure; evaluation of proposals; commission; power to negotiate.

(1) Construction managers shall submit proposals as required by the request for proposals.

(2) Proposals shall be sealed and shall not be opened until expiration of the time established for making the proposals as set forth in the request for proposals.

(3) Proposals may be withdrawn at any time prior to signing a contract for preconstruction services. The commission shall have the right to reject any and all proposals at no cost to the commission. The commission may thereafter solicit new proposals or may cancel the construction manager-general contractor procurement process.

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

(5) The commission may attempt to negotiate a contract for preconstruction services with the highest ranked construction manager and may enter into a contract for preconstruction services after negotiations. If the commission is unable to negotiate a satisfactory contract for preconstruction services with the highest ranked construction manager, the commission may terminate negotiations with that construction manager. The commission may then undertake negotiations with the second highest ranked construction manager and may enter into a contract for preconstruction services after negotiations. If the commission is unable to negotiate a satisfactory contract with the second highest ranked construction manager, the commission may undertake negotiations with the third highest ranked construction manager, if any, and may enter into a contract for preconstruction services after negotiations.

(6) If the commission is unable to negotiate a satisfactory contract for preconstruction services with any of the ranked construction managers, the commission may either revise the request for proposals and solicit new proposals or cancel the construction manager-general contractor contract process under the State Park System Construction Alternatives Act.

Source: Laws 2018, LB775, § 29.

37-1729 Commission; duties; powers.

(1) Before the construction manager begins any construction services, the commission shall:

(a) Conduct an independent cost estimate for the project; and

(b) Conduct contract negotiations with the construction manager to develop a construction manager-general contractor contract for construction services.

(2) If the construction manager and the commission are unable to negotiate a contract, the commission may use other contract procurement processes as provided by law. Persons or organizations who submitted proposals but were unable to negotiate a contract with the commission shall be eligible to compete in the other contract procurement processes.

Source: Laws 2018, LB775, § 30.

37-1730 Contract changes authorized.

A design-build contract and a construction manager-general contractor contract may be conditioned upon later refinements in scope and price and may permit the commission in agreement with the design-builder or construction manager to make changes in the project without invalidating the contract.

Source: Laws 2018, LB775, § 31.

37-1731 Insurance requirements.

Nothing in the State Park System Construction Alternatives Act shall limit or reduce statutory or regulatory requirements regarding insurance.

Source: Laws 2018, LB775, § 32.

37-1732 Rules and regulations.

The commission may adopt and promulgate rules and regulations to carry out the State Park System Construction Alternatives Act.

Source: Laws 2018, LB775, § 33.

ARTICLE 18

WATER RECREATION ENHANCEMENT

Section
37-1801. Act, how cited.
37-1802. Legislative findings and declarations.
37-1803. Act; purposes; Game and Parks Commission; powers; legislative intent; contracts; conflict-of-interest provisions.
37-1804. Water Recreation Enhancement Fund; created; use; investment.

37-1801 Act, how cited.

Sections 37-1801 to 37-1803 shall be known and may be cited as the Water Recreation Enhancement Act.

Source: Laws 2022, LB1023, § 5.
Effective date April 19, 2022.

37-1802 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) In 2019, the state experienced historic flooding along the Platte River which caused loss of life and over one billion dollars in damage to private and public property and infrastructure;

(4) Well-planned flood control is critical to the future of the people, communities, and businesses of Nebraska;

(5) In light of the disruption from the COVID-19 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;

(6) 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;

(7) The state's water resources provide economic benefits to the people, communities, and businesses of Nebraska by helping to attract visitors from other states and boosting local economies;

(8) In 2021, the Legislature passed LB406, which established the Statewide Tourism And Recreational Water Access and Resource Sustainability Special Committee of the Legislature. The committee was tasked with conducting studies on:

(a) 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;

(b) 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

(c) 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;

(9) After considerable study, the Statewide Tourism And Recreational Water Access and Resource Sustainability Special Committee identified the following potential opportunities:

(a) Marina construction projects to expand water access and recreational opportunities at Lake McConaughy and the Lewis and Clark State Recreation Area; and

(b) A project to increase access to and the enjoyment of Niobrara State Park through the construction of an event center and lodge;

(10) It is in the public interest to expand water access and recreational opportunities at Lake McConaughy and the Lewis and Clark State Recreation Area through the construction of new marinas; and

(11) It is in the public interest to increase access to and the enjoyment of Niobrara State Park through the construction of an event center and lodge.

Source: Laws 2022, LB1023, § 6.
Effective date April 19, 2022.

37-1803 Act; purposes; Game and Parks Commission; powers; legislative intent; contracts; conflict-of-interest provisions.

(1) The purposes of the Water Recreation Enhancement Act are to administer and carry out the following projects:

(a) Marina construction projects to expand water access and recreational opportunities at Lake McConaughy and the Lewis and Clark State Recreation Area; and

(b) A project to increase access to and the enjoyment of Niobrara State Park through the construction of an event center and lodge.

(2) The Game and Parks Commission is granted all power necessary to carry out the purposes of the Water Recreation Enhancement Act, including, but not limited to, the power to:

(a) Enter into contracts, including, but not limited to, contracts relating to the provision of construction services, management services, legal services, auditor services, and other consulting services or advice as the commission may require in the performance of its duties; and

(b) Enter into public-private partnerships to carry out the purposes of the act.

(3) It is the intent of the Legislature that the Game and Parks Commission engage local stakeholders as the commission carries out the projects authorized in this section.

(4) It is also the intent of the Legislature to encourage political subdivisions that hold a Federal Energy Regulatory Commission license and that own land in and around the projects authorized in this section to enter into contracts with public and private entities for the use, lease, and purchase of such land whenever possible in order to increase economic development and recreational opportunities, particularly when covenants, easements, and other instruments can ensure such economic development complies with the rules and regulations of the Federal Energy Regulatory Commission.

(5) No member of the Game and Parks Commission or any employee of the commission shall have a financial interest, either personally or through an immediate family member, in any purchase, sale, or lease of real property relating to a project authorized in this section or in any contract entered into by the commission relating to a project authorized in this section. For purposes of this subsection, immediate family member means a spouse, child, sibling, parent, grandparent, or grandchild.

Source: Laws 2022, LB1023, § 7.
Effective date April 19, 2022.

37-1804 Water Recreation Enhancement Fund; created; use; investment.

(1) The Water Recreation Enhancement Fund is created. The fund shall be administered by the Game and Parks Commission. The State Treasurer shall credit to the fund any money transferred to the fund by the Legislature and such donations, gifts, bequests, or other money received from any federal or state agency or public or private source. The fund shall be used for water and recreational projects pursuant to the Water Recreation Enhancement 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. Any investment earnings from investment of money in the fund shall be credited to the fund.

(2) For any amount credited to the fund from a source other than a transfer authorized by the Legislature, the State Treasurer shall transfer an equal amount from the Water Recreation Enhancement Fund to the Jobs and Economic Development Initiative Fund at the end of the fiscal year in which such funds were credited, on such dates as directed by the budget administrator of the budget division of the Department of Administrative Services to be used pursuant to section 61-405.

Source: Laws 2022, LB1012, § 8.
Effective date April 5, 2022.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.
Water Recreation Enhancement Act, see section 37-1801.

CHAPTER 38
HEALTH OCCUPATIONS AND PROFESSIONS

Article.

ARTICLE 1
UNIFORM CREDENTIALING ACT

Section

38-101 Act, how cited.

Sections 38-101 to 38-1,147 and the following practice acts shall be known and may be cited as the Uniform Credentialing Act:

(1) The Advanced Practice Registered Nurse Practice Act;

(2) The Alcohol and Drug Counseling Practice Act;

(3) The Athletic Training Practice Act;

(4) The Audiology and Speech-Language Pathology Practice Act;

(5) The Certified Nurse Midwifery Practice Act;

(6) The Certified Registered Nurse Anesthetist Practice Act;

(7) The Chiropractic Practice Act;

(8) The Clinical Nurse Specialist Practice Act;

(9) The Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act;

(10) The Dentistry Practice Act;

(11) The Dialysis Patient Care Technician Registration Act;

(12) The Emergency Medical Services Practice Act;

(13) The Environmental Health Specialists Practice Act;

(14) The Funeral Directing and Embalming Practice Act;

(15) The Genetic Counseling Practice Act;

(16) The Hearing Instrument Specialists Practice Act;

(17) The Licensed Practical Nurse-Certified Practice Act until November 1, 2017;

(18) The Massage Therapy Practice Act;

(19) The Medical Nutrition Therapy Practice Act;

(20) The Medical Radiography Practice Act;

(21) The Medicine and Surgery Practice Act;

(22) The Mental Health Practice Act;

(23) The Nurse Practice Act;

(24) The Nurse Practitioner Practice Act;

(25) The Nursing Home Administrator Practice Act;

(26) The Occupational Therapy Practice Act;

(27) The Optometry Practice Act;

(28) The Perfusion Practice Act;

(29) The Pharmacy Practice Act;

(30) The Physical Therapy Practice Act;

(31) The Podiatry Practice Act;

(32) The Psychology Practice Act;

(33) The Respiratory Care Practice Act;

(34) The Surgical First Assistant Practice Act; and

(35) The Veterinary Medicine and Surgery Practice Act.

If there is any conflict between any provision of sections 38-101 to 38-1,147 and any provision of a practice act, the provision of the practice act shall prevail except as otherwise specifically provided in section 38-129.02.

Source: Laws 1927, c. 167, § 1, p. 454; C.S.1929, § 71-101; R.S.1943, § 71-101; Laws 1972, LB 1067, § 1; Laws 1984, LB 481, § 5; Laws 1986, LB 277, § 2; Laws 1986, LB 286, § 23; Laws 1986, LB 355, § 8; Laws 1986, LB 579, § 15; Laws 1986, LB 926, § 1; Laws 1987, LB 473, § 3; Laws 1988, LB 557, § 12; Laws 1988, LB 1100, § 4; Laws 1989, LB 323, § 2; Laws 1989, LB 344, § 4; Laws 1991, LB 456, § 4; Laws 1993, LB 48, § 1; Laws 1993, LB 187, § 3; Laws 1993, LB 429, § 1; Laws 1993, LB 536, § 43; Laws 1993, LB 669, § 2; Laws 1994, LB 900, § 1; Laws 1994, LB 1210, § 9; Laws 1994, LB 1223, § 2; Laws 1995, LB 406, § 10;

Laws 1996, LB 1044, § 371; Laws 1997, LB 622, § 77; Laws 1999, LB 178, § 1; Laws 1999, LB 366, § 7; Laws 1999, LB 828, § 7; Laws 2001, LB 25, § 1; Laws 2001, LB 209, § 1; Laws 2001, LB 270, § 1; Laws 2001, LB 398, § 19; Laws 2002, LB 1021, § 4; Laws 2002, LB 1062, § 11; Laws 2003, LB 242, § 13; Laws 2004, LB 1005, § 8; Laws 2004, LB 1083, § 103; Laws 2005, LB 306, § 1; Laws 2006, LB 994, § 79; R.S.Supp.,2006, § 71-101; Laws 2007, LB236, § 1; Laws 2007, LB247, § 23; Laws 2007, LB247, § 58; Laws 2007, LB296, § 296; Laws 2007, LB463, § 1; Laws 2007, LB481, § 1; Laws 2008, LB928, § 2; Laws 2009, LB195, § 5; Laws 2012, LB831, § 26; Laws 2015, LB264, § 1; Laws 2016, LB721, § 18; Laws 2016, LB750, § 1; Laws 2017, LB88, § 28; Laws 2017, LB255, § 8; Laws 2017, LB417, § 3; Laws 2018, LB701, § 1; Laws 2019, LB29, § 1; Laws 2019, LB112, § 1; Laws 2019, LB556, § 1; Laws 2021, LB148, § 41; Laws 2021, LB390, § 1; Laws 2021, LB583, § 3; Laws 2022, LB752, § 5.

Effective date July 21, 2022.

Cross References

Advanced Practice Registered Nurse Practice Act, see section 38-201.
Alcohol and Drug Counseling Practice Act, see section 38-301.
Athletic Training Practice Act, see section 38-401.
Audiology and Speech-Language Pathology Practice Act, see section 38-501.
Certified Nurse Midwifery Practice Act, see section 38-601.
Certified Registered Nurse Anesthetist Practice Act, see section 38-701.
Chiropractic Practice Act, see section 38-801.
Clinical Nurse Specialist Practice Act, see section 38-901.
Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act, see section 38-1001.
Dentistry Practice Act, see section 38-1101.
Dialysis Patient Care Technician Registration Act, see section 38-3701.
Emergency Medical Services Practice Act, see section 38-1201.
Environmental Health Specialists Practice Act, see section 38-1301.
Funeral Directing and Embalming Practice Act, see section 38-1401.
Genetic Counseling Practice Act, see section 38-3401.
Hearing Instrument Specialists Practice Act, see section 38-1501.
Licensed Practical Nurse-Certified Practice Act, see section 38-1601.
Massage Therapy Practice Act, see section 38-1701.
Medical Nutrition Therapy Practice Act, see section 38-1801.
Medical Radiography Practice Act, see section 38-1901.
Medicine and Surgery Practice Act, see section 38-2001.
Mental Health Practice Act, see section 38-2101.
Nurse Practice Act, see section 38-2201.
Nurse Practitioner Practice Act, see section 38-2301.
Nursing Home Administrator Practice Act, see section 38-2401.
Occupational Therapy Practice Act, see section 38-2501.
Optometry Practice Act, see section 38-2601.
Perfusion Practice Act, see section 38-2701.
Pharmacy Practice Act, see section 38-2801.
Physical Therapy Practice Act, see section 38-2901.
Podiatry Practice Act, see section 38-3001.
Psychology Practice Act, see section 38-3101.
Respiratory Care Practice Act, see section 38-3201.
Surgical First Assistant Practice Act, see section 38-3501.
Veterinary Medicine and Surgery Practice Act, see section 38-3301.

38-105 Definitions, where found.

For purposes of the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-106 to 38-120.03 apply.

Source: Laws 2007, LB463, § 5; Laws 2017, LB88, § 29; Laws 2018, LB701, § 2; Laws 2019, LB112, § 2.

38-108 Board, defined; no board established by statute; effect.

Board means one of the boards appointed by the State Board of Health pursuant to section 38-158 or appointed by the Governor pursuant to the Emergency Medical Services Practice Act. For professions for which there is no board established by statute, the duties normally carried out by a board are the responsibility of the department.

Source: Laws 2007, LB463, § 8; Laws 2021, LB148, § 42.

Cross References

Emergency Medical Services Practice Act, see section 38-1201.

38-117.01 Low-income individual, defined.

Low-income individual means an individual enrolled in a state or federal public assistance program, including, but not limited to, the medical assistance program established pursuant to the Medical Assistance Act, the federal Supplemental Nutrition Assistance Program, or the federal Temporary Assistance for Needy Families program, or whose household adjusted gross income is below one hundred thirty percent of the federal income poverty guideline or a higher threshold to be set by the Licensure Unit of the Division of Public Health of the Department of Health and Human Services.

Source: Laws 2019, LB112, § 3.

Cross References

Medical Assistance Act, see section 68-901.

38-117.02 Military families, defined.

Military families means active duty service members in the armed services of the United States, military spouses, honorably discharged veterans of the armed services of the United States, spouses of such honorably discharged veterans, and unremarried surviving spouses of deceased service members of the armed services of the United States.

Source: Laws 2019, LB112, § 4.

38-118.01 Military spouse, defined.

Military spouse means the spouse of an active duty service member in the armed forces of the United States.

Source: Laws 2017, LB88, § 30; Laws 2019, LB112, § 5.

38-120.01 Telehealth, defined.

Telehealth means the use of medical information electronically exchanged from one site to another, whether synchronously or asynchronously, to aid a credential holder in the diagnosis or treatment of a patient. Telehealth includes services originating from a patient's home or any other location where such patient is located, asynchronous services involving the acquisition and storage of medical information at one site that is then forwarded to or retrieved by a credential holder at another site for medical evaluation, and telemonitoring.

Source: Laws 2018, LB701, § 3.

38-120.02 Telemonitoring, defined.

Telemonitoring means the remote monitoring of a patient's vital signs, biometric data, or subjective data by a monitoring device which transmits such data electronically to a credential holder for analysis and storage.

Source: Laws 2018, LB701, § 4.

38-120.03 Young worker, defined.

Young worker means (1) for an initial credential under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act, except for a body art license, an applicant who is between the ages of seventeen and twenty-five years or (2) for an initial credential issued under any other provision of the Uniform Credentialing Act, including a body art license, an applicant who is between the ages of eighteen and twenty-five years.

Source: Laws 2019, LB112, § 6.

Cross References

Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act, see section 38-1001.

38-121 Practices; credential required.

(1) No individual shall engage in the following practices unless such individual has obtained a credential under the Uniform Credentialing Act:

(a) Acupuncture;

(b) Advanced practice nursing;

(c) Alcohol and drug counseling;

(d) Asbestos abatement, inspection, project design, and training;

(e) Athletic training;

(f) Audiology;

(g) Speech-language pathology;

(h) Body art;

(i) Chiropractic;

(j) Cosmetology;

(k) Dentistry;

(l) Dental hygiene;

(m) Electrology;

(n) Emergency medical services;

(o) Esthetics;

(p) Funeral directing and embalming;

(q) Genetic counseling;

(r) Hearing instrument dispensing and fitting;

(s) Lead-based paint abatement, inspection, project design, and training;

(t) Licensed practical nurse-certified until November 1, 2017;

(u) Massage therapy;

(v) Medical nutrition therapy;

(w) Medical radiography;

(x) Medicine and surgery;

(y) Mental health practice;

(z) Nail technology;

(aa) Nursing;

(bb) Nursing home administration;

(cc) Occupational therapy;

(dd) Optometry;

(ee) Osteopathy;

(ff) Perfusion;

(gg) Pharmacy;

(hh) Physical therapy;

(ii) Podiatry;

(jj) Psychology;

(kk) Radon detection, measurement, and mitigation;

(ll) Respiratory care;

(mm) Surgical assisting; and

(nn) Veterinary medicine and surgery.

(2) No individual shall hold himself or herself out as any of the following until such individual has obtained a credential under the Uniform Credentialing Act for that purpose:

(a) Registered environmental health specialist;

(b) Certified marriage and family therapist;

(c) Certified professional counselor;

(d) Social worker; or

(e) Dialysis patient care technician.

(3) No business shall operate for the provision of any of the following services unless such business has obtained a credential under the Uniform Credentialing Act:

(a) Body art;

(b) Cosmetology;

(c) Emergency medical services;

(d) Esthetics;

(e) Funeral directing and embalming;

(f) Massage therapy; or

(g) Nail technology.

Source: Laws 1927, c. 167, § 2, p. 455; C.S.1929, § 71-201; Laws 1935, c. 142, § 27, p. 529; C.S.Supp.,1941, § 71-201; R.S.1943, § 71-102; Laws 1957, c. 298, § 5, p. 1076; Laws 1961, c. 337, § 3, p. 1051; Laws 1971, LB 587, § 1; Laws 1978, LB 406, § 1; Laws 1980, LB 94, § 2; Laws 1984, LB 481, § 6; Laws 1985, LB 129, § 1; Laws 1986, LB 277, § 3; Laws 1986, LB 286, § 24; Laws 1986, LB 355, § 9; Laws 1986, LB 579, § 16; Laws 1988, LB 557, § 13; Laws 1988, LB 1100, § 5; Laws 1989, LB 342, § 4; Laws 1993, LB 669, § 3; Laws 1995, LB 406, § 11; Laws 1996, LB 1044, § 372; Laws 2001, LB 270, § 2; Laws 2004, LB 1083, § 104; R.S.Supp.,2006, § 71-102; Laws 2007, LB236, § 2; Laws 2007, LB247, § 59; Laws

2007, LB296, § 297; Laws 2007, LB463, § 21; Laws 2009, LB195, § 6; Laws 2012, LB831, § 27; Laws 2016, LB721, § 19; Laws 2017, LB88, § 31; Laws 2017, LB255, § 9; Laws 2021, LB148, § 43.

38-122 Credential; form.

Every initial credential to practice a profession or engage in a business shall be in the form of a document under the name of the department.

Source: Laws 1927, c. 167, § 5, p. 455; C.S.1929, § 71-204; R.S.1943, § 71-105; Laws 1994, LB 1210, § 12; Laws 1996, LB 1044, § 374; Laws 1999, LB 828, § 9; R.S.1943, (2003), § 71-105; Laws 2007, LB296, § 299; Laws 2007, LB463, § 22; Laws 2018, LB1034, § 4.

38-123 Record of credentials issued under act; department; duties; contents.

(1) The department shall establish and maintain a record of all credentials issued pursuant to the Uniform Credentialing Act. The record shall contain identifying information for each credential holder and the credential issued pursuant to the act.

(2) For individual credential holders engaged in a profession:

(a) The record information shall include:

(i) The name, date and place of birth, and social security number;

(ii) The street, rural route, or post office address;

(iii) The school and date of graduation;

(iv) The name of examination, date of examination, and ratings or grades received, if any;

(v) The type of credential issued, the date the credential was issued, the identifying name and number assigned to the credential, and the basis on which the credential was issued;

(vi) The status of the credential; and

(vii) A description of any disciplinary action against the credential, including, but not limited to, the type of disciplinary action, the effective date of the disciplinary action, and a description of the basis for any such disciplinary action;

(b) The record may contain any additional information the department deems appropriate to advance or support the purpose of the Uniform Credentialing Act;

(c) The record may be maintained in computer files or paper copies and may be stored on microfilm or in similar form; and

(d) The record is a public record, except that social security numbers shall not be public information but may be shared as specified in subsection (5) of section 38-130.

(3) For credential holders engaged in a business:

(a) The record information shall include:

(i) The full name and address of the business;

(ii) The type of credential issued, the date the credential was issued, the identifying name and number assigned to the credential, and the basis on which the credential was issued;

(iii) The status of the credential; and

(iv) A description of any disciplinary action against the credential, including, but not limited to, the type of disciplinary action, the effective date of the disciplinary action, and a description of the basis for any such disciplinary action;

(b) The record may contain any additional information the department deems appropriate to advance or support the purpose of the Uniform Credentialing Act;

(c) The record may be maintained in computer files or paper copies and may be stored on microfilm or in similar form; and

(d) The record is a public record.

(4) Except as otherwise specifically provided, if the department is required to provide notice or notify an applicant or credential holder under the Uniform Credentialing Act, such requirements shall be satisfied by sending a notice to such applicant or credential holder at his or her last address of record.

Source: Laws 2007, LB463, § 23; Laws 2017, LB417, § 4.

38-126 Rules and regulations; board and department; adopt.

To protect the health, safety, and welfare of the public and to insure to the greatest extent possible the efficient, adequate, and safe practice of health services, health-related services, and environmental services:

(1)(a) The appropriate board may adopt rules and regulations to:

(i) Specify minimum standards required for a credential, including education, experience, and eligibility for taking the credentialing examination, specify methods to meet the minimum standards through military service as provided in section 38-1,141, and on or before December 15, 2017, specify standards and procedures for issuance of temporary credentials for military spouses as provided in section 38-129.01;

(ii) Designate credentialing examinations, specify the passing score on credentialing examinations, and specify standards, if any, for accepting examination results from other jurisdictions;

(iii) Set continuing competency requirements in conformance with section 38-145;

(iv) Set standards for waiver of continuing competency requirements in conformance with section 38-146;

(v) Set standards for courses of study; and

(vi) Specify acts in addition to those set out in section 38-179 that constitute unprofessional conduct; and

(b) The department shall promulgate and enforce such rules and regulations;

(2) For professions or businesses that do not have a board created by statute:

(a) The department may adopt, promulgate, and enforce such rules and regulations; and

(b) The department shall carry out any statutory powers and duties of the board;

(3) The department, with the recommendation of the appropriate board, if any, may adopt, promulgate, and enforce rules and regulations for the respective profession, other than those specified in subdivision (1) of this section, to carry out the Uniform Credentialing Act; and

(4) The department may adopt, promulgate, and enforce rules and regulations with general applicability to carry out the Uniform Credentialing Act.

Source: Laws 1927, c. 167, § 68, p. 472; C.S.1929, § 71-902; R.S.1943, § 71-169; Laws 1996, LB 1044, § 401; R.S.1943, (2003), § 71-169; Laws 2007, LB296, § 321; Laws 2007, LB463, § 26; Laws 2015, LB264, § 2; Laws 2017, LB88, § 32.

38-129 Issuance of credential; qualifications.

(1) No individual shall be issued a credential under the Uniform Credentialing Act until he or she has furnished satisfactory evidence to the department that he or she is of good character and has attained the age of nineteen years except as otherwise specifically provided by statute, rule, or regulation.

(2) A credential may only be issued to (a) a citizen of the United States, (b) an alien lawfully admitted into the United States who is eligible for a credential under the Uniform Credentialing Act, (c) a nonimmigrant lawfully present in the United States who is eligible for a credential under the Uniform Credentialing Act, or (d) a person who submits (i) an unexpired employment authorization document issued by the United States Department of Homeland Security, Form I-766, and (ii) documentation issued by the United States Department of Homeland Security, the United States Citizenship and Immigration Services, or any other federal agency, such as one of the types of Form I-797 used by the United States Citizenship and Immigration Services, demonstrating that such person is described in section 202(c)(2)(B)(i) through (x) of the federal REAL ID Act of 2005, Public Law 109-13. Such credential shall be valid only for the period of time during which such person's employment authorization document is valid.

Source: Laws 1927, c. 167, § 3, p. 455; C.S.1929, § 71-202; R.S.1943, § 71-103; Laws 1969, c. 560, § 1, p. 2278; Laws 1974, LB 811, § 6; Laws 1986, LB 286, § 25; Laws 1986, LB 579, § 17; Laws 1986, LB 926, § 2; Laws 1994, LB 1210, § 10; R.S.1943, (2003), § 71-103; Laws 2007, LB463, § 29; Laws 2011, LB225, § 1; Laws 2016, LB947, § 3; Laws 2020, LB944, § 4.

38-129.01 Temporary credential to military spouse; issuance; period valid.

(1) The department, with the recommendation of the appropriate board, shall issue a temporary credential to a military spouse who complies with and meets the requirements of this section pending issuance of the applicable credential under the Uniform Credentialing Act. This section shall not apply to a license to practice dentistry, including a temporary license under section 38-1123.

(2) A military spouse shall submit the following with his or her application for the applicable credential:

(a) A copy of his or her military dependent identification card which identifies him or her as the spouse of an active duty member of the United States Armed Forces;

(b) A copy of his or her spouse's military orders reflecting an active-duty assignment in Nebraska;

(c) A copy of his or her credential from another jurisdiction and the applicable statutes, rules, and regulations governing the credential; and

(d) A copy of his or her fingerprints for a criminal background check if required under section 38-131.

(3) If the department, with the recommendation of the appropriate board, determines that the applicant is the spouse of an active duty member of the United States Armed Forces who is assigned to a duty station in Nebraska, holds a valid credential in another jurisdiction which has similar standards for the profession to the Uniform Credentialing Act and the rules and regulations adopted and promulgated under the act, and has submitted fingerprints for a criminal background check if required under section 38-131, the department shall issue a temporary credential to the applicant. The applicant shall not be required to pay any fees pursuant to the Uniform Credentialing Act for the temporary credential or the initial regular credential except the actual cost of the fingerprinting and criminal background check for an initial license under section 38-131.

(4) A temporary credential issued under this section shall be valid until the application for the regular credential is approved or rejected, not to exceed one year.

Source: Laws 2017, LB88, § 33; Laws 2019, LB112, § 7; Laws 2021, LB390, § 2.

38-129.02 Credential; additional method of issuance based on reciprocity; eligibility; requirements; applicability.

(1) This section provides an additional method of issuing a credential based on reciprocity and is supplemental to the methods of credentialing found in the various practice acts within the Uniform Credentialing Act. Any person required to be credentialed under any of the various practice acts who meets the requirements of this section shall be issued a credential subject to the provisions of this section.

(2) A person who has a credential that is current and valid in another state, a territory of the United States, or the District of Columbia may apply to the department for the equivalent credential under the Uniform Credentialing Act. The department, with the recommendation of the board with jurisdiction over the equivalent credential, shall determine the appropriate level of credential for which the applicant qualifies under this section. The department shall determine the documentation required to comply with subsection (3) of this section. The department shall issue the credential if the applicant meets the requirements of subsections (3) and (4) of this section and section 38-129 and submits the appropriate fees for issuance of the credential, including fees for a criminal background check if required for the profession. A credential issued under this section shall not be valid for purposes of an interstate compact or for reciprocity provisions of any practice act under the Uniform Credentialing Act.

(3) The applicant shall provide documentation of the following:

(a) The credential held in the other state, territory, or District of Columbia, the level of such credential, and the profession for which credentialed;

(b) Such credential is valid and current and has been valid for at least one year;

(c) Educational requirements;

(d) The minimum work experience and clinical supervision requirements, if any, required for such credential and verification of the applicant's completion of such requirements;

(e) The passage of an examination for such credential if such passage is required to obtain the credential in the other jurisdiction;

(f) Such credential is not and has not been subject to revocation or any other disciplinary action or voluntarily surrendered while the applicant was under investigation for unprofessional conduct or any other conduct which would be subject to section 38-178 if the conduct occurred in Nebraska;

(g) Such credential has not been subject to disciplinary action. If another jurisdiction has taken disciplinary action against the applicant on any credential the applicant has held, the appropriate board under the Uniform Credentialing Act shall determine if the cause for the disciplinary action was corrected and the matter resolved. If the matter has not been resolved, the applicant is not eligible for a credential under this section until the matter is resolved; and

(h) Receipt of a passing score on a credentialing examination specific to the laws of Nebraska if required by the appropriate board under the Uniform Credentialing Act.

(4) An applicant who obtains a credential upon compliance with subsections (2) and (3) of this section shall establish residency in Nebraska within one hundred eighty days after the issuance of the credential and shall provide proof of residency in a manner and within the time period required by the department. The department shall automatically revoke the credential of any credential holder who fails to comply with this subsection.

(5) In addition to failure to submit the required documentation in subsection (3) of this section, an applicant shall not be eligible for a credential under this section if:

(a) The applicant had a credential revoked, subject to any other disciplinary action, or voluntarily surrendered due to an investigation in any jurisdiction for unprofessional conduct or any other conduct which would be subject to section 38-178 if the conduct occurred in Nebraska;

(b) The applicant has a complaint, allegation, or investigation pending before any jurisdiction that relates to unprofessional conduct or any other conduct which would be subject to section 38-178 if the conduct occurred in Nebraska. If the matter has not been resolved, the applicant is not eligible for a credential under this section until the matter is resolved; or

(c) The person has a disqualifying criminal history as determined by the appropriate board pursuant to the Uniform Credentialing Act and rules and regulations adopted and promulgated under the act.

(6) A person who holds a credential under this section shall be subject to the Uniform Credentialing Act and other laws of this state relating to the person's practice under the credential and shall be subject to the jurisdiction of the appropriate board.

(7) This section applies to credentials for:

(a) Professions governed by the Advanced Practice Registered Nurse Practice Act, the Certified Nurse Midwifery Practice Act, the Certified Registered Nurse Anesthetist Practice Act, the Clinical Nurse Specialist Practice Act, the Dentistry Practice Act, the Dialysis Patient Care Technician Registration Act, the Emergency Medical Services Practice Act, the Medical Nutrition Therapy Practice Act, the Medical Radiography Practice Act, the Nurse Practitioner Practice Act, the Optometry Practice Act, the Perfusion Practice Act, the Pharmacy Practice Act, the Psychology Practice Act, and the Surgical First Assistant Practice Act; and

(b) Physician assistants and acupuncturists credentialed pursuant to the Medicine and Surgery Practice Act.

Source: Laws 2021, LB390, § 3.

Cross References

Advanced Practice Registered Nurse Practice Act, see section 38-201.
Certified Nurse Midwifery Practice Act, see section 38-601.
Certified Registered Nurse Anesthetist Practice Act, see section 38-701.
Clinical Nurse Specialist Practice Act, see section 38-901.
Dentistry Practice Act, see section 38-1101.
Dialysis Patient Care Technician Registration Act, see section 38-3701.
Emergency Medical Services Practice Act, see section 38-1201.
Medical Nutrition Therapy Practice Act, see section 38-1801.
Medical Radiography Practice Act, see section 38-1901.
Medicine and Surgery Practice Act, see section 38-2001.
Nurse Practitioner Practice Act, see section 38-2301.
Optometry Practice Act, see section 38-2601.
Perfusion Practice Act, see section 38-2701.
Pharmacy Practice Act, see section 38-2801.
Psychology Practice Act, see section 38-3101.
Surgical First Assistant Practice Act, see section 38-3501.

38-131 Criminal background check; when required.

(1) An applicant for an initial license to practice as a registered nurse, a licensed practical nurse, a physical therapist, a physical therapy assistant, a psychologist, an advanced emergency medical technician, an emergency medical technician, an audiologist, a speech-language pathologist, a licensed independent mental health practitioner, an occupational therapist, an occupational therapy assistant, or a paramedic or to practice a profession which is authorized to prescribe controlled substances shall be subject to a criminal background check. A criminal background check may also be required for initial licensure or reinstatement of a license governed by the Uniform Credentialing Act if a criminal background check is required by an interstate licensure compact. Except as provided in subsection (3) of this section, the applicant shall submit with the application a full set of fingerprints which shall be forwarded to the Nebraska State Patrol to be submitted to the Federal Bureau of Investigation for a national criminal history record information check. The applicant shall authorize release of the results of the national criminal history record information check to the department. The applicant shall pay the actual cost of the fingerprinting and criminal background check.

(2) This section shall not apply to a dentist who is an applicant for a dental locum tenens under section 38-1122, to a physician or osteopathic physician who is an applicant for a physician locum tenens under section 38-2036, or to a veterinarian who is an applicant for a veterinarian locum tenens under section 38-3335.

(3) An applicant for a temporary educational permit as defined in section 38-2019 shall have ninety days from the issuance of the permit to comply with

subsection (1) of this section and shall have his or her permit suspended after such ninety-day period if the criminal background check is not complete or revoked if the criminal background check reveals that the applicant was not qualified for the permit.

Source: Laws 2005, LB 306, § 2; Laws 2005, LB 382, § 15; Laws 2006, LB 833, § 1; R.S.Supp.,2006, § 71-104.01; Laws 2007, LB247, § 60; Laws 2007, LB463, § 31; Laws 2007, LB481, § 2; Laws 2011, LB687, § 1; Laws 2015, LB129, § 1; Laws 2018, LB731, § 1; Laws 2018, LB1034, § 5; Laws 2022, LB752, § 7.
Effective date July 21, 2022.

38-145 Continuing competency requirements; board; duties.

(1) The appropriate board shall establish continuing competency requirements for persons seeking renewal of a credential.

(2) The purposes of continuing competency requirements are to ensure (a) the maintenance by a credential holder of knowledge and skills necessary to competently practice his or her profession, (b) the utilization of new techniques based on scientific and clinical advances, and (c) the promotion of research to assure expansive and comprehensive services to the public.

(3) Each board shall consult with the department and the appropriate professional academies, professional societies, and professional associations in the development of such requirements.

(4)(a) For a profession for which there are no continuing education requirements on December 31, 2002, the requirements may include, but not be limited to, any one or a combination of the continuing competency activities listed in subsection (5) of this section.

(b) For a profession for which there are continuing education requirements on December 31, 2002, continuing education is sufficient to meet continuing competency requirements. The requirements may also include, but not be limited to, any one or a combination of the continuing competency activities listed in subdivisions (5)(b) through (5)(p) of this section which a credential holder may select as an alternative to continuing education.

(5) Continuing competency activities may include, but not be limited to, any one or a combination of the following:

(a) Continuing education;

(b) Clinical privileging in an ambulatory surgical center or hospital as defined in section 71-405 or 71-419;

(c) Board certification in a clinical specialty area;

(d) Professional certification;

(e) Self-assessment;

(f) Peer review or evaluation;

(g) Professional portfolio;

(h) Practical demonstration;

(i) Audit;

(j) Exit interviews with consumers;

(k) Outcome documentation;

(l) Testing;

(m) Refresher courses;

(n) Inservice training;

(o) Practice requirement; or

(p) Any other similar modalities.

(6) Beginning with the first license renewal period which begins on or after October 1, 2018, the continuing competency requirements for a nurse midwife, dentist, physician, physician assistant, nurse practitioner, podiatrist, and veterinarian who prescribes controlled substances shall include at least three hours of continuing education biennially regarding prescribing opiates as defined in section 28-401. The continuing education may include, but is not limited to, education regarding prescribing and administering opiates, the risks and indicators regarding development of addiction to opiates, and emergency opiate situations. One-half hour of the three hours of continuing education shall cover the prescription drug monitoring program described in sections 71-2454 to 71-2456. This subsection terminates on January 1, 2029.

Source: Laws 1976, LB 877, § 14; Laws 1984, LB 481, § 21; Laws 1985, LB 250, § 4; Laws 1986, LB 286, § 62; Laws 1986, LB 579, § 54; Laws 1992, LB 1019, § 38; Laws 1994, LB 1210, § 41; Laws 1999, LB 828, § 47; Laws 2002, LB 1021, § 12; R.S.1943, (2003), § 71-161.09; Laws 2007, LB463, § 45; Laws 2018, LB731, § 2.

38-151 Credentialing system; administrative costs; how paid; patient safety fee.

(1) It is the intent of the Legislature that the revenue to cover the cost of the credentialing system administered by the department is to be derived from General Funds, cash funds, federal funds, gifts, grants, or fees from individuals or businesses seeking credentials except as otherwise provided in section 38-155. The credentialing system includes the totality of the credentialing infrastructure and the process of issuance and renewal of credentials, examinations, inspections, investigations, continuing competency, compliance assurance, the periodic review under section 38-128, and the activities conducted under the Nebraska Regulation of Health Professions Act, for individuals and businesses that provide health services, health-related services, and environmental services.

(2) The department shall determine the cost of the credentialing system for such individuals and businesses by calculating the total of the base costs, the variable costs, and any adjustments as provided in sections 38-152 to 38-154.

(3) When fees are to be established pursuant to section 38-155 for individuals or businesses, the department, with the recommendation of the appropriate board if applicable, shall base the fees on the cost of the credentialing system and shall include usual and customary cost increases, a reasonable reserve, and the cost of any new or additional credentialing activities. All such fees shall be used as provided in section 38-157.

(4) In addition to the fees established under section 38-155, each applicant for the initial issuance and renewal of a credential to practice as a physician or an osteopathic physician under the Medicine and Surgery Practice Act shall pay a patient safety fee of fifty dollars and to practice as a physician assistant under the Medicine and Surgery Practice Act shall pay a patient safety fee of twenty dollars, which fee shall be collected biennially with the initial or renewal fee for

the credential. Revenue from such fee shall be remitted to the State Treasurer for credit to the Patient Safety Cash Fund. The patient safety fee shall terminate on January 1, 2026, unless extended by the Legislature.

Source: Laws 1927, c. 167, § 61, p. 469; C.S.1929, § 71-701; Laws 1935, c. 142, § 34, p. 531; Laws 1937, c. 157, § 1, p. 615; Laws 1941, c. 141, § 1, p. 555; C.S.Supp.,1941, § 71-701; Laws 1943, c. 150, § 16, p. 545; R.S.1943, § 71-162; Laws 1953, c. 238, § 3, p. 825; Laws 1955, c. 270, § 2, p. 850; Laws 1957, c. 292, § 1, p. 1048; Laws 1957, c. 298, § 12, p. 1080; Laws 1959, c. 318, § 2, p. 1166; Laws 1961, c. 337, § 8, p. 1054; Laws 1963, c. 409, § 1, p. 1314; Laws 1965, c. 412, § 1, p. 1319; Laws 1967, c. 438, § 4, p. 1350; Laws 1967, c. 439, § 17, p. 1364; Laws 1969, c. 560, § 6, p. 2281; Laws 1969, c. 562, § 1, p. 2288; Laws 1971, LB 300, § 1; Laws 1971, LB 587, § 9; Laws 1973, LB 515, § 3; Laws 1975, LB 92, § 1; Laws 1978, LB 689, § 1; Laws 1978, LB 406, § 12; Laws 1979, LB 4, § 6; Laws 1979, LB 428, § 3; Laws 1981, LB 451, § 8; Laws 1982, LB 263, § 1; Laws 1982, LB 448, § 2; Laws 1982, LB 449, § 2; Laws 1982, LB 450, § 2; Laws 1984, LB 481, § 22; Laws 1985, LB 129, § 12; Laws 1986, LB 277, § 8; Laws 1986, LB 286, § 72; Laws 1986, LB 579, § 64; Laws 1986, LB 926, § 36; Laws 1986, LB 355, § 14; Laws 1987, LB 473, § 18; Laws 1988, LB 1100, § 26; Laws 1988, LB 557, § 20; Laws 1989, LB 342, § 12; Laws 1990, LB 1064, § 9; Laws 1991, LB 703, § 17; Laws 1992, LB 1019, § 39; Laws 1993, LB 187, § 7; Laws 1993, LB 669, § 12; Laws 1994, LB 1210, § 46; Laws 1994, LB 1223, § 9; Laws 1995, LB 406, § 18; Laws 1997, LB 622, § 80; Laws 1999, LB 828, § 54; Laws 2001, LB 270, § 7; Laws 2003, LB 242, § 23; Laws 2004, LB 906, § 2; Laws 2004, LB 1005, § 10; Laws 2004, LB 1083, § 113; Laws 2006, LB 994, § 81; R.S.Supp.,2006, § 71-162; Laws 2007, LB236, § 6; Laws 2007, LB283, § 1; Laws 2007, LB463, § 51; Laws 2012, LB834, § 1; Laws 2019, LB25, § 1; Laws 2019, LB112, § 8; Laws 2021, LB148, § 44.

Cross References

Fees of state boards, see sections 33-151 and 33-152.
Medicine and Surgery Practice Act, see section 38-2001.
Nebraska Regulation of Health Professions Act, see section 71-6201.

38-154 Adjustments to the cost of credentialing.

Adjustments to the cost of credentialing include, but are not limited to:

(1) Revenue from sources that include, but are not limited to:

(a) Interest earned on the Professional and Occupational Credentialing Cash Fund, if any;

(b) Certification and verification of credentials;

(c) Administrative fees;

(d) Reinstatement fees;

(e) General Funds and federal funds;

(f) Fees for miscellaneous services, such as production of photocopies, lists, labels, and diskettes;

(g) Gifts; and

(h) Grants;

(2) Transfers to other funds for costs related to the Nebraska Regulation of Health Professions Act and section 38-128; and

(3) Costs associated with subsection (3) of section 38-155.

Source: Laws 2003, LB 242, § 26; R.S.1943, (2003), § 71-162.03; Laws 2007, LB463, § 54; Laws 2019, LB112, § 9.

Cross References

Nebraska Regulation of Health Professions Act, see section 71-6201.

38-155 Credentialing fees; establishment and collection.

(1) Subject to subsection (3) of this section, the department, with the recommendation of the appropriate board if applicable, shall adopt and promulgate rules and regulations to establish and collect the fees for the following credentials:

(a) Initial credentials, which include, but are not limited to:

(i) Licensure, certification, or registration;

(ii) Add-on or specialty credentials;

(iii) Temporary, provisional, or training credentials; and

(iv) Supervisory or collaborative relationship credentials;

(b) Applications to renew licenses, certifications, and registrations;

(c) Approval of continuing education courses and other methods of continuing competency; and

(d) Inspections and reinspections.

(2) When a credential will expire within one hundred eighty days after its initial issuance date or its reinstatement date and the initial credentialing or renewal fee is twenty-five dollars or more, the department shall collect twenty-five dollars or one-fourth of the initial credentialing or renewal fee, whichever is greater, for the initial or reinstated credential. The initial or reinstated credential shall be valid until the next subsequent renewal date.

(3) All fees for initial credentials under the Uniform Credentialing Act for low-income individuals, military families, and young workers shall be waived except the actual cost of the fingerprinting and criminal background check for an initial license under section 38-131.

Source: Laws 2003, LB 242, § 27; R.S.1943, (2003), § 71-162.04; Laws 2007, LB463, § 55; Laws 2012, LB773, § 1; Laws 2019, LB112, § 10; Laws 2021, LB148, § 45.

38-157 Professional and Occupational Credentialing Cash Fund; created; use; investment.

(1) The Professional and Occupational Credentialing Cash Fund is created. Except as provided in section 71-17,113, the fund shall consist of all fees, gifts, grants, and other money, excluding fines and civil penalties, received or collected by the department under sections 38-151 to 38-156 and the Nebraska Regulation of Health Professions Act.

(2) The department shall use the fund for the administration and enforcement of such laws regulating the individuals and businesses listed in section 38-121. Transfers may be made from the fund to the General Fund at the direction of the Legislature. The State Treasurer shall transfer any money in the Professional and Occupational Credentialing Cash Fund for licensing activities under the Water Well Standards and Contractors' Practice Act on July 1, 2021, to the Water Well Standards and Contractors' Licensing Fund.

(3) Any money in the Professional and Occupational Credentialing 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 1927, c. 167, § 62, p. 471; C.S.1929, § 71-702; R.S.1943, § 71-163; Laws 1986, LB 926, § 37; Laws 1988, LB 1100, § 27; Laws 1994, LB 1210, § 47; Laws 2003, LB 242, § 30; Laws 2005, LB 146, § 10; R.S.Supp.,2006, § 71-163; Laws 2007, LB463, § 57; Laws 2009, First Spec. Sess., LB3, § 19; Laws 2012, LB834, § 2; Laws 2021, LB148, § 46.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska Regulation of Health Professions Act, see section 71-6201.
Nebraska State Funds Investment Act, see section 72-1260.
Water Well Standards and Contractors' Practice Act, see section 46-1201.

38-158 Boards; appointment; vacancy.

(1) The State Board of Health shall appoint members to the boards designated in section 38-167 except the Board of Emergency Medical Services.

(2) Any vacancy in the membership of a board caused by death, resignation, removal, or otherwise shall be filled for the unexpired term in the same manner as original appointments are made.

Source: Laws 1927, c. 167, § 11, p. 457; C.S.1929, § 71-301; R.S.1943, § 71-111; Laws 1979, LB 427, § 4; Laws 1981, LB 451, § 2; Laws 1986, LB 286, § 31; Laws 1986, LB 579, § 23; Laws 1987, LB 473, § 6; Laws 1989, LB 342, § 7; Laws 1994, LB 1210, § 17; Laws 1999, LB 828, § 13; Laws 2001, LB 270, § 4; Laws 2002, LB 1021, § 6; R.S.1943, (2003), § 71-111; Laws 2007, LB463, § 58; Laws 2021, LB148, § 47.

38-167 Boards; designated; change in name; effect.

(1) Boards shall be designated as follows:

(a) Board of Advanced Practice Registered Nurses;

(b) Board of Alcohol and Drug Counseling;

(c) Board of Athletic Training;

(d) Board of Audiology and Speech-Language Pathology;

(e) Board of Chiropractic;

(f) Board of Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art;

(g) Board of Dentistry;

(h) Board of Emergency Medical Services;

(i) Board of Registered Environmental Health Specialists;

(j) Board of Funeral Directing and Embalming;

(k) Board of Hearing Instrument Specialists;

(l) Board of Massage Therapy;

(m) Board of Medical Nutrition Therapy;

(n) Board of Medical Radiography;

(o) Board of Medicine and Surgery;

(p) Board of Mental Health Practice;

(q) Board of Nursing;

(r) Board of Nursing Home Administration;

(s) Board of Occupational Therapy Practice;

(t) Board of Optometry;

(u) Board of Pharmacy;

(v) Board of Physical Therapy;

(w) Board of Podiatry;

(x) Board of Psychology;

(y) Board of Respiratory Care Practice; and

(z) Board of Veterinary Medicine and Surgery.

(2) Any change made by the Legislature of the names of boards listed in this section shall not change the membership of such boards or affect the validity of any action taken by or the status of any action pending before any of such boards. Any such board newly named by the Legislature shall be the direct and only successor to the board as previously named.

Source: Laws 1927, c. 167, § 12, p. 457; C.S.1929, § 71-302; Laws 1935, c. 142, § 30, p. 530; C.S.Supp.,1941, § 71-302; Laws 1943, c. 150, § 4, p. 540; R.S.1943, § 71-112; Laws 1957, c. 298, § 8, p. 1078; Laws 1961, c. 337, § 6, p. 1053; Laws 1978, LB 406, § 4; Laws 1979, LB 427, § 5; Laws 1981, LB 451, § 3; Laws 1984, LB 481, § 9; Laws 1985, LB 129, § 5; Laws 1986, LB 277, § 5; Laws 1986, LB 286, § 32; Laws 1986, LB 355, § 11; Laws 1986, LB 579, § 24; Laws 1988, LB 557, § 16; Laws 1988, LB 1100, § 8; Laws 1989, LB 342, § 8; Laws 1993, LB 187, § 5; Laws 1993, LB 669, § 6; Laws 1995, LB 406, § 14; Laws 1999, LB 828, § 14; Laws 2000, LB 833, § 1; Laws 2001, LB 270, § 5; Laws 2002, LB 1021, § 7; Laws 2004, LB 1083, § 107; R.S.Supp.,2006, § 71-112; Laws 2007, LB236, § 5; Laws 2007, LB463, § 67; Laws 2009, LB195, § 7; Laws 2021, LB148, § 48.

38-170 Board; business; how transacted.

The department shall, as far as practicable, provide for the conducting of the business of the boards by mail and may hold meetings by virtual conferencing subject to the Open Meetings Act. Any official action or vote of the members of a board taken by mail shall be preserved in the records of the department and shall be recorded in the board's minutes by the department.

Source: Laws 1927, c. 167, § 21, p. 459; C.S.1929, § 71-311; Laws 1943, c. 150, § 9, p. 541; R.S.1943, § 71-121; Laws 1978, LB 406, § 8;

Laws 1979, LB 427, § 11; Laws 1985, LB 129, § 9; Laws 1986, LB 926, § 8; Laws 1988, LB 1100, § 12; Laws 1997, LB 307, § 114; Laws 1999, LB 828, § 25; Laws 2004, LB 821, § 16; R.S.Supp.,2006, § 71-121; Laws 2007, LB463, § 70; Laws 2021, LB83, § 4.

Cross References

Open Meetings Act, see section 84-1407.

38-178 Disciplinary actions; grounds.

Except as otherwise provided in sections 38-1,119 to 38-1,123, a credential to practice a profession may be denied, refused renewal, or have other disciplinary measures taken against it in accordance with section 38-185 or 38-186 on any of the following grounds:

(1) Misrepresentation of material facts in procuring or attempting to procure a credential;

(2) Immoral or dishonorable conduct evidencing unfitness to practice the profession in this state;

(3) Abuse of, dependence on, or active addiction to alcohol, any controlled substance, or any mind-altering substance;

(4) Failure to comply with a treatment program or an aftercare program, including, but not limited to, a program entered into under the Licensee Assistance Program established pursuant to section 38-175;

(5) Conviction of (a) a misdemeanor or felony under Nebraska law or federal law, or (b) a crime in any jurisdiction which, if committed within this state, would have constituted a misdemeanor or felony under Nebraska law and which has a rational connection with the fitness or capacity of the applicant or credential holder to practice the profession;

(6) Practice of the profession (a) fraudulently, (b) beyond its authorized scope, (c) with gross incompetence or gross negligence, or (d) in a pattern of incompetent or negligent conduct;

(7) Practice of the profession while the ability to practice is impaired by alcohol, controlled substances, drugs, mind-altering substances, physical disability, mental disability, or emotional disability;

(8) Physical or mental incapacity to practice the profession as evidenced by a legal judgment or a determination by other lawful means;

(9) Illness, deterioration, or disability that impairs the ability to practice the profession;

(10) Permitting, aiding, or abetting the practice of a profession or the performance of activities requiring a credential by a person not credentialed to do so;

(11) Performing or offering to perform scleral tattooing as defined in section 38-10,172 by a person not credentialed to do so;

(12) Having had his or her credential denied, refused renewal, limited, suspended, revoked, or disciplined in any manner similar to section 38-196 by another state or jurisdiction based upon acts by the applicant or credential holder similar to acts described in this section;

(13) Use of untruthful, deceptive, or misleading statements in advertisements, including failure to comply with section 38-124;

(14) Conviction of fraudulent or misleading advertising or conviction of a violation of the Uniform Deceptive Trade Practices Act;

(15) Distribution of intoxicating liquors, controlled substances, or drugs for any other than lawful purposes;

(16) Violations of the Uniform Credentialing Act or the rules and regulations relating to the particular profession;

(17) Unlawful invasion of the field of practice of any profession regulated by the Uniform Credentialing Act which the credential holder is not credentialed to practice;

(18) Violation of the Uniform Controlled Substances Act or any rules and regulations adopted pursuant to the act;

(19) Failure to file a report required by section 38-1,124, 38-1,125, or 71-552;

(20) Failure to maintain the requirements necessary to obtain a credential;

(21) Violation of an order issued by the department;

(22) Violation of an assurance of compliance entered into under section 38-1,108;

(23) Failure to pay an administrative penalty;

(24) Unprofessional conduct as defined in section 38-179;

(25) Violation of the Automated Medication Systems Act; or

(26) Failure to comply with section 38-1,147.

Source: Laws 1927, c. 167, § 46, p. 466; C.S.1929, § 71-601; Laws 1943, c. 150, § 10, p. 541; R.S.1943, § 71-147; Laws 1976, LB 877, § 1; Laws 1979, LB 95, § 1; Laws 1986, LB 286, § 45; Laws 1986, LB 579, § 37; Laws 1986, LB 926, § 24; Laws 1987, LB 473, § 15; Laws 1988, LB 1100, § 16; Laws 1991, LB 456, § 7; Laws 1992, LB 1019, § 37; Laws 1993, LB 536, § 44; Laws 1994, LB 1210, § 25; Laws 1994, LB 1223, § 6; Laws 1997, LB 622, § 79; Laws 1999, LB 366, § 8; Laws 2001, LB 398, § 20; Laws 2005, LB 301, § 9; R.S.Supp.,2006, § 71-147; Laws 2007, LB463, § 78; Laws 2008, LB308, § 10; Laws 2011, LB591, § 2; Laws 2015, LB452, § 2; Laws 2019, LB449, § 1; Laws 2022, LB752, § 8.
Effective date July 21, 2022.

Cross References

Automated Medication Systems Act, see section 71-2444.
Uniform Controlled Substances Act, see section 28-401.01.
Uniform Deceptive Trade Practices Act, see section 87-306.

38-179 Disciplinary actions; unprofessional conduct, defined.

For purposes of section 38-178, unprofessional conduct means any departure from or failure to conform to the standards of acceptable and prevailing practice of a profession or the ethics of the profession, regardless of whether a person, consumer, or entity is injured, or conduct that is likely to deceive or defraud the public or is detrimental to the public interest, including, but not limited to:

(1) Receipt of fees on the assurance that an incurable disease can be permanently cured;

(2) Division of fees, or agreeing to split or divide the fees, received for professional services with any person for bringing or referring a consumer

other than (a) with a partner or employee of the applicant or credential holder or his or her office or clinic, (b) with a landlord of the applicant or credential holder pursuant to a written agreement that provides for payment of rent based on gross receipts, or (c) with a former partner or employee of the applicant or credential holder based on a retirement plan or separation agreement;

(3) Obtaining any fee for professional services by fraud, deceit, or misrepresentation, including, but not limited to, falsification of third-party claim documents;

(4) Cheating on or attempting to subvert the credentialing examination;

(5) Assisting in the care or treatment of a consumer without the consent of such consumer or his or her legal representative;

(6) Use of any letters, words, or terms, either as a prefix, affix, or suffix, on stationery, in advertisements, or otherwise, indicating that such person is entitled to practice a profession for which he or she is not credentialed;

(7) Performing, procuring, or aiding and abetting in the performance or procurement of a criminal abortion;

(8) Knowingly disclosing confidential information except as otherwise permitted by law;

(9) Commission of any act of sexual abuse, misconduct, or exploitation related to the practice of the profession of the applicant or credential holder;

(10) Failure to keep and maintain adequate records of treatment or service;

(11) Prescribing, administering, distributing, dispensing, giving, or selling any controlled substance or other drug recognized as addictive or dangerous for other than a medically accepted therapeutic purpose;

(12) Prescribing any controlled substance to (a) oneself or (b) except in the case of a medical emergency (i) one's spouse, (ii) one's child, (iii) one's parent, (iv) one's sibling, or (v) any other person living in the same household as the prescriber;

(13) Failure to comply with any federal, state, or municipal law, ordinance, rule, or regulation that pertains to the applicable profession;

(14) Disruptive behavior, whether verbal or physical, which interferes with consumer care or could reasonably be expected to interfere with such care; and

(15) Such other acts as may be defined in rules and regulations.

Nothing in this section shall be construed to exclude determination of additional conduct that is unprofessional by adjudication in individual contested cases.

Source: Laws 1927, c. 167, § 47, p. 466; C.S.1929, § 71-602; Laws 1935, c. 141, § 1, p. 518; C.S.Supp.,1941, § 71-602; Laws 1943, c. 146, § 11, p. 542; R.S.1943, § 71-148; Laws 1979, LB 95, § 2; Laws 1981, LB 466, § 1; Laws 1986, LB 286, § 46; Laws 1986, LB 579, § 38; Laws 1986, LB 926, § 25; Laws 1987, LB 473, § 16; Laws 1988, LB 273, § 9; Laws 1988, LB 1100, § 17; Laws 1991, LB 425, § 11; Laws 1991, LB 456, § 11; Laws 1993, LB 536, § 45; Laws 1994, LB 1210, § 27; Laws 1997, LB 23, § 5; R.S.1943, (2003), § 71-148; Laws 2007, LB463, § 79; Laws 2021, LB148, § 49.

38-180 Disciplinary actions; evidence of discipline by another state or jurisdiction.

For purposes of subdivision (12) of section 38-178, a certified copy of the record of denial, refusal of renewal, limitation, suspension, or revocation of a license, certificate, registration, or other similar credential or the taking of other disciplinary measures against it by another state or jurisdiction shall be conclusive evidence of a violation.

Source: Laws 2007, LB463, § 80; Laws 2019, LB449, § 2.

38-186 Credential; discipline; petition by Attorney General; hearing; department; powers and duties.

(1) A petition shall be filed by the Attorney General in order for the director to discipline a credential obtained under the Uniform Credentialing Act to:

(a) Practice or represent oneself as being certified under any of the practice acts enumerated in subdivisions (1) through (19) and (21) through (35) of section 38-101; or

(b) Operate as a business for the provision of services in body art; cosmetology; emergency medical services; esthetics; funeral directing and embalming; massage therapy; and nail technology in accordance with subsection (3) of section 38-121.

(2) The petition shall be filed in the office of the director. The department may withhold a petition for discipline or a final decision from public access for a period of five days from the date of filing the petition or the date the decision is entered or until service is made, whichever is earliest.

(3) The proceeding shall be summary in its nature and triable as an equity action and shall be heard by the director or by a hearing officer designated by the director under rules and regulations of the department. Affidavits may be received in evidence in the discretion of the director or hearing officer. The department shall have the power to administer oaths, to subpoena witnesses and compel their attendance, and to issue subpoenas duces tecum and require the production of books, accounts, and documents in the same manner and to the same extent as the district courts of the state. Depositions may be used by either party.

Source: Laws 2007, LB463, § 86; Laws 2012, LB831, § 28; Laws 2017, LB88, § 34; Laws 2017, LB255, § 10.

38-1,107 Violations; department; Attorney General; powers and duties; applicability of section.

(1) Except as provided in subsection (2) of this section, the department shall provide the Attorney General with a copy of all complaints it receives and advise the Attorney General of investigations it makes which may involve any possible violation of statutes or rules and regulations by a credential holder. The Attorney General shall then determine which, if any, statutes, rules, or regulations the credential holder has violated and the appropriate legal action to take. The Attorney General may (a) elect to file a petition under section 38-186 or not to file a petition, (b) negotiate a voluntary surrender or voluntary limitation pursuant to section 38-1,109, or (c) in cases involving a minor or insubstantial violation, refer the matter to the appropriate board for the opportunity to resolve the matter by recommending to the Attorney General

that he or she enter into an assurance of compliance with the credential holder in lieu of filing a petition. An assurance of compliance shall not constitute discipline against a credential holder.

(2) This section does not apply to the following professions or businesses: Asbestos abatement, inspection, project design, and training; lead-based paint abatement, inspection, project design, and training; medical radiography; and radon detection, measurement, and mitigation.

Source: Laws 1984, LB 481, § 2; Laws 1986, LB 286, § 76; Laws 1986, LB 579, § 68; Laws 1991, LB 456, § 25; Laws 1994, LB 1210, § 52; Laws 1999, LB 828, § 58; R.S.1943, (2003), § 71-171.01; Laws 2007, LB463, § 107; Laws 2021, LB148, § 50.

38-1,115 Prima facie evidence of practice without being credentialed; conditions.

It shall be prima facie evidence of practice without being credentialed when any of the following conditions exist:

(1) The person admits to engaging in practice;

(2) Staffing records or other reports from the employer of the person indicate that the person was engaged in practice;

(3) Billing or payment records document the provision of service, care, or treatment by the person;

(4) Service, care, or treatment records document the provision of service, care, or treatment by the person;

(5) Appointment records indicate that the person was engaged in practice;

(6) Government records indicate that the person was engaged in practice; and

(7) The person opens a business or practice site and announces or advertises that the business or site is open to provide service, care, or treatment.

Source: Laws 2007, LB463, § 115; Laws 2021, LB148, § 51.

38-1,119 Certain professions and businesses; sections applicable; initial credential; renewal of credential; denial or refusal to renew; department; powers.

(1) Sections 38-1,119 to 38-1,123 apply to the following professions and businesses: Asbestos abatement, inspection, project design, and training; lead-based paint abatement, inspection, project design, and training; medical radiography; and radon detection, measurement, and mitigation.

(2) If an applicant for an initial credential to practice a profession or operate a business does not meet all of the requirements for the credential, the department shall deny issuance of the credential. If an applicant for an initial credential or a credential holder applying for renewal of the credential has committed any of the acts set out in section 38-178 or 38-182, as applicable, the department may deny issuance or refuse renewal of the credential or may issue or renew the credential subject to any of the terms imposed under section 38-196 in order to protect the public.

Source: Laws 2007, LB463, § 119; Laws 2021, LB148, § 52.

38-1,124 Enforcement; investigations; violations; credential holder; duty to report; cease and desist order; violation; penalty; loss or theft of controlled substance; duty to report.

(1) The department shall enforce the Uniform Credentialing Act and for that purpose shall make necessary investigations. Every credential holder and every member of a board shall furnish the department such evidence as he or she may have relative to any alleged violation which is being investigated.

(2) Every credential holder shall report to the department the name of every person without a credential that he or she has reason to believe is engaged in practicing any profession or operating any business for which a credential is required by the Uniform Credentialing Act. The department may, along with the Attorney General and other law enforcement agencies, investigate such reports or other complaints of unauthorized practice. The director, with the recommendation of the appropriate board, may issue an order to cease and desist the unauthorized practice of such profession or the unauthorized operation of such business as a measure to obtain compliance with the applicable credentialing requirements by the person prior to referral of the matter to the Attorney General for action. Practice of such profession or operation of such business without a credential after receiving a cease and desist order is a Class III felony.

(3) Any credential holder who is required to file a report of loss or theft of a controlled substance to the federal Drug Enforcement Administration shall provide a copy of such report to the department. This subsection shall not apply to pharmacist interns or pharmacy technicians.

Source: Laws 1927, c. 167, § 67, p. 472; C.S.1929, § 71-901; R.S.1943, § 71-168; Laws 1986, LB 286, § 74; Laws 1986, LB 579, § 66; Laws 1991, LB 456, § 23; Laws 1994, LB 1210, § 50; Laws 1994, LB 1223, § 10; Laws 1995, LB 563, § 2; Laws 1996, LB 414, § 1; Laws 1997, LB 138, § 42; Laws 1997, LB 222, § 4; Laws 1999, LB 828, § 55; Laws 2000, LB 1115, § 12; Laws 2005, LB 256, § 21; Laws 2005, LB 306, § 3; Laws 2005, LB 361, § 32; Laws 2005, LB 382, § 5; R.S.Supp.,2006, § 71-168; Laws 2007, LB236, § 7; Laws 2007, LB463, § 124; Laws 2016, LB859, § 2; Laws 2017, LB166, § 7.

38-1,125 Credential holder except pharmacist intern and pharmacy technician; incompetent, gross negligent, or unprofessional conduct; impaired or disabled person; duty to report.

(1) Except as otherwise provided in section 38-2897, every credential holder shall, within thirty days of an occurrence described in this subsection, report to the department in such manner and form as the department may require whenever he or she:

(a) Has first-hand knowledge of facts giving him or her reason to believe that any person in his or her profession:

(i) Has acted with gross incompetence or gross negligence;

(ii) Has engaged in a pattern of incompetent or negligent conduct as defined in section 38-177;

(iii) Has engaged in unprofessional conduct as defined in section 38-179;

(iv) Has been practicing while his or her ability to practice is impaired by alcohol, controlled substances, mind-altering substances, or physical, mental, or emotional disability; or

(v) Has otherwise violated the regulatory provisions governing the practice of the profession;

(b) Has first-hand knowledge of facts giving him or her reason to believe that any person in another profession:

(i) Has acted with gross incompetence or gross negligence; or

(ii) Has been practicing while his or her ability to practice is impaired by alcohol, controlled substances, mind-altering substances, or physical, mental, or emotional disability; or

(c) Has been the subject of any of the following actions:

(i) Loss of privileges in a hospital or other health care facility due to alleged incompetence, negligence, unethical or unprofessional conduct, or physical, mental, or chemical impairment or the voluntary limitation of privileges or resignation from the staff of any health care facility when that occurred while under formal or informal investigation or evaluation by the facility or a committee of the facility for issues of clinical competence, unprofessional conduct, or physical, mental, or chemical impairment;

(ii) Loss of employment due to alleged incompetence, negligence, unethical or unprofessional conduct, or physical, mental, or chemical impairment;

(iii) An adverse judgment, settlement, or award arising out of a professional liability claim, including a settlement made prior to suit in which the consumer releases any professional liability claim against the credentialed person, or adverse action by an insurance company affecting professional liability coverage. The department may define what constitutes a settlement that would be reportable when a credential holder refunds or reduces a fee or makes no charge for reasons related to a consumer complaint other than costs;

(iv) Denial of a credential or other form of authorization to practice by any jurisdiction due to alleged incompetence, negligence, unethical or unprofessional conduct, or physical, mental, or chemical impairment;

(v) Disciplinary action against any credential or other form of permit he or she holds taken by any jurisdiction, the settlement of such action, or any voluntary surrender of or limitation on any such credential or other form of permit;

(vi) Loss of membership in, or discipline of a credential related to the applicable profession by, a professional organization due to alleged incompetence, negligence, unethical or unprofessional conduct, or physical, mental, or chemical impairment; or

(vii) Conviction of any misdemeanor or felony in this or any other jurisdiction.

(2) The requirement to file a report under subdivision (1)(a) or (b) of this section shall not apply:

(a) To the spouse of the credential holder;

(b) To a practitioner who is providing treatment to such credential holder in a practitioner-consumer relationship concerning information obtained or discovered in the course of treatment unless the treating practitioner determines that the condition of the credential holder may be of a nature which constitutes

a danger to the public health and safety by the credential holder's continued practice; or

(c) When a credential holder who is chemically impaired enters the Licensee Assistance Program authorized by section 38-175 except as otherwise provided in such section.

(3) A report submitted by a professional liability insurance company on behalf of a credential holder within the thirty-day period prescribed in subsection (1) of this section shall be sufficient to satisfy the credential holder's reporting requirement under subsection (1) of this section.

Source: Laws 2007, LB247, § 61; Laws 2007, LB463, § 125; Laws 2017, LB166, § 8.

38-1,143 Telehealth; provider-patient relationship; prescription authority; applicability of section.

(1) Except as otherwise provided in subsection (4) of this section, any credential holder under the Uniform Credentialing Act may establish a provider-patient relationship through telehealth.

(2) Any credential holder under the Uniform Credentialing Act who is providing a telehealth service to a patient may prescribe the patient a drug if the credential holder is authorized to prescribe under state and federal law.

(3) The department may adopt and promulgate rules and regulations pursuant to section 38-126 that are consistent with this section.

(4) This section does not apply to a credential holder under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act, the Dialysis Patient Care Technician Registration Act, the Environmental Health Specialists Practice Act, the Funeral Directing and Embalming Practice Act, the Massage Therapy Practice Act, the Medical Radiography Practice Act, the Nursing Home Administrator Practice Act, the Perfusion Practice Act, the Surgical First Assistant Practice Act, or the Veterinary Medicine and Surgery Practice Act.

Source: Laws 2019, LB29, § 2; Laws 2021, LB148, § 53.

Cross References

Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act, see section 38-1001.
Dialysis Patient Care Technician Registration Act, see section 38-3701.
Environmental Health Specialists Practice Act, see section 38-1301.
Funeral Directing and Embalming Practice Act, see section 38-1401.
Massage Therapy Practice Act, see section 38-1701.
Medical Radiography Practice Act, see section 38-1901.
Nursing Home Administrator Practice Act, see section 38-2401.
Perfusion Practice Act, see section 38-2701.
Surgical First Assistant Practice Act, see section 38-3501.
Veterinary Medicine and Surgery Practice Act, see section 38-3301.

38-1,144 Schedule II controlled substance or other opiate; practitioner; duties.

(1) For purposes of this section, practitioner means a physician, a physician assistant, a dentist, a pharmacist, a podiatrist, an optometrist, a certified nurse midwife, a certified registered nurse anesthetist, and a nurse practitioner.

(2) When prescribing a controlled substance listed in Schedule II of section 28-405 or any other opiate as defined in section 28-401 not listed in Schedule II, prior to issuing the practitioner's initial prescription for a course of treatment for acute or chronic pain, a practitioner involved in the course of

treatment as the primary prescribing practitioner or as a member of the patient's care team who is under the direct supervision or in consultation with the primary prescribing practitioner shall discuss with the patient, or the patient's parent or guardian if the patient is younger than eighteen years of age and is not emancipated, unless the discussion has already occurred with another member of the patient's care team within the previous sixty days:

(a) The risks of addiction and overdose associated with the controlled substance or opiate being prescribed, including, but not limited to:

(i) Controlled substances and opiates are highly addictive even when taken as prescribed;

(ii) There is a risk of developing a physical or psychological dependence on the controlled substance or opiate; and

(iii) Taking more controlled substances or opiates than prescribed, or mixing sedatives, benzodiazepines, or alcohol with controlled substances or opiates, can result in fatal respiratory depression;

(b) The reasons why the prescription is necessary; and

(c) Alternative treatments that may be available.

(3) This section does not apply to a prescription for a hospice patient or for a course of treatment for cancer or palliative care.

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

Source: Laws 2018, LB931, § 3; R.S.Supp.,2018, § 28-473; Laws 2019, LB556, § 2.

38-1,145 Opiates; legislative findings; limitation on certain prescriptions; practitioner; duties.

(1) For purposes of this section, practitioner means a physician, a physician assistant, a dentist, a pharmacist, a podiatrist, an optometrist, a certified nurse midwife, a certified registered nurse anesthetist, and a nurse practitioner.

(2) The Legislature finds that:

(a) In most cases, acute pain can be treated effectively with nonopiate or nonpharmacological options;

(b) With a more severe or acute injury, short-term use of opiates may be appropriate;

(c) Initial opiate prescriptions for children should not exceed seven days for most situations, and two or three days of opiates will often be sufficient;

(d) If a patient needs medication beyond three days, the prescriber should reevaluate the patient prior to issuing another prescription for opiates; and

(e) Physical dependence on opiates can occur within only a few weeks of continuous use, so great caution needs to be exercised during this critical recovery period.

(3) A practitioner who is prescribing an opiate as defined in section 28-401 for a patient younger than eighteen years of age for outpatient use for an acute condition shall not prescribe more than a seven-day supply except as otherwise provided in subsection (4) of this section and, if the practitioner has not previously prescribed an opiate for such patient, shall discuss with a parent or guardian of such patient, or with the patient if the patient is an emancipated

minor, the risks associated with use of opiates and the reasons why the prescription is necessary.

(4) If, in the professional medical judgment of the practitioner, more than a seven-day supply of an opiate is required to treat such patient's medical condition or is necessary for the treatment of pain associated with a cancer diagnosis or for palliative care, the practitioner may issue a prescription for the quantity needed to treat such patient's medical condition or pain. The practitioner shall document the medical condition triggering the prescription of more than a seven-day supply of an opiate in the patient's medical record and shall indicate that a nonopiate alternative was not appropriate to address the medical condition.

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

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

Source: Laws 2018, LB931, § 4; R.S.Supp.,2018, § 28-474; Laws 2019, LB556, § 3.

38-1,146 Prescription; issuance; requirements; applicability.

(1) For purposes of this section, prescriber means a health care practitioner authorized to prescribe controlled substances in the practice for which credentialed under the Uniform Credentialing Act.

(2) Except as otherwise provided in subsection (3) or (6) of this section, no prescriber shall, in this state, issue any prescription as defined in section 38-2840 for a controlled substance as defined in section 28-401 unless such prescription is issued (a) using electronic prescription technology, (b) from the prescriber issuing the prescription to a pharmacy, and (c) in accordance with all requirements of state law and the rules and regulations adopted and promulgated pursuant to such state law.

(3) The requirements of subsection (2) of this section shall not apply to prescriptions:

(a) Issued by veterinarians;

(b) Issued in circumstances where electronic prescribing is not available due to temporary technological or electrical failure;

(c) Issued when the prescriber and the dispenser are the same entity;

(d) Issued that include elements that are not supported by the Prescriber/Pharmacist Interface SCRIPT Standard of the National Council for Prescription Drug Programs as such standard existed on January 1, 2021;

(e) Issued for a drug for which the federal Food and Drug Administration requires the prescription to contain certain elements that are not able to be accomplished with electronic prescribing;

(f) Issued for dispensing a non-patient-specific prescription which is (i) an approved protocol for drug therapy or (ii) in response to a public health emergency;

(g) Issued for a drug for purposes of a research protocol;

(h) Issued under circumstances in which, notwithstanding the prescriber's ability to make an electronic prescription as required by this section, such prescriber reasonably determines (i) that it would be impractical for the patient to obtain substances prescribed by electronic prescription in a timely manner

and (ii) that such delay would adversely impact the patient's medical condition; or

(i) Issued for drugs requiring compounding.

(4) A pharmacist who receives a written, oral, or faxed prescription is not required to verify that the prescription falls under one of the exceptions listed in subsection (3) of this section. A pharmacist may continue to dispense medication from any otherwise valid written, oral, or faxed prescription consistent with the law and rules and regulations as they existed prior to January 1, 2022.

(5) A violation of this section shall not be grounds for disciplinary action under the Uniform Credentialing Act.

(6) A dentist shall not be subject to this section until January 1, 2024.

Source: Laws 2021, LB583, § 4.

38-1,147 Stem-cell-based therapy; informed written consent; required.

(1) For purposes of this section:

(a) Health care practitioner means a person licensed or certified under the Uniform Credentialing Act;

(b) Human stem cells means human cells, tissues, or cellular or tissue-based products, as defined in 21 C.F.R. 1271.3 as amended August 31, 2016, as published in the Federal Register at 81 Fed. Reg. 60223;

(c) Informed written consent related to stem-cell-based therapy means a signed writing executed by a patient that confirms that (i) a health care practitioner has explained the treatment, (ii) the treatment has not received the approval of the United States Food and Drug Administration, including for experimental use, and (iii) the patient understands that the treatment has not received such approval; and

(d) Stem-cell-based therapy means treatment using products derived from human stem cells.

(2) Any health care practitioner who performs stem-cell-based therapy shall, by informed written consent, communicate to any patient seeking stem-cell-based therapy from such practitioner that it is not approved by the United States Food and Drug Administration.

(3) This section does not apply to a health care practitioner using stem-cell-based therapy products that are approved by the United States Food and Drug Administration or stem-cell-based therapy for which the health care practitioner obtained approval for an investigational new drug or device from the United States Food and Drug Administration for use of human cells, tissues, or cellular or tissue-based products.

Source: Laws 2022, LB752, § 6.
Effective date July 21, 2022.

ARTICLE 2

ADVANCED PRACTICE REGISTERED NURSE PRACTICE ACT

Section
38-201. Act, how cited.
38-203. Definitions, where found.
38-204.01. Perinatal mental health disorder, defined.

Section
38-204.02. Postnatal care, defined.
38-204.03. Prenatal care, defined.
38-204.04. Questionnaire, defined.
38-208. License; qualifications; military spouse; temporary license.
38-213. Perinatal mental health disorders; referral network; questionnaire.

38-201 Act, how cited.

Sections 38-201 to 38-213 shall be known and may be cited as the Advanced Practice Registered Nurse Practice Act.

Source: Laws 2005, LB 256, § 36; R.S.Supp.,2006, § 71-17,131; Laws 2007, LB463, § 140; Laws 2022, LB905, § 1.
Effective date July 21, 2022.

38-203 Definitions, where found.

For purposes of the Advanced Practice Registered Nurse Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-204 to 38-204.04 apply.

Source: Laws 2005, LB 256, § 38; R.S.Supp.,2006, § 71-17,133; Laws 2007, LB463, § 142; Laws 2022, LB905, § 2.
Effective date July 21, 2022.

38-204.01 Perinatal mental health disorder, defined.

Perinatal mental health disorder means a mental health condition that occurs during pregnancy or during the postpartum period, including depression, anxiety, or postpartum psychosis.

Source: Laws 2022, LB905, § 3.
Effective date July 21, 2022.

38-204.02 Postnatal care, defined.

Postnatal care means an office visit to an advanced practice registered nurse occurring after birth, with reference to the infant or mother.

Source: Laws 2022, LB905, § 4.
Effective date July 21, 2022.

38-204.03 Prenatal care, defined.

Prenatal care means an office visit to an advanced practice registered nurse for pregnancy-related care occurring before birth.

Source: Laws 2022, LB905, § 5.
Effective date July 21, 2022.

38-204.04 Questionnaire, defined.

Questionnaire means a screening tool administered by an advanced practice registered nurse to detect perinatal mental health disorders, such as the Edinburgh Postnatal Depression Scale, the Postpartum Depression Screening Scale, the Beck Depression Inventory, the Patient Health Questionnaire, or other validated screening methods.

Source: Laws 2022, LB905, § 6.
Effective date July 21, 2022.

38-208 License; qualifications; military spouse; temporary license.

(1) An applicant for initial licensure as an advanced practice registered nurse shall:

(a) Be licensed as a registered nurse under the Nurse Practice Act or have authority based on the Nurse Licensure Compact to practice as a registered nurse in Nebraska;

(b) Be a graduate of or have completed a graduate-level advanced practice registered nurse program in a clinical specialty area of certified registered nurse anesthetist, clinical nurse specialist, certified nurse midwife, or nurse practitioner, which program is accredited by a national accrediting body;

(c) Be certified as a certified registered nurse anesthetist, a clinical nurse specialist, a certified nurse midwife, or a nurse practitioner, by an approved certifying body or an alternative method of competency assessment approved by the board, pursuant to the Certified Nurse Midwifery Practice Act, the Certified Registered Nurse Anesthetist Practice Act, the Clinical Nurse Specialist Practice Act, or the Nurse Practitioner Practice Act, as appropriate to the applicant's educational preparation;

(d) Provide evidence as required by rules and regulations; and

(e) Have committed no acts or omissions which are grounds for disciplinary action in another jurisdiction or, if such acts have been committed and would be grounds for discipline under the Nurse Practice Act, the board has found after investigation that sufficient restitution has been made.

(2) The department may issue a license under this section to an applicant who holds a license from another jurisdiction if the licensure requirements of such other jurisdiction meet or exceed the requirements for licensure as an advanced practice registered nurse under the Advanced Practice Registered Nurse Practice Act. An applicant under this subsection shall submit documentation as required by rules and regulations.

(3) A person licensed as an advanced practice registered nurse or certified as a certified registered nurse anesthetist or a certified nurse midwife in this state on July 1, 2007, shall be issued a license by the department as an advanced practice registered nurse on such date.

(4) An applicant who is a military spouse may apply for a temporary license as provided in section 38-129.01.

Source: Laws 2005, LB 256, § 42; R.S.Supp.,2006, § 71-17,137; Laws 2007, LB185, § 38; Laws 2007, LB463, § 147; Laws 2017, LB88, § 35.

Cross References

Certified Nurse Midwifery Practice Act, see section 38-601.
Certified Registered Nurse Anesthetist Practice Act, see section 38-701.
Clinical Nurse Specialist Practice Act, see section 38-901.
Credentialing, general requirements and issuance procedures, see section 38-121 et seq.
Nurse Licensure Compact, see sections 71-1795 to 71-1795.02.
Nurse Practice Act, see section 38-2201.
Nurse Practitioner Practice Act, see section 38-2301.

38-213 Perinatal mental health disorders; referral network; questionnaire.

The board may work with accredited hospitals, advanced practice registered nurses, and licensed health care professionals and may create a referral network in Nebraska to develop policies, procedures, information, and edu-

cational materials to meet each of the following requirements concerning perinatal mental health disorders:

(1) An advanced practice registered nurse providing prenatal care may:

(a) Provide education to a pregnant patient and, if possible and with permission, to the patient's family about perinatal mental health disorders in accordance with the formal opinions and recommendations of the American College of Obstetricians and Gynecologists; and

(b) Invite each pregnant patient to complete a questionnaire in accordance with the formal opinions and recommendations of the American College of Obstetricians and Gynecologists. Screening for perinatal mental health disorders may be repeated when, in the professional judgment of the advanced practice registered nurse, the patient is at increased risk for developing a perinatal mental health disorder;

(2) An advanced practice registered nurse providing postnatal care may invite each postpartum patient to complete a questionnaire and, if completed, shall review the questionnaire in accordance with the formal opinions and recommendations of the American College of Obstetricians and Gynecologists; and

(3) An advanced practice registered nurse providing pediatric care to an infant may invite the infant's mother to complete a questionnaire at any well-child checkup occurring during the first year of life at which the mother is present and, if completed, shall review the questionnaire in accordance with the formal opinions and recommendations of the American Academy of Pediatrics, in order to ensure that the health and well-being of the infant are not compromised by an undiagnosed perinatal mental health disorder in the mother.

Source: Laws 2022, LB905, § 7.
Effective date July 21, 2022.

ARTICLE 3

ALCOHOL AND DRUG COUNSELING PRACTICE ACT

Section
38-316. Alcohol and drug counselor; license requirements.
38-318. Licensure; substitute requirements.
38-319. Reciprocity; military spouse; temporary license.
38-321. Rules and regulations.

38-316 Alcohol and drug counselor; license requirements.

(1) To be licensed to practice as an alcohol and drug counselor, an applicant shall meet the requirements for licensure as a provisional alcohol and drug counselor under section 38-314, shall receive a passing score on an examination approved by the board, and shall have six thousand hours of supervised clinical work experience providing alcohol and drug counseling services to alcohol and other drug clients for remuneration. The experience shall be polydrug counseling experience.

(2) The experience shall include carrying a client caseload as the primary alcohol and drug counselor performing the core functions of assessment, treatment planning, counseling, case management, referral, reports and record keeping, and consultation with other professionals for those clients. The experience shall also include responsibility for performance of the five remaining core

functions although these core functions need not be performed by the applicant with each client in their caseload.

(3) Experience that shall not count towards licensure shall include, but not be limited to:

(a) Providing services to individuals who do not have a diagnosis of alcohol and drug abuse or dependence such as prevention, intervention, and codependency services or other mental health disorder counseling services, except that this shall not exclude counseling services provided to a client's significant others when provided in the context of treatment for the diagnosed alcohol or drug client; and

(b) Providing services when the experience does not include primary case responsibility for alcohol or drug treatment or does not include responsibility for the performance of all of the core functions.

(4) The maximum number of hours of experience that may be accrued are forty hours per week or two thousand hours per year.

(5)(a) A postsecondary educational degree may be substituted for part of the supervised clinical work experience. The degree shall be from an accredited postsecondary educational institution or the educational program.

(b) An associate's degree in addictions or chemical dependency may be substituted for one thousand hours of supervised clinical work experience.

(c) A bachelor's degree with a major in counseling, addictions, social work, sociology, or psychology may be substituted for two thousand hours of supervised clinical work experience.

(d) A master's degree or higher in counseling, addictions, social work, sociology, or psychology may be substituted for four thousand hours of supervised clinical work experience.

(e) A substitution shall not be made for more than one degree.

Source: Laws 2004, LB 1083, § 121; R.S.Supp.,2006, § 71-1,357; Laws 2007, LB463, § 167; Laws 2021, LB528, § 6.

Cross References

Credentialing, general requirements and issuance procedures, see section 38-121 et seq.

38-318 Licensure; substitute requirements.

(1) An individual who is licensed as a provisional alcohol and drug counselor at the time of application for licensure as an alcohol and drug counselor is deemed to have met the requirements of a high school diploma or its equivalent, the two hundred seventy hours of education related to alcohol and drug counseling, and the supervised practical training requirement.

(2) An applicant who is licensed as a provisional mental health practitioner or a mental health practitioner or who holds a privilege to practice in Nebraska as a professional counselor under the Licensed Professional Counselors Interstate Compact at the time of application for licensure is deemed to have met the requirements of subdivisions (2)(a), (b), (c), (d), and (f) of section 38-314.

Source: Laws 2004, LB 1083, § 123; R.S.Supp.,2006, § 71-1,359; Laws 2007, LB463, § 169; Laws 2022, LB752, § 9.
Effective date July 21, 2022.

Cross References

Licensed Professional Counselors Interstate Compact, see section 38-4201.

38-319 Reciprocity; military spouse; temporary license.

The department, with the recommendation of the board, may issue a license based on licensure in another jurisdiction to an individual who (1) meets the requirements of the Alcohol and Drug Counseling Practice Act, (2) meets substantially equivalent requirements as determined by the department, with the recommendation of the board, or (3) holds a license or certification that is current in another jurisdiction that authorizes the applicant to provide alcohol and drug counseling, has at least two hundred seventy hours of alcohol and drug counseling education, has at least three years of full-time alcohol and drug counseling practice following initial licensure or certification in the other jurisdiction, and has passed an alcohol and drug counseling examination. An applicant who is a military spouse may apply for a temporary license as provided in section 38-129.01.

Source: Laws 2007, LB463, § 170; Laws 2017, LB88, § 36; Laws 2018, LB1034, § 6.

38-321 Rules and regulations.

The department, with the recommendation of the board, shall adopt and promulgate rules and regulations to administer the Alcohol and Drug Counseling Practice Act, including rules and regulations governing:

(1) Ways of clearly identifying students, interns, and other persons providing alcohol and drug counseling under supervision;

(2) The rights of persons receiving alcohol and drug counseling;

(3) The rights of clients to gain access to their records, except that records relating to substance abuse may be withheld from a client if an alcohol and drug counselor determines, in his or her professional opinion, that release of the records to the client would not be in the best interest of the client or would pose a threat to another person, unless the release of the records is required by court order;

(4) The contents and methods of distribution of disclosure statements to clients of alcohol and drug counselors; and

(5) Standards of professional conduct and a code of ethics.

Source: Laws 2004, LB 1083, § 125; R.S.Supp.,2006, § 71-1,361; Laws 2007, LB463, § 172; Laws 2018, LB1034, § 7.

ARTICLE 4

ATHLETIC TRAINING PRACTICE ACT

Section

Section
38-408. Athletic training; scope of practice; department; duties.
38-409. License required; exceptions.
38-410. Licensure requirements; exemptions.
38-411. Applicant for licensure; qualifications; examination.
38-413. Reciprocity; continuing competency requirements; military spouse; temporary license.

38-401 Act, how cited.

Sections 38-401 to 38-414 shall be known and may be cited as the Athletic Training Practice Act.

Source: Laws 2007, LB463, § 173; Laws 2022, LB436, § 1.
Effective date July 21, 2022.

38-402 Definitions, where found.

For purposes of the Athletic Training Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-404 to 38-407.02 apply.

Source: Laws 1986, LB 355, § 1; Laws 1996, LB 1044, § 477; Laws 1999, LB 178, § 2; Laws 1999, LB 828, § 140; Laws 2003, LB 242, § 65; R.S.1943, (2003), § 71-1,238; Laws 2007, LB296, § 359; Laws 2007, LB463, § 174; Laws 2022, LB436, § 2.
Effective date July 21, 2022.

38-403 Repealed. Laws 2022, LB436, § 12.

38-404 Athletic trainer, defined.

Athletic trainer means a health care professional who is licensed to practice athletic training under the Athletic Training Practice Act and who, under guidelines established with a licensed physician, performs the functions outlined in section 38-408 except as otherwise provided in subsection (5) of section 38-408.

Source: Laws 2007, LB463, § 176; Laws 2022, LB436, § 3.
Effective date July 21, 2022.

38-405 Repealed. Laws 2022, LB436, § 12.

38-406.01 Condition, defined.

Condition means a disease, illness, or injury.

Source: Laws 2022, LB436, § 4.
Effective date July 21, 2022.

38-407 Repealed. Laws 2022, LB436, § 12.

38-407.01 Impression, defined.

Impression means a summation of information or an opinion formed, which is the outcome of the examination and assessment process.

Source: Laws 2022, LB436, § 5.
Effective date July 21, 2022.

38-407.02 Injuries and illnesses, defined.

Injuries and illnesses means injuries or common illnesses and conditions which are related to, or which limit participation in, exercise, athletic activities, recreational activities, or activities requiring physical strength, agility, flexibility, range of motion, speed, or stamina, and for which athletic trainers as a result of their education and training are qualified to provide care and make referrals to the appropriate health care professionals.

Source: Laws 2022, LB436, § 6.
Effective date July 21, 2022.

38-408 Athletic training; scope of practice; department; duties.

(1) As set forth in the Athletic Training Practice Act, the practice of athletic training includes providing the following regarding injuries and illnesses:

(a) Prevention and wellness promotion;

(b) Examination, assessment, and impression;

(c) Immediate and emergency care, including the administration of emergency drugs as prescribed by a licensed physician and dispensed by a pharmacy for emergency use, subject to subsection (2) of this section;

(d) Therapeutic intervention or rehabilitation of injuries and illnesses in the manner, means, and methods deemed necessary to affect care, rehabilitation, or function;

(e) Therapeutic modalities. For purposes of this subdivision, and except as provided in subsection (9) of this section, therapeutic modalities includes, but is not limited to:

(i) Physical modalities; and

(ii) Mechanical modalities, including, but not limited to, dry needling; and

(f) Health care administration, risk management, and professional responsibility.

(2) The department shall adopt and promulgate rules and regulations regarding the administration of emergency drugs as authorized in this section, including drugs, medicines, and medicinal substances as defined in section 38-2819 except for controlled substances listed in section 28-405.

(3) The department shall adopt and promulgate rules and regulations regarding the use of dry needling by athletic trainers.

(4) The scope of practice of athletic trainers does not include the use of joint manipulation, grade V mobilization/manipulation, thrust joint manipulation, high velocity/low amplitude thrust, nor any other procedure intended to result in joint cavitation. Joint manipulation commences where grades one through four mobilization ends.

(5) When athletic training is provided in a hospital outpatient department or clinic, or an outpatient-based medical facility or clinic, the athletic trainer shall perform the functions described in this section with a referral from a licensed physician, osteopathic physician, podiatrist, nurse practitioner, physician assistant, dentist, or chiropractor. The referral shall state the diagnosis and, if deemed necessary, identify any instructions or protocols by the referring provider. In these instances, for each patient under his or her care, the athletic trainer shall ensure documentation is complete, accurate, and timely and shall include the following:

(a) Provide and document the initial examination, assessment, and impression;

(b) Provide periodic reexamination with documentation of the reexamination, assessment, and impression;

(c) Establish a plan of care following either the initial examination or reexamination that is in accordance with the diagnosis and any instructions or protocols indicated by the referring provider;

(d) Communicate to the referring provider changes in the patient's condition that may require altering instructions and protocols indicated by the referral from the referring provider;

(e) Be responsible for accurate documentation of each followup visit and billing for athletic training services provided; and

(f) Provide documentation upon discharge, including patient response to athletic training intervention at the time of discharge.

(6) In all other instances, the athletic trainer shall maintain documentation consistent with the guidelines established with a licensed physician and specific to the setting in which the athletic trainer is practicing.

(7) An individual who is licensed as an athletic trainer may not provide, offer to provide, or represent that he or she is qualified to provide any care or services that he or she lacks the education, training, or experience to provide or that he or she is otherwise prohibited by law from providing.

(8) Pursuant to subdivision (18) of section 38-2025, no athletic trainer shall hold himself or herself out to be a physician or surgeon or qualified to prescribe medications.

(9) The application of heat, cold, air, water, or exercise shall not be restricted by the Athletic Training Practice Act.

Source: Laws 2007, LB463, § 180; Laws 2022, LB436, § 7.
Effective date July 21, 2022.

38-409 License required; exceptions.

No person shall be authorized to perform the functions outlined in section 38-408 unless the person first obtains a license as an athletic trainer or unless such person is licensed as a physician, osteopathic physician, chiropractor, nurse, physical therapist, or podiatrist. No person shall hold himself or herself out as an athletic trainer in this state unless such person is licensed under the Athletic Training Practice Act.

Source: Laws 1986, LB 355, § 3; Laws 1989, LB 342, § 27; Laws 1999, LB 178, § 3; Laws 2003, LB 242, § 67; R.S.1943, (2003), § 71-1,240; Laws 2007, LB463, § 181; Laws 2022, LB436, § 8.
Effective date July 21, 2022.

38-410 Licensure requirements; exemptions.

(1) An individual who accompanies an athletic team or organization from another state or jurisdiction as the athletic trainer is exempt from the licensure requirements of the Athletic Training Practice Act.

(2) An athletic training student who is enrolled in an athletic training education program accredited by an accrediting body approved by the board is exempt from the licensure requirements of the Athletic Training Practice Act.

Source: Laws 1999, LB 178, § 4; Laws 2003, LB 242, § 66; R.S.1943, (2003), § 71-1,239.01; Laws 2007, LB463, § 182; Laws 2022, LB436, § 9.
Effective date July 21, 2022.

38-411 Applicant for licensure; qualifications; examination.

(1) An applicant for licensure as an athletic trainer shall at the time of application provide proof to the department that the applicant meets one or more of the following qualifications:

(a) For any person who graduated prior to January 1, 2004:

(i) Graduation after successful completion of the curriculum requirements of an accredited athletic training education program at an accredited college or university approved by the board; or

(ii) Graduation with a four-year degree from an accredited college or university and completion of at least two consecutive years, military duty excepted, as an athletic training student under the supervision of an athletic trainer approved by the board; and

(b) For any person who graduated after January 1, 2004, graduation after successful completion of the curriculum requirements of an accredited athletic training education program at an accredited college or university approved by the board.

(2) In order to be licensed as an athletic trainer, an applicant shall, in addition to the requirements of subsection (1) of this section, successfully complete an examination approved by the board.

Source: Laws 1986, LB 355, § 4; R.S.1943, (2003), § 71-1,241; Laws 2007, LB463, § 183; Laws 2022, LB436, § 10.
Effective date July 21, 2022.

Cross References

Credentialing, general requirements and issuance procedures, see section 38-121 et seq.

38-413 Reciprocity; continuing competency requirements; military spouse; temporary license.

(1) An applicant for licensure as an athletic trainer who has met the standards set by the board pursuant to section 38-126 for a license based on licensure in another jurisdiction but is not practicing at the time of application for licensure shall present proof satisfactory to the department that he or she has within the three years immediately preceding the application for licensure completed continuing competency requirements approved by the board pursuant to section 38-145.

(2) An applicant who is a military spouse may apply for a temporary license as provided in section 38-129.01.

Source: Laws 2007, LB463, § 185; Laws 2017, LB88, § 37.

ARTICLE 5

AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY PRACTICE ACT

Section
38-513. Licensed professional; nonresident; practice of audiology or speech-language pathology; act, how construed.
38-515. Practice of audiology or speech-language pathology; license or privilege to practice; applicant; requirements.
38-517. Reciprocity; continuing competency requirements; military spouse; temporary license.
38-518. Practice of audiology or speech-language pathology; temporary license; granted; when.
38-520. Audiologist or speech-language pathology assistant; supervision; termination.

38-513 Licensed professional; nonresident; practice of audiology or speech-language pathology; act, how construed.

Nothing in the Audiology and Speech-Language Pathology Practice Act shall be construed to prevent or restrict (1) a qualified person licensed in this state from engaging in the profession for which he or she is licensed if he or she does not present himself or herself to be an audiologist or speech-language pathologist or (2) the performance of audiology or speech-language pathology services in this state by any person not a resident of this state who is not licensed either under the act or in a member state of the Audiology and Speech-Language Pathology Interstate Compact, if (a) such services are performed for not more than thirty days in any calendar year, (b) such person meets the qualifications and requirements for application for licensure under the act, (c) such person is working under the supervision of a person licensed in Nebraska to practice speech-language pathology or audiology or under the supervision of a person licensed in a member state practicing speech-language pathology or audiology in Nebraska under the compact privilege, and (d) such person registers with the board prior to initiation of professional services.

Source: Laws 1978, LB 406, § 15; Laws 1985, LB 129, § 16; Laws 1990, LB 828, § 2; R.S.1943, (2003), § 71-1,188; Laws 2007, LB463, § 198; Laws 2021, LB14, § 1.

Cross References

Audiology and Speech-Language Pathology Interstate Compact, see section 38-4101.

38-515 Practice of audiology or speech-language pathology; license or privilege to practice; applicant; requirements.

(1) Every applicant for a license to practice audiology shall (a)(i) for applicants graduating prior to September 1, 2007, present proof of a master's degree, a doctoral degree, or the equivalent of a master's degree or doctoral degree in audiology from an academic program approved by the board, and (ii) for applicants graduating on or after September 1, 2007, present proof of a doctoral degree or its equivalent in audiology, (b) present proof of no less than thirty-six weeks of full-time professional experience or equivalent half-time professional experience in audiology, supervised in the area in which licensure is sought, and (c) successfully complete an examination approved by the board.

(2) Every applicant for a license to practice speech-language pathology shall (a) present proof of a master's degree, a doctoral degree, or the equivalent of a master's degree or doctoral degree in speech-language pathology from an

academic program approved by the board, (b) present proof of no less than thirty-six weeks of full-time professional experience or equivalent half-time professional experience in speech-language pathology, supervised in the area in which licensure is sought, and (c) successfully complete an examination approved by the board.

(3) Presentation of official documentation of certification by a nationwide professional accrediting organization approved by the board shall be deemed equivalent to the requirements of this section.

(4) Every applicant for a privilege to practice audiology or speech-language pathology under the Audiology and Speech-Language Pathology Interstate Compact shall present proof of authorization from a member state, as defined in section 38-4101, to practice as an audiologist or speech-language pathologist.

Source: Laws 1978, LB 406, § 17; Laws 1985, LB 129, § 18; Laws 1988, LB 1100, § 67; R.S.1943, (2003), § 71-1,190; Laws 2007, LB463, § 200; Laws 2007, LB463, § 1178; Laws 2021, LB14, § 2.

Cross References

Audiology and Speech-Language Pathology Interstate Compact, see section 38-4101.
Credentialing, general requirements and issuance procedures, see section 38-121 et seq.

38-517 Reciprocity; continuing competency requirements; military spouse; temporary license.

(1) An applicant for licensure to practice audiology or speech-language pathology who has met the standards set by the board pursuant to section 38-126 for a license based on licensure in another jurisdiction but is not practicing at the time of application for licensure shall present proof satisfactory to the department that he or she has within the three years immediately preceding the application for licensure completed continuing competency requirements approved by the board pursuant to section 38-145.

(2) An applicant who is a military spouse may apply for a temporary license as provided in section 38-129.01.

Source: Laws 2007, LB463, § 202; Laws 2017, LB88, § 38.

38-518 Practice of audiology or speech-language pathology; temporary license; granted; when.

A temporary license to practice audiology or speech-language pathology may be granted to:

(1) A military spouse as provided in section 38-129.01; or

(2) A person who establishes residence in Nebraska, or a person who is a resident of a member state of the Audiology and Speech-Language Pathology Interstate Compact, if such person:

(a) Meets all the requirements for a license except passage of the examination required by section 38-515, which temporary license shall be valid only until the date on which the results of the next licensure examination are available to the department and shall not be renewed; or

(b) Meets all the requirements for a license except completion of the professional experience required by section 38-515, which temporary license shall be

valid only until the sooner of completion of such professional experience or eighteen months and shall not be renewed.

Source: Laws 1978, LB 406, § 21; Laws 1985, LB 129, § 22; Laws 1988, LB 1100, § 68; Laws 1991, LB 456, § 28; Laws 2001, LB 209, § 12; Laws 2003, LB 242, § 59; R.S.1943, (2003), § 71-1,194; Laws 2007, LB463, § 203; Laws 2017, LB88, § 39; Laws 2021, LB14, § 3.

Cross References

Audiology and Speech-Language Pathology Interstate Compact, see section 38-4101.

38-520 Audiologist or speech-language pathology assistant; supervision; termination.

(1) The department, with the recommendation of the board, shall approve an application submitted by an audiologist or speech-language pathologist for supervision of an audiology or speech-language pathology assistant when:

(a) The audiology or speech-language pathology assistant meets the requirements for registration pursuant to section 38-519;

(b) The audiologist or speech-language pathologist has a valid Nebraska license or a privilege to practice audiology or speech-language pathology under the Audiology and Speech-Language Pathology Interstate Compact; and

(c) The audiologist or speech-language pathologist practices in Nebraska.

(2) Any audiologist or speech-language pathologist seeking approval for supervision of an audiology or speech-language pathology assistant shall submit an application which is signed by the audiology or speech-language pathology assistant and the audiologist or speech-language pathologist with whom he or she is associated. Such application shall (a) identify the settings within which the audiology or speech-language pathology assistant is authorized to practice, (b) describe the agreed-upon functions that the audiology or speech-language pathology assistant may perform as provided in section 38-523, and (c) describe the provision for supervision by an alternate audiologist or speech-language pathologist when necessary.

(3) If the supervision of an audiology or speech-language pathology assistant is terminated by the audiologist, speech-language pathologist, or audiology or speech-language pathology assistant, the audiologist or speech-language pathologist shall notify the department of such termination. An audiologist or speech-language pathologist who thereafter assumes the responsibility for such supervision shall obtain a certificate of approval to supervise an audiology or speech-language pathology assistant from the department prior to the use of the audiology or speech-language pathology assistant in the practice of audiology or speech-language pathology.

Source: Laws 1985, LB 129, § 24; Laws 1987, LB 473, § 30; Laws 1988, LB 1100, § 70; R.S.1943, (2003), § 71-1,195.02; Laws 2007, LB247, § 30; Laws 2007, LB463, § 205; Laws 2021, LB14, § 4.

Cross References

Audiology and Speech-Language Pathology Interstate Compact, see section 38-4101.

ARTICLE 6

CERTIFIED NURSE MIDWIFERY PRACTICE ACT

Section
38-615. Licensure as nurse midwife; application; requirements; temporary licensure.

38-615 Licensure as nurse midwife; application; requirements; temporary licensure.

(1) An applicant for licensure under the Advanced Practice Registered Nurse Practice Act to practice as a certified nurse midwife shall submit such evidence as the board requires showing that the applicant is currently licensed as a registered nurse by the state or has the authority based on the Nurse Licensure Compact to practice as a registered nurse in Nebraska, has successfully completed an approved certified nurse midwifery education program, and is certified as a nurse midwife by a board-approved certifying body.

(2) The department may, with the approval of the board, grant temporary licensure as a certified nurse midwife for up to one hundred twenty days upon application (a) to graduates of an approved nurse midwifery program pending results of the first certifying examination following graduation and (b) to nurse midwives currently licensed in another state pending completion of the application for a Nebraska license. A temporary license issued pursuant to this subsection may be extended for up to one year with the approval of the board.

(3) An applicant who is a military spouse may apply for a temporary license as provided in section 38-129.01.

(4) If more than five years have elapsed since the completion of the nurse midwifery program or since the applicant has practiced as a nurse midwife, the applicant shall meet the requirements in subsection (1) of this section and provide evidence of continuing competency, as may be determined by the board, either by means of a reentry program, references, supervised practice, examination, or one or more of the continuing competency activities listed in section 38-145.

Source: Laws 1984, LB 761, § 18; Laws 1993, LB 536, § 76; Laws 1997, LB 752, § 175; Laws 2002, LB 1021, § 63; Laws 2003, LB 242, § 107; Laws 2005, LB 256, § 89; R.S.Supp.,2006, § 71-1755; Laws 2007, LB185, § 23; Laws 2007, LB463, § 227; Laws 2017, LB88, § 40.

Cross References

Advanced Practice Registered Nurse Practice Act, see section 38-201.
Credentialing, general requirements and issuance procedures, see section 38-121 et seq.
Nurse Licensure Compact, see sections 71-1795 to 71-1795.02.

ARTICLE 7

CERTIFIED REGISTERED NURSE ANESTHETIST PRACTICE ACT

Section
38-708. Certified registered nurse anesthetist; temporary license; permit.

38-708 Certified registered nurse anesthetist; temporary license; permit.

(1) The department may, with the approval of the board, grant a temporary license in the practice of anesthesia for up to one hundred twenty days upon

application (a) to graduates of an accredited school of nurse anesthesia pending results of the first certifying examination following graduation and (b) to registered nurse anesthetists currently licensed in another state pending completion of the application for a Nebraska license. A temporary license issued pursuant to this subsection may be extended at the discretion of the board with the approval of the department.

(2) An applicant for a license to practice as a certified registered nurse anesthetist who is a military spouse may apply for a temporary license as provided in section 38-129.01.

Source: Laws 1981, LB 379, § 28; Laws 1984, LB 724, § 30; Laws 1992, LB 1019, § 75; Laws 1996, LB 414, § 45; Laws 1999, LB 828, § 156; Laws 2005, LB 256, § 79; R.S.Supp.,2006, § 71-1731; Laws 2007, LB185, § 16; Laws 2007, LB463, § 238; Laws 2017, LB88, § 41.

ARTICLE 8

CHIROPRACTIC PRACTICE ACT

Section
38-809. Reciprocity; continuing competency requirements; military spouse; temporary license.

38-809 Reciprocity; continuing competency requirements; military spouse; temporary license.

(1) An applicant for licensure to practice chiropractic who has met the standards set by the board pursuant to section 38-126 for a license based on licensure in another jurisdiction but is not practicing at the time of application for licensure shall present proof satisfactory to the department that he or she has within the two years immediately preceding the application for licensure completed continuing competency requirements approved by the board pursuant to section 38-145.

(2) An applicant who is a military spouse may apply for a temporary license as provided in section 38-129.01.

Source: Laws 1927, c. 167, § 80, p. 475; C.S.1929, § 71-1105; R.S.1943, § 71-181; Laws 1996, LB 1044, § 406; R.S.1943, (2003), § 71-181; Laws 2007, LB296, § 324; Laws 2007, LB463, § 250; Laws 2017, LB88, § 42.

ARTICLE 10

COSMETOLOGY, ELECTROLOGY, ESTHETICS, NAIL TECHNOLOGY, AND BODY ART PRACTICE ACT

Section
38-1001. Act, how cited.
38-1004. Definitions, where found.
38-1005. Apprentice, defined.
38-1013. Repealed. Laws 2018, LB731, § 106.
38-1014. Repealed. Laws 2018, LB731, § 106.
38-1017. Cosmetology establishment, defined.
38-1018. Cosmetology salon, defined.
38-1022. Repealed. Laws 2018, LB731, § 106.
38-1028. Esthetics salon, defined.
38-1029. Repealed. Laws 2018, LB731, § 106.

Section

38-1001 Act, how cited.

Sections 38-1001 to 38-10,172 shall be known and may be cited as the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act.

Source: Laws 1986, LB 318, § 1; Laws 1995, LB 83, § 1; Laws 1999, LB 68, § 1; Laws 2001, LB 209, § 13; Laws 2002, LB 241, § 1; Laws 2004, LB 906, § 3; R.S.Supp.,2006, § 71-340; Laws 2007, LB463, § 263; Laws 2016, LB898, § 1; Laws 2018, LB731, § 3; Laws 2019, LB449, § 3.

38-1004 Definitions, where found.

For purposes of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-1005 to 38-1056 apply.

Source: Laws 1986, LB 318, § 4; Laws 1995, LB 83, § 4; Laws 1999, LB 68, § 4; Laws 2002, LB 241, § 4; Laws 2004, LB 906, § 6; R.S.Supp.,2006, § 71-343; Laws 2007, LB463, § 266; Laws 2016, LB898, § 2; Laws 2018, LB731, § 4.

38-1005 Apprentice, defined.

Apprentice means a person engaged in the study of any or all of the practices of cosmetology under the supervision of an instructor in an apprentice salon.

Source: Laws 1986, LB 318, § 5; R.S.1943, (2003), § 71-344; Laws 2007, LB463, § 267; Laws 2018, LB731, § 5.

38-1013 Repealed. Laws 2018, LB731, § 106.

38-1014 Repealed. Laws 2018, LB731, § 106.

38-1017 Cosmetology establishment, defined.

Cosmetology establishment means a cosmetology salon, a mobile cosmetology salon, an esthetics salon, a school of cosmetology, a school of esthetics, an apprentice salon, or any other place in which any or all of the practices of cosmetology are performed on members of the general public for compensation or in which instruction or training in any or all of the practices of cosmetology is given, except when such practices constitute nonvocational training.

Source: Laws 1986, LB 318, § 13; Laws 1999, LB 68, § 7; Laws 2002, LB 241, § 7; R.S.1943, (2003), § 71-352; Laws 2007, LB463, § 279; Laws 2018, LB731, § 6.

38-1018 Cosmetology salon, defined.

Cosmetology salon means a fixed structure or part thereof licensed under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act to serve as the site for the performance of any or all of the practices of cosmetology by persons licensed under such act.

Source: Laws 1986, LB 318, § 14; R.S.1943, (2003), § 71-353; Laws 2007, LB463, § 280; Laws 2018, LB731, § 7.

38-1022 Repealed. Laws 2018, LB731, § 106.

38-1028 Esthetics salon, defined.

Esthetics salon means a fixed structure or part thereof licensed under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act to serve as the site for the performance of any or all of the practices of esthetics by persons licensed under such act.

Source: Laws 1986, LB 318, § 28; R.S.1943, (1996), § 71-367; Laws 2002, LB 241, § 11; R.S.1943, (2003), § 71-357.03; Laws 2007, LB463, § 290; Laws 2018, LB731, § 8.

38-1029 Repealed. Laws 2018, LB731, § 106.

38-1030 Repealed. Laws 2018, LB731, § 106.

38-1033.01 Mobile cosmetology salon, defined.

Mobile cosmetology salon means a self-contained, self-supporting, enclosed mobile unit licensed under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act as a mobile site for the performance of the practices of cosmetology by persons licensed under the act.

Source: Laws 2018, LB731, § 9.

38-1033.02 Mobile nail technology salon, defined.

Mobile nail technology salon means a self-contained, self-supporting, enclosed mobile unit licensed under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act to serve as a mobile site for the performance of the practices of nail technology by persons licensed under the act.

Source: Laws 2018, LB731, § 10.

38-1036 Nail technology establishment, defined.

Nail technology establishment means a nail technology salon, a mobile nail technology salon, a nail technology school, or any other place in which the practices of nail technology are performed on members of the general public for compensation or in which instruction or training in the practices of nail technology is given, except when such practices constitute nonvocational training.

Source: Laws 1999, LB 68, § 11; R.S.1943, (2003), § 71-361.03; Laws 2007, LB463, § 298; Laws 2018, LB731, § 11.

38-1038 Nail technology salon, defined.

Nail technology salon means a fixed structure or part thereof licensed under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act to serve as the site for the performance of the practices of nail technology by persons licensed under the act.

Source: Laws 1999, LB 68, § 13; R.S.1943, (2003), § 71-361.05; Laws 2007, LB463, § 300; Laws 2018, LB731, § 12.

38-1043 Nonvocational training, defined.

Nonvocational training means the act of imparting knowledge of or skills in any or all of the practices of cosmetology, nail technology, esthetics, or electrology to persons not licensed under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act for the purpose of noncommercial use by those receiving such training.

Source: Laws 1986, LB 318, § 23; Laws 1995, LB 83, § 11; Laws 1999, LB 68, § 18; Laws 2002, LB 241, § 12; R.S.1943, (2003), § 71-362; Laws 2007, LB463, § 305; Laws 2018, LB731, § 13.

38-1058 Cosmetology; licensure required.

It shall be unlawful for any person, group, company, or other entity to engage in any of the following acts without being duly licensed as required by the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act, unless specifically excepted by such act:

(1) To engage in or follow or to advertise or hold oneself out as engaging in or following any of the practices of cosmetology or to act as a practitioner;

(2) To engage in or advertise or hold oneself out as engaging in the teaching of any of the practices of cosmetology; or

(3) To operate or advertise or hold oneself out as operating a cosmetology establishment in which any of the practices of cosmetology or the teaching of any of the practices of cosmetology are carried out.

Source: Laws 1986, LB 318, § 46; R.S.1943, (2003), § 71-385; Laws 2007, LB463, § 320; Laws 2018, LB731, § 14.

38-1061 Licensure; categories; use of titles prohibited; practice in licensed establishment or facility.

(1) All practitioners shall be licensed by the department under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act in a category or categories appropriate to their practice.

(2) Licensure shall be required before any person may engage in the full, unsupervised practice or teaching of cosmetology, electrology, esthetics, nail technology, or body art, and no person may assume the title of cosmetologist, electrologist, esthetician, instructor, nail technician, nail technology instructor, esthetics instructor, permanent color technician, tattoo artist, body piercer, or body brander without first being licensed by the department.

(3) All licensed practitioners shall practice in an appropriate licensed establishment or facility.

Source: Laws 1986, LB 318, § 47; Laws 1995, LB 83, § 21; Laws 1999, LB 68, § 27; Laws 2002, LB 241, § 22; Laws 2004, LB 906, § 19; R.S.Supp.,2006, § 71-386; Laws 2007, LB463, § 323; Laws 2018, LB731, § 15.

38-1062 Licensure by examination; requirements.

In order to be licensed by the department by examination, an individual shall meet, and present to the department evidence of meeting, the following requirements:

(1) Has attained the age of seventeen years on or before the beginning date of the examination for which application is being made;

(2) Has completed formal education equivalent to a United States high school education;

(3) Possesses a minimum competency in the knowledge and skills necessary to perform the practices for which licensure is sought, as evidenced by successful completion of an examination in the appropriate practices approved by the board and administered by the department;

(4) Possesses sufficient ability to read the English language to permit the applicant to practice in a safe manner, as evidenced by successful completion of the written examination; and

(5) Has graduated from a school of cosmetology or an apprentice salon in or outside of Nebraska, a school of esthetics in or outside of Nebraska, or a school of electrolysis upon completion of a program of studies appropriate to the practices for which licensure is being sought, as evidenced by a diploma or certificate from the school or apprentice salon to the effect that the applicant has complied with the following:

(a) For licensure as a cosmetologist, the program of studies shall consist of a minimum of one thousand eight hundred hours;

(b) For licensure as an esthetician, the program of studies shall consist of a minimum of six hundred hours;

(c) For licensure as a cosmetology instructor, the program of studies shall consist of a minimum of six hundred hours beyond the program of studies required for licensure as a cosmetologist;

(d) For licensure as a cosmetology instructor, be currently licensed as a cosmetologist in Nebraska, as evidenced by possession of a valid Nebraska cosmetology license;

(e) For licensure as an electrologist, the program of studies shall consist of a minimum of six hundred hours;

(f) For licensure as an electrology instructor, be currently licensed as an electrologist in Nebraska and have practiced electrology actively for at least two years immediately before the application; and

(g) For licensure as an esthetics instructor, completion of a program of studies consisting of a minimum of three hundred hours beyond the program of studies required for licensure as an esthetician and current licensure as an esthetician in Nebraska.

Source: Laws 1986, LB 318, § 48; Laws 1987, LB 543, § 6; Laws 1995, LB 83, § 22; Laws 1996, LB 1155, § 26; Laws 1997, LB 752, § 168; Laws 2002, LB 241, § 23; Laws 2004, LB 1005, § 26; R.S.Supp.,2006, § 71-387; Laws 2007, LB463, § 324; Laws 2018, LB731, § 16.

Cross References

Credentialing, general requirements and issuance procedures, see section 38-121 et seq.

38-1063 Application for examination.

No application for any type of licensure shall be considered complete unless all information requested in the application has been supplied, all seals and signatures required have been obtained, and all supporting and documentary evidence has been received by the department.

Source: Laws 1986, LB 318, § 49; Laws 1989, LB 344, § 8; Laws 2003, LB 242, § 82; R.S.1943, (2003) § 71-388; Laws 2007, LB463, § 325; Laws 2018, LB731, § 17.

38-1065 Examinations; requirements; grades.

(1) Examinations approved by the board may be national standardized examinations, but in all cases the examinations shall be related to the knowledge and skills necessary to perform the practices being examined and shall be related to the curricula required to be taught in schools of cosmetology, schools of esthetics, or schools of electrolysis.

(2) Practical examinations may be offered as either written or hands-on and shall be conducted in such a manner that the identity of the applicant is not disclosed to the examiners in any way.

(3) In order to successfully complete the examination, an applicant shall obtain an average grade of seventy-five percent on all examinations.

Source: Laws 1986, LB 318, § 51; Laws 1987, LB 543, § 8; Laws 1995, LB 83, § 24; Laws 1997, LB 307, § 134; R.S.1943, (2003), § 71-390; Laws 2007, LB296, § 366; Laws 2007, LB463, § 327; Laws 2018, LB731, § 18.

38-1066 Reciprocity; requirements; military spouse; temporary license.

(1) The department may grant a license based on licensure in another jurisdiction to any person who meets the requirements of subdivisions (1) and (2) of section 38-1062 and who presents proof of the following:

(a) That he or she is currently licensed in the appropriate category in another jurisdiction and that he or she has never been disciplined or had his or her license revoked. An applicant seeking licensure as an instructor in the manner provided in this section shall be licensed as an instructor in another jurisdic-

tion. An applicant seeking licensure as a cosmetologist in the manner provided in this section shall be licensed as a cosmetologist in another jurisdiction. An applicant seeking licensure as an esthetician in the manner provided in this section shall be licensed as a cosmetologist, an esthetician, or an equivalent title in another jurisdiction. An applicant seeking licensure as an esthetics instructor in the manner provided in this section shall be licensed as a cosmetology instructor, esthetics instructor, or the equivalent in another jurisdiction. An applicant seeking licensure as an electrologist or an electrology instructor in the manner provided in this section shall be licensed as an electrologist or an electrology instructor, respectively, in another jurisdiction;

(b) That such license was issued on the basis of an examination and the results of the examination. If an examination was not required for licensure in the other jurisdiction, the applicant shall take the Nebraska examination; and

(c) That the applicant complies with the hour requirements of subdivision (5) of section 38-1062 through any combination of hours earned as a student or apprentice in a cosmetology establishment licensed or approved by the jurisdiction in which it was located and hour-equivalents granted for recent work experience, with hour-equivalents recognized as follows:

(i) Each month of full-time practice as an instructor within the five years immediately preceding application shall be valued as one hundred hour-equivalents toward an instructor's license;

(ii) Each month of full-time practice as a cosmetologist within the five years immediately preceding application shall be valued as one hundred hour-equivalents toward a cosmetology license;

(iii) Each month of full-time practice as an esthetician within the five years immediately preceding application shall be valued as one hundred hour-equivalents toward an esthetician's license;

(iv) Each month of full-time practice as an esthetics instructor within the five years immediately preceding application shall be valued as one hundred hour-equivalents toward an esthetics instructor's license; and

(v) Each month of full-time practice as an electrologist within the five years immediately preceding application shall be valued as one hundred hour-equivalents toward an electrologist's license.

(2) An applicant who is a military spouse may apply for a temporary license as provided in section 38-129.01 and may practice under the temporary license without supervision.

Source: Laws 1986, LB 318, § 55; Laws 1987, LB 543, § 9; Laws 1995, LB 83, § 26; Laws 2002, LB 241, § 24; R.S.1943, (2003), § 71-394; Laws 2007, LB463, § 328; Laws 2017, LB88, § 43; Laws 2018, LB731, § 19.

38-1067 Foreign-trained applicants; examination requirements.

(1) Applicants for Nebraska licensure who received their training in foreign countries may not be licensed by waiver of examination except as provided in section 38-129.01. In order to be considered eligible to take the examination, they shall meet the requirements of subdivisions (1) and (2) of section 38-1062 and, in order to establish equivalency with subdivision (5) of section 38-1062, shall present proof satisfactory to the department of one of the following:

(a) Current licensure or equivalent official recognition of the right to practice in a foreign country; or

(b) At least five years of practice within the eight years immediately preceding the application.

(2) In all cases such applicants shall take the examination for licensure in the State of Nebraska.

Source: Laws 1986, LB 318, § 56; Laws 1987, LB 543, § 10; Laws 1995, LB 83, § 27; R.S.1943, (2003), § 71-395; Laws 2007, LB463, § 329; Laws 2017, LB88, § 44.

38-1069 License; when required; temporary practitioner; license.

A license as a temporary practitioner shall be required before any person may act as a temporary practitioner, and no person shall assume any title indicative of being a temporary practitioner without first being so licensed by the department under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act.

Source: Laws 1986, LB 318, § 59; Laws 2004, LB 906, § 22; R.S.Supp.,2006, § 71-398; Laws 2007, LB463, § 331; Laws 2018, LB731, § 20.

Cross References

Credentialing, general requirements and issuance procedures, see section 38-121 et seq.

38-1070 Temporary license; general requirements.

An individual making application for a temporary license, other than a temporary license issued as provided in section 38-129.01, shall meet, and present to the department evidence of meeting, the requirements for the specific type of license applied for.

Source: Laws 1986, LB 318, § 60; R.S.1943, (2003), § 71-399; Laws 2007, LB463, § 332; Laws 2017, LB88, § 45; Laws 2018, LB731, § 21.

38-1071 Repealed. Laws 2018, LB731, § 106.

38-1072 Repealed. Laws 2018, LB731, § 106.

38-1073 Licensure as temporary practitioner; requirements.

An applicant for licensure as a temporary practitioner shall show evidence that his or her completed application for regular licensure has been accepted by the department, that he or she has not failed any portion of the licensure examination, and that he or she has been accepted for work in a licensed cosmetology establishment under the supervision of a licensed practitioner.

Source: Laws 1986, LB 318, § 65; R.S.1943, (2003), § 71-3,104; Laws 2007, LB463, § 335; Laws 2018, LB731, § 22.

38-1074 Temporary licensure; expiration dates; extension.

Licensure as a temporary practitioner shall expire eight weeks following the date of issuance or upon receipt of examination results, whichever occurs first. The department may extend the license an additional eight weeks.

Source: Laws 1986, LB 318, § 66; Laws 1987, LB 543, § 13; Laws 1995, LB 83, § 32; Laws 2002, LB 241, § 28; Laws 2004, LB 906, § 24; Laws 2004, LB 1005, § 29; R.S.Supp.,2006, § 71-3,105; Laws 2007, LB463, § 336; Laws 2018, LB731, § 23.

38-1075 Act; activities exempt.

The Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act does not apply to or restrict the activities of the following:

(1) Any person holding a current license or certificate issued pursuant to the Uniform Credentialing Act when engaged in the usual and customary practice of his or her profession or occupation;

(2) Any person engaging solely in earlobe piercing;

(3) Any person engaging solely in natural hair braiding;

(4) Any person when engaged in domestic or charitable administration;

(5) Any person performing any of the practices of cosmetology or nail technology solely for theatrical presentations or other entertainment functions;

(6) Any person practicing cosmetology, electrology, esthetics, or nail technology within the confines of a hospital, nursing home, massage therapy establishment, funeral establishment, or other similar establishment or facility licensed or otherwise regulated by the department, except that no unlicensed person may accept compensation for such practice;

(7) Any person providing services during a bona fide emergency;

(8) Any retail or wholesale establishment or any person engaged in the sale of cosmetics, nail technology products, or other beauty products when the products are applied by the customer or when the application of the products is in direct connection with the sale or attempted sale of such products at retail;

(9) Any person when engaged in nonvocational training;

(10) A person demonstrating on behalf of a manufacturer or distributor any cosmetology, nail technology, electrolysis, or body art equipment or supplies if such demonstration is performed without charge;

(11) Any person or licensee engaged in the practice or teaching of manicuring;

(12) Any person or licensee engaged in the practice of airbrush tanning or temporary, nonpermanent airbrush tattooing; and

(13) Any person applying cosmetics.

Source: Laws 1986, LB 318, § 67; Laws 1987, LB 543, § 14; Laws 1988, LB 1100, § 97; Laws 1995, LB 83, § 33; Laws 1999, LB 68, § 44; Laws 2001, LB 209, § 16; Laws 2004, LB 906, § 28; Laws 2005, LB 256, § 33; R.S.Supp.,2006, § 71-3,106; Laws 2007, LB463, § 337; Laws 2016, LB898, § 4; Laws 2018, LB731, § 24.

38-1086 Licensed salon; operating requirements.

In order to maintain its license in good standing, each salon shall operate in accordance with the following requirements:

(1) The salon shall at all times comply with all applicable provisions of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act and all rules and regulations adopted and promulgated under such act;

(2) The salon owner or his or her agent shall notify the department at least thirty days prior to any change of ownership, name, or address, and within one week if a salon is permanently closed, except in emergency circumstances as determined by the department;

(3) No salon shall permit any unlicensed person to perform any of the practices of cosmetology within its confines or employment;

(4) The salon shall display a name upon, over, or near the entrance door distinguishing it as a salon;

(5) The salon shall permit any duly authorized agent of the department to conduct an operation inspection or investigation at any time during the normal operating hours of the salon, without prior notice, and the owner and manager shall assist the inspector by providing access to all areas of the salon, all personnel, and all records requested by the inspector;

(6) The salon shall display in a conspicuous place the following records:

(a) The current license or certificate of consideration to operate a salon;

(b) The current licenses of all persons employed by or working in the salon; and

(c) The rating sheet from the most recent operation inspection;

(7) At no time shall a salon employ more employees than permitted by the square footage requirements of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act; and

(8) The salon shall not knowingly permit its employees to use or consume intoxicating beverages upon its premises.

Source: Laws 1986, LB 318, § 85; R.S.1943, (2003), § 71-3,124; Laws 2007, LB463, § 348; Laws 2018, LB731, § 25.

38-1091 Repealed. Laws 2018, LB731, § 106.

38-1092 Repealed. Laws 2018, LB731, § 106.

38-1093 Repealed. Laws 2018, LB731, § 106.

38-1094 Repealed. Laws 2018, LB731, § 106.

38-1095 Repealed. Laws 2018, LB731, § 106.

38-1096 Repealed. Laws 2018, LB731, § 106.

38-1097 School of cosmetology; license; requirements.

In order to be licensed as a school of cosmetology by the department, an applicant shall meet and present to the department evidence of meeting the following requirements:

(1) The proposed school shall be a fixed permanent structure or part of one;

(2) The proposed school shall have a contracted enrollment of at least ten full-time or part-time students;

(3) The proposed school shall contain at least three thousand five hundred square feet of floor space and facilities, staff, apparatus, and equipment appropriate to its projected enrollment in accordance with the standards established by rule and regulation; and

(4) The proposed school shall not have the same entrance as or direct access to a cosmetology salon, esthetics salon, or nail technology salon.

A school of cosmetology is not required to be licensed as a school of esthetics in order to provide an esthetics training program or as a school of nail technology in order to provide a nail technology training program.

Source: Laws 1986, LB 318, § 97; Laws 2002, LB 241, § 33; R.S.1943, (2003), § 71-3,136; Laws 2007, LB463, § 359; Laws 2018, LB731, § 26.

38-1099 School of cosmetology license; school of esthetics license; application; additional information.

Along with the application the applicant for a license to operate a school of cosmetology or school of esthetics shall submit:

(1) A detailed floor plan or blueprint of the proposed school building sufficient to show compliance with the relevant rules and regulations;

(2) Evidence of minimal property damage, personal injury, and liability insurance coverage for the proposed school;

(3) A copy of the curriculum to be taught for all courses;

(4) A copy of the school catalog, handbook, or policies and the student contract; and

(5) A list of the names and credentials of all licensees to be employed by the school.

Source: Laws 1986, LB 318, § 99; Laws 2002, LB 241, § 36; R.S.1943, (2003), § 71-3,138; Laws 2007, LB463, § 361; Laws 2018, LB731, § 27.

38-10,100 School of esthetics license; application; additional information.

In order to be licensed as a school of esthetics by the department, an applicant shall meet and present to the department evidence of meeting the following requirements:

(1) The proposed school shall be a fixed permanent structure or part of one;

(2) The proposed school shall have a contracted enrollment of at least four full-time or part-time students;

(3) The proposed school shall contain at least one thousand square feet of floor space and facilities, staff, apparatus, and equipment appropriate to its projected enrollment in accordance with the standards established by rule and regulation; and

(4) The proposed school shall not have the same entrance as or direct access to a cosmetology salon, an esthetics salon, or a nail technology salon.

Source: Laws 2002, LB 241, § 34; R.S.1943, (2003), § 71-3,138.02; Laws 2007, LB463, § 362; Laws 2018, LB731, § 28.

38-10,102 Licensed school; operating requirements.

In order to maintain its license in good standing, each school of cosmetology or school of esthetics shall operate in accordance with the following requirements:

(1) The school shall at all times comply with all applicable provisions of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act and all rules and regulations adopted and promulgated under such act;

(2) The school owner or owners or the authorized agent thereof shall notify the department at least thirty days prior to any change of ownership, name, or address, and at least sixty days prior to closure, except in emergency circumstances as determined by the department;

(3) No school shall permit anyone other than a student, student instructor, or instructor to perform any of the practices of cosmetology or esthetics within its confines or employ, except that such restriction shall not prevent a school from inviting guest educators who are not licensed to provide education to students or student instructors if the guest educator does not perform any of the practices of cosmetology or esthetics;

(4) The school shall display a name upon or near the entrance door designating it as a school of cosmetology or a school of esthetics;

(5) The school shall display in a conspicuous place within the clinic area a sign reading: All services in this school are performed by students who are training in cosmetology or esthetics, as applicable. A notice to such effect shall also appear in all advertising conducted by the school for its clinic services;

(6) The school shall permit any duly authorized agent of the department to conduct an operation inspection or investigation at any time during the normal operating hours of the school without prior notice, and the owner or manager shall assist the inspector by providing access to all areas of the school, all personnel, and all records requested by the inspector;

(7) The school shall display in a conspicuous place the following records:

(a) The current license to operate a school of cosmetology or school of esthetics;

(b) The current licenses of all persons licensed under the act, except students, employed by or working in the school; and

(c) The rating sheet from the most recent accreditation inspection;

(8) At no time shall a school enroll more students than permitted by the act or the rules and regulations adopted and promulgated under the act;

(9) The school shall not knowingly permit its students, employees, or clients to use, consume, serve, or in any other manner possess or distribute intoxicating beverages or controlled substances upon its premises;

(10) No instructor or student instructor shall perform, and no school shall permit such person to perform, any of the practices of cosmetology or esthetics on the public in a school of cosmetology or school of esthetics other than that part of the practical work which pertains directly to the teaching of practical subjects to students or student instructors and in no instance shall complete cosmetology or esthetics services be provided for a client unless done in a demonstration class of theoretical or practical studies;

(11) The school shall maintain space, staff, library, teaching apparatus, and equipment as established by rules and regulations adopted and promulgated under the act;

(12) The school shall keep a daily record of the attendance and clinical performance of each student and student instructor;

(13) The school shall maintain regular class and instructor hours and shall require the minimum curriculum;

(14) The school shall establish and maintain criteria and standards for student grading, evaluation, and performance and shall award a certificate or

diploma to a student only upon completing a full course of study in compliance with such standards, except that no student shall receive such certificate or diploma until he or she has satisfied or made an agreement with the school to satisfy all outstanding financial obligations to the school;

(15) The school shall maintain on file the enrollment of each student;

(16) The school shall maintain a report indicating the students and student instructors enrolled, the hours earned, the instructors employed, the hours of operation, and such other pertinent information as required by the department; and

(17) The school shall print and provide to each student a copy of the school rules, which shall not be inconsistent with the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act, the Uniform Credentialing Act, or the rules and regulations adopted and promulgated under either act and which shall include policies of the school with respect to tuition, reimbursement, conduct, attendance, grading, earning of hours, demerits, penalties, dismissal, graduation requirements, dress, and other information sufficient to advise the student of the standards he or she will be required to maintain. The department may review any school's rules to determine their consistency with the intent and content of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act and the rules and regulations and may overturn any school rules found not to be in accord.

Source: Laws 1986, LB 318, § 101; Laws 1987, LB 543, § 20; Laws 1995, LB 83, § 42; Laws 2002, LB 241, § 38; Laws 2004, LB 1005, § 33; R.S.Supp.,2006, § 71-3,140; Laws 2007, LB463, § 364; Laws 2018, LB731, § 29.

38-10,103 School or apprentice salon; operation; student; apprentice; student instructor; requirements.

In order to maintain a school or apprentice salon license in good standing, each school or apprentice salon shall operate in accordance with the following:

(1) Every person accepted for enrollment as a standard student or apprentice shall show evidence that he or she attained the age of seventeen years on or before the date of his or her enrollment in a school of cosmetology, a school of esthetics, or an apprentice salon, has completed the equivalent of a high school education, has been accepted for enrollment at a school of cosmetology, a school of esthetics, or an apprentice salon, and has not undertaken any training in cosmetology or esthetics without being enrolled as a student or apprentice;

(2)(a) Every person accepted for enrollment as a special study student or apprentice shall show evidence that he or she:

(i) Has attained the age of seventeen years on or before the date of enrollment in a school of cosmetology, a school of esthetics, or an apprentice salon;

(ii) Has completed the tenth grade;

(iii) Has been accepted for enrollment at a school of cosmetology, a school of esthetics, or an apprentice salon; and

(iv) Is actively continuing his or her formal high school education on a full-time basis as determined by the department.

(b) An applicant for enrollment as a special study student or apprentice shall not have undertaken any training in cosmetology or esthetics without being enrolled as a student or apprentice.

(c) Special study students shall be limited to attending a school of cosmetology, a school of esthetics, or an apprentice salon for no more than eight hours per week during the school year;

(3) Every person accepted for enrollment as a student instructor shall show evidence of current licensure as a cosmetologist or esthetician in Nebraska and completion of formal education equivalent to a United States high school education; and

(4) No school of cosmetology, school of esthetics, or apprentice salon shall accept an individual for enrollment who does not provide evidence of meeting the age and education requirements.

Source: Laws 1986, LB 318, § 63; Laws 1987, LB 543, § 11; Laws 1995, LB 83, § 31; Laws 2002, LB 241, § 26; Laws 2004, LB 1005, § 28; R.S.Supp.,2006, § 71-3,102; Laws 2007, LB463, § 365; Laws 2018, LB731, § 30.

38-10,104 Licensed school; additional operating requirements.

In order to maintain its license in good standing, each school of cosmetology or school of esthetics shall operate in accordance with the following requirements:

(1) All persons accepted for enrollment as students shall meet the qualifications established in section 38-10,103;

(2) The school shall, at all times the school is in operation, have at least one instructor in the school for each twenty students or fraction thereof enrolled in the school, except that freshman and advanced students shall be taught by different instructors in separate classes;

(3) The school shall not permit any student to render clinical services on members of the public with or without fees until such student has satisfactorily completed the freshman curriculum, except that the board may establish guidelines by which it may approve such practices as part of the freshman curriculum;

(4) No school shall pay direct compensation to any of its students. Student instructors may be paid as determined by the school;

(5) All students and student instructors shall be under the supervision of an instructor at all times, except that students shall be under the direct supervision of an instructor or student instructor at all times when cosmetology or esthetics services are being taught or performed and student instructors may independently supervise students after successfully completing at least one-half of the required instructor program;

(6) No student shall be permitted by the school to train or work in a school in any manner for more than ten hours a day; and

(7) The school shall not credit a student or student instructor with hours except when such hours were earned in the study or practice of cosmetology, esthetics, nail technology, or barbering in accordance with the required curriculum. Hours shall be credited on a daily basis. Once credited, hours cannot be

removed or disallowed except by the department upon a finding that the hours have been wrongfully allowed.

Source: Laws 1986, LB 318, § 102; Laws 1987, LB 543, § 21; Laws 1995, LB 83, § 43; Laws 2002, LB 241, § 39; Laws 2004, LB 1005, § 34; R.S.Supp.,2006, § 71-3,141; Laws 2007, LB463, § 366; Laws 2018, LB731, § 31.

38-10,105 Transfer of cosmetology student; requirements.

A student may transfer from one school of cosmetology to another school at any time without penalty if all tuition obligations to the school from which the student is transferring have been honored and if the student secures a letter from the school from which he or she is transferring stating that the student has not left any unfulfilled tuition obligations and stating the number of hours earned by the student at such school, including any hours the student transferred into that school, and the dates of attendance of the student at that school. The student may not begin training at the new school until such conditions have been fulfilled. The school to which the student is transferring shall be entitled to receive from the student's previous school, upon request, all records pertaining to the student.

Source: Laws 1986, LB 318, § 103; R.S.1943, (2003), § 71-3,142; Laws 2007, LB463, § 367; Laws 2018, LB731, § 32.

38-10,106 Repealed. Laws 2018, LB731, § 106.

38-10,107 Licensed barber; licensed cosmetologist; waiver of course requirements; conditions.

(1) Barbers licensed in the State of Nebraska attending a school of cosmetology may be given credit of one thousand hours of training applied toward the course hours required for graduation.

(2) Cosmetologists licensed in the State of Nebraska attending a barber school or college may be given credit of one thousand hours of training applied toward the course hours required for graduation.

Source: Laws 1986, LB 318, § 105; R.S.1943, (2003), § 71-3,144; Laws 2007, LB463, § 369; Laws 2018, LB731, § 33.

Cross References

Barbering license under the Barber Act, see section 71-224.

38-10,108 School of cosmetology; student instructors; limitation.

No school of cosmetology shall at any time enroll more than three student instructors for each full-time instructor actively working in and employed by the school.

Source: Laws 1986, LB 318, § 107; R.S.1943, (2003), § 71-3,146; Laws 2007, LB463, § 370; Laws 2018, LB731, § 34.

38-10,109 School licenses; renewal; requirements; inactive status; revocation; effect.

(1) The procedure for renewing a school license shall be in accordance with section 38-143, except that in addition to all other requirements, the school of cosmetology or school of esthetics shall provide evidence of minimal property

damage, bodily injury, and liability insurance coverage and shall receive a satisfactory rating on an accreditation inspection conducted by the department within the six months immediately prior to the date of license renewal.

(2) Any school of cosmetology or school of esthetics which has current accreditation from an accrediting organization approved by the board shall be considered to satisfy the accreditation requirements outlined in this section, except that successful completion of an operation inspection shall be required. Each school of cosmetology or school of esthetics, whether or not it is accredited, shall satisfy all curriculum and sanitation requirements outlined in the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act to maintain its license.

(3) Any school not able to meet the requirements for license renewal shall have its license placed on inactive status until all deficiencies have been corrected, and the school shall not operate in any manner during the time its license is inactive. If the deficiencies are not corrected within six months of the date of license renewal, the license may be revoked unless the department approves an extension of the time limit. The license of a school that has been revoked or expired for any reason shall not be reinstated. An original application for licensure shall be submitted and approved before such school may reopen.

Source: Laws 1986, LB 318, § 108; Laws 1995, LB 83, § 45; Laws 2002, LB 241, § 41; Laws 2003, LB 242, § 88; Laws 2004, LB 1005, § 36; R.S.1943, (2003), § 71-3,147; Laws 2007, LB463, § 371; Laws 2021, LB528, § 7.

38-10,112 School; owner; liability; manager required.

(1) The owner of each school of cosmetology or school of esthetics shall have full responsibility for ensuring that the school is operated in compliance with all applicable laws and rules and regulations and shall be liable for any and all violations occurring in the school.

(2) Each school of cosmetology or school of esthetics shall be operated by a manager who shall be present on the premises of the school no less than thirty-five hours each week. The manager may have responsibility for the daily operation of the school or satellite classroom.

Source: Laws 1986, LB 318, § 111; Laws 1995, LB 83, § 46; Laws 2002, LB 241, § 42; Laws 2004, LB 1005, § 37; R.S.Supp.,2006, § 71-3,150; Laws 2007, LB463, § 374; Laws 2018, LB731, § 35.

38-10,120 Home services permit; issuance.

(1) A licensed cosmetology salon or esthetics salon may employ licensed cosmetologists and estheticians, according to the licensed activities of the salon, to perform home services by meeting the following requirements:

(a) In order to be issued a home services permit by the department, an applicant shall hold a current active salon license; and

(b) Any person seeking a home services permit shall submit a complete application at least ten days before the proposed date for beginning home services. Along with the application the applicant shall submit evidence of liability insurance or bonding.

(2) The department shall issue a home services permit to each applicant meeting the requirements set forth in this section.

Source: Laws 1986, LB 318, § 120; Laws 1995, LB 83, § 47; Laws 2002, LB 241, § 46; R.S.1943, (2003), § 71-3,159; Laws 2007, LB463, § 382; Laws 2018, LB731, § 36.

38-10,121 Home services permit; requirements.

In order to maintain in good standing or renew its home services permit, a salon shall at all times operate in accordance with all requirements for operation, maintain its license in good standing, and comply with the following requirements:

(1)(a) Clients receiving home services shall be in emergency or persistent circumstances which shall generally be defined as any condition sufficiently immobilizing to prevent the client from leaving his or her residence regularly to conduct routine affairs of daily living such as grocery shopping, visiting friends and relatives, attending social events, attending worship services, and other similar activities.

(b) Emergency or persistent circumstances may include such conditions or situations as:

(i) Chronic illness or injury leaving the client bedridden or with severely restricted mobility;

(ii) Extreme general infirmity such as that associated with the aging process;

(iii) Temporary conditions including, but not limited to, immobilizing injury and recuperation from serious illness or surgery;

(iv) Having sole responsibility for the care of an invalid dependent or a mentally disabled person requiring constant attention;

(v) Mental disability that significantly limits the client in areas of functioning described in subdivision (1)(a) of this section; or

(vi) Any other conditions that, in the opinion of the department, meet the general definition of emergency or persistent circumstances;

(2) The salon shall determine that each person receiving home services meets the requirements of subdivision (1) of this section and shall:

(a) Complete a client information form supplied by the department before home services may be provided to any client; and

(b) Keep on file the client information forms of all clients it is currently providing with home services or to whom it has provided such services within the past two years;

(3) The salon shall employ or contract with persons licensed under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act to provide home services and shall not permit any person to perform any home services under its authority for which he or she is not licensed;

(4) No client shall be left unattended while any chemical service is in progress or while any electrical appliance is in use; and

(5) Each salon providing home services shall post a daily itinerary for each licensee providing home services. The kit for each licensee shall be available for inspection at the salon or at the home of the client receiving services.

Source: Laws 1986, LB 318, § 121; Laws 1995, LB 83, § 48; R.S.1943, (2003), § 71-3,160; Laws 2007, LB463, § 383; Laws 2020, LB755, § 1.

38-10,125.01 Mobile cosmetology salon; license; requirements.

In order to be licensed as a mobile cosmetology salon by the department, an applicant shall meet, and present to the department evidence of meeting, the following requirements:

(1) The proposed salon is a self-contained, self-supporting, enclosed mobile unit;

(2)(a)(i) The mobile unit has a global positioning system tracking device that enables the department to track the location of the salon over the Internet;

(ii) The device is on board the mobile unit and functioning at all times the salon is in operation or open for business; and

(iii) The owner of the salon provides the department with all information necessary to track the salon over the Internet; or

(b) The owner of the salon submits to the department, in a manner specified by the department, a weekly itinerary showing the dates, exact locations, and times that cosmetology services are scheduled to be provided. The owner shall submit the itinerary not less than seven calendar days prior to the beginning of the service described in the itinerary and shall submit to the department any changes in the itinerary not less than twenty-four hours prior to the change. A salon shall follow the itinerary in providing service and notify the department of any changes;

(3) The salon has insurance coverage which meets the requirements of the department for the mobile unit;

(4) The salon is clearly identified as such to the public by a sign;

(5) The salon complies with the sanitary requirements of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act;

(6) The entrance into the proposed salon used by the general public provides safe access by the public;

(7) The proposed salon has at least one hundred fifty square feet of floor space. If more than one practitioner is to be employed in the salon at the same time, the salon shall contain an additional space of at least fifty square feet for each additional practitioner; and

(8) The proposed salon includes a functional sink and toilet facilities and maintains an adequate supply of clean water and wastewater storage capacity.

Source: Laws 2018, LB731, § 37.

38-10,125.02 Mobile cosmetology salon license; application.

Any person seeking a license to operate a mobile cosmetology salon shall submit a completed application to the department, and along with the application, the applicant shall submit a detailed floor plan or blueprint of the

proposed salon sufficient to demonstrate compliance with the requirements of section 38-10,125.01.

Source: Laws 2018, LB731, § 38.

38-10,125.03 Mobile cosmetology salon; application; review; denial; inspection.

Each application for a license to operate a mobile cosmetology salon shall be reviewed by the department for compliance with the requirements of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act. If an application is denied, the applicant shall be informed in writing of the grounds for denial, and such denial shall not prejudice future applications by the applicant. If an application is approved, the department shall issue the applicant a certificate of consideration to operate a mobile cosmetology salon pending an operation inspection. The department shall conduct an operation inspection of each salon issued a certificate of consideration within six months after the issuance of such certificate. A salon which passes the inspection shall be issued a permanent license. A salon which fails the inspection shall submit within fifteen days evidence of corrective action taken to improve those aspects of operation found deficient. If evidence is not submitted within fifteen days or if after a second inspection the salon does not receive a satisfactory rating, it shall immediately relinquish its certificate of consideration and cease operation.

Source: Laws 2018, LB731, § 39.

38-10,125.04 Mobile cosmetology salon; operating requirements.

In order to maintain its license in good standing, each mobile cosmetology salon shall operate in accordance with the following requirements:

(1) The salon shall at all times comply with all applicable provisions of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act and all rules and regulations adopted and promulgated under the act;

(2) The salon owner or his or her agent shall notify the department of any change of ownership, name, or office address and if a salon is permanently closed;

(3) No salon shall permit any unlicensed person to perform any of the practices of cosmetology within its confines or employment;

(4) The salon shall display a name upon, over, or near the entrance door distinguishing it as a salon;

(5) The salon shall permit any duly authorized agent of the department to conduct an operation inspection or investigation at any time during the normal operating hours of the salon, without prior notice, and the owner and manager shall assist the inspector by providing access to all areas of the salon, all personnel, and all records requested by the inspector;

(6) The salon shall display in a conspicuous place the following records:

(a) The current license or certificate of consideration to operate a salon;

(b) The current licenses of all persons licensed under the act who are employed by or working in the salon; and

(c) The rating sheet from the most recent operation inspection;

(7) At no time shall a salon employ more employees than permitted by the square footage requirements of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act;

(8) No cosmetology services may be performed in a salon while the salon is moving. The salon must be safely and legally parked in a legal parking space at all times while clients are present inside the salon. A salon shall not park or conduct business within three hundred feet of another licensed cosmetology establishment. The department is not responsible for monitoring for enforcement of this subdivision but may discipline a license for a reported and verified violation;

(9) The owner of the salon shall maintain a permanent business address at which correspondence from the department may be received and records of appointments, license numbers, and vehicle identification numbers shall be kept for each salon being operated by the owner. The owner shall make such records available for verification and inspection by the department; and

(10) The salon shall not knowingly permit its employees or clients to use, consume, serve, or in any manner possess or distribute intoxicating beverages or controlled substances upon its premises.

Source: Laws 2018, LB731, § 40.

38-10,125.05 Mobile cosmetology salon license; renewal.

The procedure for renewing a mobile cosmetology salon license shall be in accordance with section 38-143, except that in addition to all other requirements, the salon shall submit evidence of minimal property damage, bodily injury, and liability insurance coverage for the salon and evidence of coverage which meets the requirements of the Motor Vehicle Registration Act for the salon.

Source: Laws 2018, LB731, § 41.

Cross References

Motor Vehicle Registration Act, see section 60-301.

38-10,125.06 Mobile cosmetology salon license; revocation or expiration; effect.

The license of a mobile cosmetology salon that has been revoked or expired for any reason shall not be reinstated. An original application for licensure shall be submitted and approved before such salon may reopen for business.

Source: Laws 2018, LB731, § 42.

38-10,125.07 Mobile cosmetology salon license; change of ownership or mobile unit; effect.

Each mobile cosmetology salon license issued shall be in effect solely for the owner or owners and the mobile unit named thereon and shall expire automatically upon any change of ownership or mobile unit. An original application for licensure shall be submitted and approved before such salon may reopen for business.

Source: Laws 2018, LB731, § 43.

38-10,125.08 Mobile cosmetology salon; owner liability.

The owner of each mobile cosmetology salon shall have full responsibility for ensuring that the salon is operated in compliance with all applicable laws, rules, and regulations and shall be liable for any and all violations occurring in the salon.

Source: Laws 2018, LB731, § 44.

38-10,128 Nail technician or instructor; licensure by examination; requirements.

In order to be licensed as a nail technician or nail technology instructor by examination, an individual shall meet, and present to the department evidence of meeting, the following requirements:

(1) He or she has attained the age of seventeen years on or before the beginning date of the examination for which application is being made;

(2) He or she has completed formal education equivalent to a United States high school education;

(3) He or she possesses sufficient ability to read the English language to permit the applicant to practice in a safe manner, as evidenced by successful completion of the written examination; and

(4) He or she has graduated from a school of cosmetology or nail technology school providing a nail technology program. Evidence of graduation shall include documentation of the total number of hours of training earned and a diploma or certificate from the school to the effect that the applicant has complied with the following:

(a) For licensure as a nail technician, the program of studies shall consist of three hundred hours; and

(b) For licensure as a nail technology instructor, the program of studies shall consist of three hundred hours beyond the program of studies required for licensure as a nail technician and the individual shall be currently licensed as a nail technician in Nebraska as evidenced by possession of a valid Nebraska nail technician license.

The department shall grant a license in the appropriate category to any person meeting the requirements specified in this section.

Source: Laws 1999, LB 68, § 31; R.S.1943, (2003), § 71-3,183; Laws 2007, LB463, § 390; Laws 2018, LB731, § 45.

Cross References

Credentialing, general requirements and issuance procedures, see section 38-121 et seq.

38-10,129 Application for nail technology licensure; procedure.

No application for any type of licensure shall be considered complete unless all information requested on the application form has been supplied, all seals and signatures required have been obtained, and all supporting and documentary evidence has been received by the department.

Source: Laws 1999, LB 68, § 32; Laws 2003, LB 242, § 91; R.S.1943, (2003), § 71-3,184; Laws 2007, LB463, § 391; Laws 2018, LB731, § 46.

38-10,131 Examinations; requirements; grades.

(1) Examinations approved by the board may be national standardized examinations, but in all cases the examinations shall be related to the knowledge and skills necessary to perform the practices being examined and shall be related to the curricula required to be taught in nail technology programs.

(2) In order to successfully complete the examination, an applicant shall obtain an average grade of seventy-five percent on the written examination.

Source: Laws 1999, LB 68, § 35; R.S.1943, (2003), § 71-3,187; Laws 2007, LB463, § 393; Laws 2018, LB731, § 47.

38-10,132 Nail technician or instructor; reciprocity; requirements; military spouse; temporary license.

(1) The department may grant a license based on licensure in another jurisdiction to a nail technician or nail technology instructor who presents proof of the following:

(a) He or she has attained the age of seventeen years;

(b) He or she has completed formal education equivalent to a United States high school education;

(c) He or she is currently licensed as a nail technician or its equivalent or as a nail technology instructor or its equivalent in another jurisdiction and he or she has never been disciplined or had his or her license revoked;

(d) For licensure as a nail technician, evidence of completion of a program of nail technician studies consisting of three hundred hours and successful passage of a written examination. If a written examination was not required for licensure in another jurisdiction, the applicant must take the Nebraska written examination. Each month of full-time practice as a nail technician within the five years immediately preceding application shall be valued as equivalent to one hundred hours toward a nail technician license; and

(e) For licensure as a nail technology instructor, evidence of completion of a program of studies consisting of three hundred hours beyond the program of studies required for licensure in another jurisdiction as a nail technician, successful passage of a written examination, and current licensure as a nail technician in Nebraska as evidenced by possessing a valid Nebraska nail technician license. If a written examination was not required for licensure as a nail technology instructor, the applicant must take the Nebraska written examination. Each month of full-time practice as a nail technology instructor within the five years immediately preceding application shall be valued as equivalent to one hundred hours toward a nail technology instructor license.

(2) An applicant who is a military spouse may apply for a temporary license as provided in section 38-129.01.

Source: Laws 1999, LB 68, § 39; R.S.1943, (2003), § 71-3,191; Laws 2007, LB463, § 394; Laws 2017, LB88, § 46; Laws 2018, LB731, § 48.

38-10,133 Nail technology license; display.

Every person holding a license in nail technology issued by the department under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act shall display it in a conspicuous place in his or her principal place

of employment, and every nail technology establishment shall so display the then current licenses of all practitioners there employed.

Source: Laws 1999, LB 68, § 40; R.S.1943, (2003), § 71-3,192; Laws 2007, LB463, § 395; Laws 2018, LB731, § 49.

38-10,135 Nail technology temporary practitioner; application; qualifications.

An applicant for licensure as a nail technology temporary practitioner shall show evidence that his or her completed application for regular licensure has been accepted by the department, that he or she has not failed any portion of the licensure examination, and that he or she has been accepted for work in a licensed nail technology or cosmetology establishment under the supervision of a licensed nail technician or licensed cosmetologist.

Source: Laws 1999, LB 68, § 42; R.S.1943, (2003), § 71-3,194; Laws 2007, LB463, § 397; Laws 2018, LB731, § 50.

38-10,142 Nail technology salon; operating requirements.

In order to maintain its license in good standing, each nail technology salon shall operate in accordance with the following requirements:

(1) The nail technology salon shall at all times comply with all applicable provisions of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act and all rules and regulations adopted and promulgated under such act;

(2) The nail technology salon owner or his or her agent shall notify the department at least thirty days prior to any change of ownership, name, or address, and at least one week prior to closure, except in emergency circumstances as determined by the department;

(3) No nail technology salon shall permit any unlicensed person to perform any of the practices of nail technology within its confines or employment;

(4) The nail technology salon shall display a name upon, over, or near the entrance door distinguishing it as a nail technology salon;

(5) The nail technology salon shall permit any duly authorized agent of the department to conduct an operation inspection or investigation at any time during the normal operating hours of the nail technology salon, without prior notice, and the owner and manager shall assist the inspector by providing access to all areas of the nail technology salon, all personnel, and all records requested by the inspector;

(6) The nail technology salon shall display in a conspicuous place the following records:

(a) The current license or certificate of consideration to operate a nail technology salon;

(b) The current licenses of all persons licensed under the act who are employed by or working in the nail technology salon; and

(c) The rating sheet from the most recent operation inspection;

(7) At no time shall a nail technology salon employ more employees than permitted by the square footage requirements of the act; and

(8) The nail technology salon shall not knowingly permit its employees to use or consume intoxicating beverages upon its premises.

Source: Laws 1999, LB 68, § 62; R.S.1943, (2003), § 71-3,213; Laws 2007, LB463, § 404; Laws 2018, LB731, § 51.

38-10,147 Nail technology school; license; requirements.

In order to be licensed as a nail technology school by the department, an applicant shall meet, and present to the department evidence of meeting, the following requirements:

(1) The proposed school shall be a fixed, permanent structure or part of one;

(2) The proposed school shall have a contracted enrollment of students;

(3) The proposed school shall contain at least five hundred square feet of floor space and facilities, staff, apparatus, and equipment appropriate to its projected enrollment in accordance with the standards established by rule and regulation; and

(4) The proposed school shall not have the same entrance as or direct access to a cosmetology salon or nail technology salon.

Source: Laws 1999, LB 68, § 67; R.S.1943, (2003), § 71-3,218; Laws 2007, LB463, § 409; Laws 2018, LB731, § 52.

38-10,150 Nail technology school; license; application; requirements.

Along with the application, an applicant for a license to operate a nail technology school shall submit:

(1) A detailed floor plan or blueprint of the proposed school building sufficient to show compliance with the relevant rules and regulations;

(2) Evidence of minimal property damage, personal injury, and liability insurance coverage for the proposed school;

(3) A copy of the curriculum to be taught for all courses;

(4) A copy of the school catalog, handbook, or policies and the student contract; and

(5) A list of the names and credentials of all persons licensed under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act to be employed by the school.

A nail technology school's license shall be valid only for the location named in the application. When a school desires to change locations, it shall comply with section 38-10,158.

Source: Laws 1999, LB 68, § 70; Laws 2003, LB 242, § 95; R.S.1943, (2003), § 71-3,221; Laws 2007, LB463, § 412; Laws 2018, LB731, § 53.

38-10,152 Nail technology school; operating requirements.

In order to maintain its license in good standing, each nail technology school shall operate in accordance with the following requirements:

(1) The school shall at all times comply with all applicable provisions of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act and all rules and regulations adopted and promulgated under such act;

(2) The school owner or owners or their authorized agent shall notify the department at least thirty days prior to any change of ownership, name, or address, and at least sixty days prior to closure, except in emergency circumstances as determined by the department;

(3) No school shall permit anyone other than a nail technology student, nail technology student instructor, or nail technology instructor to perform any of the practices of nail technology within its confines or employment, except that such restriction shall not prevent a school from inviting guest educators who are not licensed to provide education to students or student instructors if the guest educator does not perform any of the practices of nail technology;

(4) The school shall display a name upon or near the entrance door designating it as a nail technology school;

(5) The school shall display in a conspicuous place within the clinic area a sign reading: All services in this school are performed by students who are training in nail technology. A notice to such effect shall also appear in all advertising conducted by the school for its clinic services;

(6) The school shall permit any duly authorized agent of the department to conduct an operation inspection or investigation at any time during the normal operating hours of the school without prior notice, and the owner or manager shall assist the inspector by providing access to all areas of the school, all personnel, and all records requested by the inspector;

(7) The school shall display in a conspicuous place the following records:

(a) The current license to operate a nail technology school;

(b) The current licenses of all persons licensed under the act, except students, employed by or working in the school; and

(c) The rating sheet from the most recent accreditation inspection;

(8) At no time shall a school enroll more students than permitted by the act or the rules and regulations adopted and promulgated under the act;

(9) The school shall not knowingly permit its students, employees, or clients to use, consume, serve, or in any other manner possess or distribute intoxicating beverages or controlled substances upon its premises;

(10) No nail technology instructor or nail technology student instructor shall perform, and no school shall permit such person to perform, any of the practices of nail technology on the public in a nail technology school other than that part of the practical work which pertains directly to the teaching of practical subjects to nail technology students or nail technology student instructors, and complete nail technology services shall not be provided for a client unless done in a demonstration class of theoretical or practical studies;

(11) The school shall maintain space, staff, library, teaching apparatus, and equipment as established by rules and regulations adopted and promulgated under the act;

(12) The school shall keep a daily record of the attendance and clinical performance of each student and student instructor;

(13) The school shall maintain regular class and instructor hours and shall require the minimum curriculum;

(14) The school shall establish and maintain criteria and standards for student grading, evaluation, and performance and shall award a certificate or diploma to a student only upon completing a full course of study in compliance

with such standards, except that no student shall receive such certificate or diploma until he or she has satisfied or made an agreement with the school to satisfy all outstanding financial obligations to the school;

(15) The school shall maintain on file the enrollment of each student; and

(16) The school shall print and provide to each student a copy of the school rules, which shall not be inconsistent with the act or with the rules and regulations adopted and promulgated under such act and which shall include policies of the school with respect to tuition, reimbursement, conduct, attendance, grading, earning of hours and credits, demerits, penalties, dismissal, graduation requirements, dress, and other information sufficient to advise the student of the standards he or she will be required to maintain. The department may review any school's rules to determine their consistency with the intent and content of the act and the rules and regulations and may overturn any school rules found not to be in accord.

Source: Laws 1999, LB 68, § 72; R.S.1943, (2003), § 71-3,223; Laws 2007, LB463, § 414; Laws 2018, LB731, § 54.

38-10,153 Nail technology school; students; requirements.

In order to maintain its license in good standing, each nail technology school shall operate in accordance with the following requirements:

(1) Every person accepted for enrollment as a standard student shall meet the following qualifications:

(a) He or she has attained the age of seventeen years on or before the date of his or her enrollment in a nail technology school;

(b) He or she has completed the equivalent of a high school education; and

(c) He or she has not undertaken any training in nail technology in this state after January 1, 2000, without being enrolled as a nail technology student;

(2)(a) Every person accepted for enrollment as a special study nail technology student shall meet the following requirements:

(i) He or she has attained the age of seventeen years on or before the date of enrollment in a nail technology school;

(ii) He or she has completed the tenth grade; and

(iii) He or she is actively continuing his or her formal high school education on a full-time basis as determined by the department.

(b) Special study nail technology students shall be limited to attending a nail technology school for no more than eight hours per week during the school year;

(3) No nail technology school shall accept an individual for enrollment who does not provide evidence of meeting the age and education requirements;

(4) Every person accepted for enrollment as a nail technology student instructor shall show evidence of current licensure as a nail technician in Nebraska and completion of formal education equivalent to a United States high school education;

(5) The school shall, at all times the school is in operation, have at least one nail technology instructor in the school for each twenty students or fraction thereof enrolled in the school;

(6) The school shall not permit any nail technology student to render clinical services on members of the public with or without fees until such student has satisfactorily completed the beginning curriculum, except that the department may establish guidelines by which it may approve such practices as part of the beginning curriculum;

(7) No school shall pay direct compensation to any of its nail technology students. Nail technology student instructors may be paid as determined by the school;

(8) All nail technology students and nail technology student instructors shall be under the supervision of a cosmetology instructor, nail technology instructor, or nail technology student instructor at all times when nail technology services are being taught or performed;

(9) No student shall be permitted by the school to train or work in a school in any manner for more than ten hours a day; and

(10) The school shall not credit a nail technology student or nail technology student instructor with hours except when such hours were earned in the study or practice of nail technology in accordance with the required curriculum. Hours shall be credited on a daily basis. Once credited, hours cannot be removed or disallowed except by the department upon a finding that the hours have been wrongfully allowed.

Source: Laws 1999, LB 68, § 73; Laws 2001, LB 209, § 17; R.S.1943, (2003), § 71-3,224; Laws 2007, LB463, § 415; Laws 2018, LB731, § 55.

38-10,154 Nail technology school; transfer of students.

Nail technology students or nail technology student instructors may transfer from one nail technology school to another school at any time.

The school to which the student is transferring shall be entitled to receive from the student's previous school, upon request, any and all records pertaining to the student after all financial obligations of the student to the previous school are met.

Source: Laws 1999, LB 68, § 74; R.S.1943, (2003), § 71-3,225; Laws 2007, LB463, § 416; Laws 2018, LB731, § 56.

38-10,155 Repealed. Laws 2018, LB731, § 106.

38-10,156 Nail technology school; student instructor limit.

No nail technology school shall at any time enroll more than two nail technology student instructors for each full-time nail technology instructor or cosmetology instructor actively working in and employed by the school.

Source: Laws 1999, LB 68, § 76; R.S.1943, (2003), § 71-3,227; Laws 2007, LB463, § 418; Laws 2018, LB731, § 57.

38-10,158.01 Mobile nail technology salon; license; requirements.

In order to be licensed as a mobile nail technology salon by the department, an applicant shall meet, and present to the department evidence of meeting, the following requirements:

(1) The proposed salon is a self-contained, self-supporting, enclosed mobile unit;

(2)(a)(i) The mobile unit has a global positioning system tracking device that enables the department to track the location of the salon over the Internet;

(ii) The device is on board the mobile unit and functioning at all times the salon is in operation or open for business; and

(iii) The owner of the salon provides the department with all information necessary to track the salon over the Internet; or

(b) The owner of the salon submits to the department, in a manner specified by the department, a weekly itinerary showing the dates, exact locations, and times that nail technology services are scheduled to be provided. The owner shall submit the itinerary not less than seven calendar days prior to the beginning of the service described in the itinerary and shall submit to the department any changes in the itinerary not less than twenty-four hours prior to the change. A salon shall follow the itinerary in providing service and notify the department of any changes;

(3) The salon has insurance coverage which meets the requirements of the department for the mobile unit;

(4) The salon is clearly identified as such to the public by a sign;

(5) The salon complies with the sanitary requirements of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act;

(6) The entrance into the proposed salon used by the general public provides safe access by the public;

(7) The proposed salon has at least one hundred fifty square feet of floor space. If more than one practitioner is to be employed in the salon at the same time, the salon shall contain an additional space of at least fifty square feet for each additional practitioner; and

(8) The proposed salon includes a functional sink and toilet facilities and maintains an adequate supply of clean water and wastewater storage capacity.

Source: Laws 2018, LB731, § 58.

38-10,158.02 Mobile nail technology salon license; application.

Any person seeking a license to operate a mobile nail technology salon shall submit a completed application to the department, and along with the application, the applicant shall submit a detailed floor plan or blueprint of the proposed salon sufficient to demonstrate compliance with the requirements of section 38-10,158.01.

Source: Laws 2018, LB731, § 59.

38-10,158.03 Mobile nail technology salon; application; review; denial; inspection.

Each application for a license to operate a mobile nail technology salon shall be reviewed by the department for compliance with the requirements of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act. If an application is denied, the applicant shall be informed in writing of the grounds for denial, and such denial shall not prejudice future applications by the applicant. If an application is approved, the department shall issue the applicant a certificate of consideration to operate a mobile nail technology salon pending an operation inspection. The department shall conduct an operation inspection of each salon issued a certificate of consideration within

six months after the issuance of such certificate. A salon which passes the inspection shall be issued a permanent license. A salon which fails the inspection shall submit within fifteen days evidence of corrective action taken to improve those aspects of operation found deficient. If evidence is not submitted within fifteen days or if after a second inspection the salon does not receive a satisfactory rating, it shall immediately relinquish its certificate of consideration and cease operation.

Source: Laws 2018, LB731, § 60.

38-10,158.04 Mobile nail technology salon; operating requirements.

In order to maintain its license in good standing, each mobile nail technology salon shall operate in accordance with the following requirements:

(1) The salon shall at all times comply with all applicable provisions of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act and all rules and regulations adopted and promulgated under the act;

(2) The salon owner or his or her agent shall notify the department of any change of ownership, name, or office address and if a salon is permanently closed;

(3) No salon shall permit any unlicensed person to perform any of the practices of nail technology within its confines or employment;

(4) The salon shall display a name upon, over, or near the entrance door distinguishing it as a salon;

(5) The salon shall permit any duly authorized agent of the department to conduct an operation inspection or investigation at any time during the normal operating hours of the salon, without prior notice, and the owner and manager shall assist the inspector by providing access to all areas of the salon, all personnel, and all records requested by the inspector;

(6) The salon shall display in a conspicuous place the following records:

(a) The current license or certificate of consideration to operate a salon;

(b) The current licenses of all persons licensed under the act who are employed by or working in the salon; and

(c) The rating sheet from the most recent operation inspection;

(7) At no time shall a salon employ more employees than permitted by the square footage requirements of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act;

(8) No nail technology services may be performed in a salon while the salon is moving. The salon must be safely and legally parked in a legal parking space at all times while clients are present inside the salon. A salon shall not park or conduct business within three hundred feet of another licensed nail technology establishment. The department is not responsible for monitoring for enforcement of this subdivision but may discipline a license for a reported and verified violation;

(9) The owner of the salon shall maintain a permanent business address at which correspondence from the department may be received and records of appointments, license numbers, and vehicle identification numbers shall be kept for each salon being operated by the owner. The owner shall make such records available for verification and inspection by the department; and

(10) The salon shall not knowingly permit its employees or clients to use, consume, serve, or in any manner possess or distribute intoxicating beverages or controlled substances upon its premises.

Source: Laws 2018, LB731, § 61.

38-10,158.05 Mobile nail technology salon license; renewal.

The procedure for renewing a mobile nail technology salon license shall be in accordance with section 38-143, except that in addition to all other requirements, the salon shall submit evidence of minimal property damage, bodily injury, and liability insurance coverage for the salon and evidence of coverage which meets the requirements of the Motor Vehicle Registration Act for the salon.

Source: Laws 2018, LB731, § 62.

Cross References

Motor Vehicle Registration Act, see section 60-301.

38-10,158.06 Mobile nail technology salon license; revocation or expiration; effect.

The license of a mobile nail technology salon that has been revoked or expired for any reason shall not be reinstated. An original application for licensure shall be submitted and approved before such salon may reopen for business.

Source: Laws 2018, LB731, § 63.

38-10,158.07 Mobile nail technology salon license; change of ownership or mobile unit; effect.

Each mobile nail technology salon license issued shall be in effect solely for the owner or owners and the mobile unit named thereon and shall expire automatically upon any change of ownership or mobile unit. An original application for licensure shall be submitted and approved before such salon may reopen for business.

Source: Laws 2018, LB731, § 64.

38-10,158.08 Mobile nail technology salon; owner liability.

The owner of each mobile nail technology salon shall have full responsibility for ensuring that the salon is operated in compliance with all applicable laws, rules, and regulations and shall be liable for any and all violations occurring in the salon.

Source: Laws 2018, LB731, § 65.

38-10,160 Nail technology home services permit; salon operating requirements.

In order to maintain in good standing or renew its nail technology home services permit, a nail technology salon shall at all times operate in accordance with all requirements for operation, maintain its license in good standing, and comply with the following requirements:

(1)(a) Clients receiving nail technology home services shall be in emergency or persistent circumstances which shall generally be defined as any condition

sufficiently immobilizing to prevent the client from leaving his or her residence regularly to conduct routine affairs of daily living such as grocery shopping, visiting friends and relatives, attending social events, attending worship services, and other similar activities.

(b) Emergency or persistent circumstances may include such conditions or situations as:

(i) Chronic illness or injury leaving the client bedridden or with severely restricted mobility;

(ii) Extreme general infirmity such as that associated with the aging process;

(iii) Temporary conditions including, but not limited to, immobilizing injury and recuperation from serious illness or surgery;

(iv) Having sole responsibility for the care of an invalid dependent or a mentally disabled person requiring constant attention;

(v) Mental disability that significantly limits the client in areas of functioning described in subdivision (1)(a) of this section; or

(vi) Any other conditions that, in the opinion of the department, meet the general definition of emergency or persistent circumstances;

(2) The nail technology salon shall determine that each person receiving nail technology home services meets the requirements of subdivision (1) of this section and shall:

(a) Complete a client information form supplied by the department before nail technology home services may be provided to any client; and

(b) Keep on file the client information forms of all clients it is currently providing with nail technology home services or to whom it has provided such services within the past two years;

(3) The nail technology salon shall employ or contract with persons licensed under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act to provide nail technology home services and shall not permit any person to perform any home services under its authority for which he or she is not licensed;

(4) No client shall be left unattended while any chemical service is in progress or while any electrical appliance is in use; and

(5) Each nail technology salon providing nail technology home services shall post a daily itinerary for each licensee providing home services. The kit for each licensee shall be available for inspection at the salon or at the home of the client receiving services.

Source: Laws 1999, LB 68, § 80; R.S.1943, (2003), § 71-3,231; Laws 2007, LB463, § 422; Laws 2020, LB755, § 2.

38-10,171 Unprofessional conduct; acts enumerated.

Each of the following may be considered an act of unprofessional conduct when committed by a person licensed under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act:

(1) Performing any of the practices regulated under the act for which an individual is not licensed or operating an establishment or facility without the appropriate license;

(2) Obstructing, interfering, or failing to cooperate with an inspection or investigation conducted by an authorized representative of the department when acting in accordance with the act;

(3) Failing to report to the department a suspected violation of the act;

(4) Aiding and abetting an individual to practice any of the practices regulated under the act for which he or she is not licensed;

(5) Engaging in any of the practices regulated under the act for compensation in an unauthorized location;

(6) Engaging in the practice of any healing art or profession for which a license is required without holding such a license;

(7) Enrolling a student or an apprentice without obtaining the appropriate documents prior to enrollment;

(8) Knowingly falsifying any student or apprentice record or report;

(9) Initiating or continuing home services to a client who does not meet the criteria established in the act;

(10) Knowingly issuing a certificate of completion or diploma to a student or an apprentice who has not completed all requirements for the issuance of such document;

(11) Failing, by a school of cosmetology, a nail technology school, a school of esthetics, or an apprentice salon, to follow its published rules;

(12) Violating, by a school of cosmetology, nail technology school, or school of esthetics, any federal or state law involving the operation of a vocational school or violating any federal or state law involving participation in any federal or state loan or grant program;

(13) Knowingly permitting any person under supervision to violate any law, rule, or regulation or knowingly permitting any establishment or facility under supervision to operate in violation of any law, rule, or regulation;

(14) Receiving two unsatisfactory inspection reports within any sixty-day period;

(15) Engaging in any of the practices regulated under the act while afflicted with any active case of a serious contagious disease, infection, or infestation, as determined by the department, or in any other circumstances when such practice might be harmful to the health or safety of clients;

(16) Violating any rule or regulation relating to the practice of body art; and

(17) Performing body art on or to any person under eighteen years of age (a) without the prior written consent of the parent or court-appointed guardian of such person, (b) without the presence of such parent or guardian during the procedure, or (c) without retaining a copy of such consent for a period of five years.

Source: Laws 1986, LB 318, § 138; Laws 1995, LB 83, § 54; Laws 1999, LB 68, § 88; Laws 2002, LB 241, § 49; Laws 2004, LB 906, § 32; Laws 2004, LB 1005, § 39; R.S.Supp.,2006, § 71-3,177; Laws 2007, LB463, § 433; Laws 2018, LB731, § 66.

38-10,172 Scleral tattooing; prohibited acts; civil penalty.

(1) For purposes of this section, scleral tattooing means the practice of using needles, scalpels, or other related equipment to produce an indelible mark or figure on the human eye by scarring or inserting a pigment on, in, or under:

(a) The fornix conjunctiva;

(b) The bulbar conjunctiva;

(c) The ocular conjunctiva; or

(d) Another ocular surface.

(2) Except as provided in subsection (3) of this section, a person shall not perform or offer to perform scleral tattooing on another person.

(3) This section does not apply to a person licensed to practice medicine and surgery or osteopathic medicine and surgery pursuant to the Uniform Credentialing Act when the licensee is performing a procedure within the scope of her or his practice.

(4) In addition to the remedies authorized in section 38-140 or 38-1,124, a person who performs scleral tattooing without being authorized to do so under the Uniform Credentialing Act shall be subject to a civil penalty not to exceed ten thousand dollars for each violation. If a violation continues after notification, this constitutes a separate offense. The civil penalties shall be assessed in a civil action brought for such purpose by the Attorney General in the district court of the county in which the violation occurred. Any civil penalty assessed and unpaid under this section shall constitute a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in any proper form of action in the name of the State of Nebraska in the district court of the county in which the violator resides or owns property. The department may also collect in such action attorney's fees and costs incurred in the collection of the civil penalty. The department shall, within thirty days after receipt, transmit any collected civil penalty to the State Treasurer to be disposed of in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 2019, LB449, § 4.

ARTICLE 11

DENTISTRY PRACTICE ACT

Section

Section

38-1101 Act, how cited.

Sections 38-1101 to 38-1152 shall be known and may be cited as the Dentistry Practice Act.

Source: Laws 2007, LB463, § 434; Laws 2015, LB80, § 1; Laws 2017, LB18, § 1.

38-1102 Definitions, where found.

For purposes of the Dentistry Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-1102.01 to 38-1113 apply.

Source: Laws 2007, LB463, § 435; Laws 2015, LB80, § 2; Laws 2017, LB18, § 2.

38-1102.01 Accredited dental assisting program, defined.

Accredited dental assisting program means a program that is accredited by the American Dental Association Commission on Dental Accreditation, which is an agency recognized by the United States Department of Education as an accrediting body, that is within a school or college approved by the board, and that requires a dental assisting curriculum of not less than one academic year.

Source: Laws 2017, LB18, § 3.

38-1107 Dental assistant, defined.

Dental assistant means a person who does not hold a license under the Dentistry Practice Act and who is employed for the purpose of assisting a licensed dentist in the performance of his or her clinical and clinical-related duties as described in section 38-1135.

Source: Laws 1986, LB 267, § 1; Laws 1999, LB 800, § 2; Laws 2001, LB 209, § 4; Laws 2002, LB 1062, § 14; R.S.1943, (2003), § 71-183.02; Laws 2007, LB463, § 440; Laws 2017, LB18, § 4.

38-1107.01 Expanded function dental assistant, defined.

Expanded function dental assistant means a licensed dental assistant who has met the requirements to practice as an expanded function dental assistant pursuant to section 38-1118.03.

Source: Laws 2017, LB18, § 6.

38-1107.02 Expanded function dental hygienist, defined.

Expanded function dental hygienist means a licensed dental hygienist who has met the requirements to practice as an expanded function dental hygienist pursuant to section 38-1118.01.

Source: Laws 2017, LB18, § 8.

38-1111.01 Licensed dental assistant, defined.

Licensed dental assistant means a dental assistant who holds a license to practice as a dental assistant under the Dentistry Practice Act.

Source: Laws 2017, LB18, § 5.

38-1111.02 Licensed dental hygienist, defined.

Licensed dental hygienist means a person who holds a license to practice dental hygiene under the Dentistry Practice Act.

Source: Laws 2017, LB18, § 7.

38-1116 Dentistry practice; exceptions.

The Dentistry Practice Act shall not require licensure as a dentist under the act for:

(1) The practice of his or her profession by a physician or surgeon licensed as such under the laws of this state unless he or she practices dentistry as a specialty;

(2) The giving by a qualified anesthetist or registered nurse of an anesthetic for a dental operation under the direct supervision of a licensed dentist or physician;

(3) The practice of dentistry by graduate dentists or dental surgeons who serve in the armed forces of the United States or the United States Public Health Service or who are employed by the United States Department of Veterans Affairs or other federal agencies, if their practice is limited to that service or employment;

(4) The practice of dentistry by a licensed dentist of other states or countries at meetings of the Nebraska Dental Association or components thereof, or other like dental organizations approved by the Board of Dentistry, while appearing as clinicians;

(5) The filling of work authorizations of a licensed and registered dentist as provided in this subdivision by any person or persons, association, corporation, or other entity for the construction, reproduction, or repair of prosthetic dentures, bridges, plates, or appliances to be used or worn as substitutes for natural teeth if such person or persons, association, corporation, or other entity does not solicit or advertise, directly or indirectly by mail, card, newspaper, pamphlet, radio, or otherwise, to the general public to construct, reproduce, or repair prosthetic dentures, bridges, plates, or other appliances to be used or worn as substitutes for natural teeth;

(6) The use of roentgen or X-ray machines or other rays for making radiograms or similar records of dental or oral tissues under the supervision of a licensed dentist or physician if such service is not advertised by any name whatever as an aid or inducement to secure dental patronage, and no person shall advertise that he or she has, leases, owns, or operates a roentgen or X-ray

machine for the purpose of making dental radiograms of the human teeth or tissues or the oral cavity or administering treatment thereto for any disease thereof;

(7) The performance by a licensed dental hygienist, under the supervision of a licensed dentist, of the oral prophylaxis procedure which shall include the scaling and polishing of teeth and such additional procedures as are prescribed in accordance with rules and regulations adopted by the department;

(8) The performance, under the supervision of a licensed dentist, by a dental assistant, a licensed dental assistant, or an expanded function dental assistant, of duties prescribed in accordance with rules and regulations adopted by the department;

(9) The performance by a licensed dental hygienist or an expanded function dental hygienist, by virtue of training and professional ability, under the supervision of a licensed dentist, of taking dental roentgenograms. Any other person is hereby authorized, under the supervision of a licensed dentist, to take dental roentgenograms but shall not be authorized to do so until he or she has satisfactorily completed a course in dental radiology recommended by the board and approved by the department;

(10) Students of dentistry who practice dentistry upon patients in clinics in the regular course of instruction at an accredited school or college of dentistry;

(11) Licensed physicians and surgeons who extract teeth or treat diseases of the oral cavity, gums, teeth, or maxillary bones as an incident to the general practice of their profession;

(12) Dental hygiene students who practice dental hygiene or expanded function dental hygiene upon patients in clinics in the regular course of instruction at an accredited dental hygiene program. Such dental hygiene students are also not engaged in the unauthorized practice of dental hygiene or expanded function dental hygiene; or

(13) Dental assisting students who practice dental assisting or expanded function dental assisting upon patients in clinics in the regular course of instruction at an accredited dental assisting program. Such dental assisting students are also not engaged in the unauthorized practice of dental assisting, expanded function dental assisting, dental hygiene, or expanded function dental hygiene.

Source: Laws 1951, c. 226, § 2, p. 823; Laws 1951, c. 227, § 2, p. 827; Laws 1971, LB 587, § 11; Laws 1984, LB 470, § 5; Laws 1991, LB 2, § 10; Laws 1996, LB 1044, § 407; Laws 1999, LB 800, § 1; Laws 1999, LB 828, § 68; Laws 2005, LB 89, § 1; R.S.Supp.,2006, § 71-183.01; Laws 2007, LB463, § 449; Laws 2017, LB18, § 9.

38-1118.01 Expanded function dental hygiene; application for permit; qualifications.

(1) Every applicant for a permit to practice expanded function dental hygiene shall (a) present proof of current, valid licensure under the Dentistry Practice Act as a licensed dental hygienist at the time of application, (b) present proof of at least one thousand five hundred hours of experience as a licensed dental hygienist, (c) present proof of successful completion of courses and examinations in expanded function dental hygiene approved by the board, (d) pass a

jurisprudence examination approved by the board that is based on the Nebraska statutes, rules, and regulations governing the practice of expanded function dental hygiene, and (e) complete continuing education as a condition of the permit if required by the board.

(2) Upon completion of these requirements, the department, with the recommendation of the board, shall issue the applicant the applicable permit to practice expanded function dental hygiene.

Source: Laws 2017, LB18, § 10.

38-1118.02 Licensed dental assistant; application for license; qualifications.

(1) Every applicant for a license to practice as a licensed dental assistant shall (a) have a high school diploma or its equivalent, (b) present proof of (i) graduation from an accredited dental assisting program or (ii) a minimum of one thousand five hundred hours of experience as a dental assistant during the five-year period prior to the application for a license, (c) pass the examination to become a certified dental assistant administered by the Dental Assisting National Board or an equivalent examination approved by the Board of Dentistry, (d) pass a jurisprudence examination approved by the board that is based on the Nebraska statutes, rules, and regulations governing the practice of dental assisting, and (e) complete continuing education as a condition of licensure if required by the board.

(2) Upon completion of these requirements, the department, with the recommendation of the board, shall issue the applicant a license to practice as a licensed dental assistant.

Source: Laws 2017, LB18, § 11.

38-1118.03 Expanded function dental assistant; application for permit; qualifications.

(1) Every applicant for a permit to practice as an expanded function dental assistant shall (a) present proof of current, valid licensure under the Dentistry Practice Act as a licensed dental assistant at the time of application, (b) present proof of at least one thousand five hundred hours of experience as a licensed dental assistant, (c) present proof of successful completion of courses and examinations in expanded function dental assisting approved by the board, (d) pass a jurisprudence examination approved by the board that is based on the Nebraska statutes, rules, and regulations governing the practice of expanded function dental assisting, and (e) complete continuing education as a condition of the permit if required by the board.

(2) Upon completion of these requirements, the department, with the recommendation of the board, shall issue the applicant the applicable permit to practice as an expanded function dental assistant.

Source: Laws 2017, LB18, § 12.

38-1119 Reexamination; requirements.

Any person who applies for a license to practice dentistry, dental hygiene, or dental assisting and who has failed on two occasions to pass any part of the practical examination shall be required to complete a course in clinical dentistry, dental hygiene, or dental assisting approved by the board before the department may consider the results of a third examination as a valid qualifica-

tion for a license to practice dentistry, dental hygiene, or dental assisting in the State of Nebraska.

Source: Laws 2007, LB463, § 452; Laws 2017, LB18, § 13.

38-1121 Dental hygienist; licensed dental assistant; reciprocity; requirements; military license; temporary license.

(1) Every applicant for a license to practice dental hygiene based on a license in another state or territory of the United States or the District of Columbia shall meet the standards set by the board pursuant to section 38-126 and shall have been actively engaged in the practice of dental hygiene for at least three years, one of which must be within the three years immediately preceding the application, under a license in another state or territory of the United States or the District of Columbia. Practice in an accredited dental hygiene program for the purpose of completing a postgraduate or residency program in dental hygiene also serves as active practice toward meeting this requirement.

(2) An applicant who is a military spouse may apply for a temporary license as provided in section 38-129.01.

(3) Every applicant for a license to practice as a licensed dental assistant based on a license in another state or territory of the United States or the District of Columbia shall meet the standards set by the board pursuant to section 38-126 and shall have been actively engaged in practice as a licensed dental assistant for at least three years, one of which must be within the three years immediately preceding the application, under a license in another state or territory of the United States or the District of Columbia. Practice in an accredited dental assisting program for the purpose of completing a postgraduate or residency program in dental assisting also serves as active practice toward meeting this requirement.

Source: Laws 2007, LB463, § 454; Laws 2017, LB18, § 14; Laws 2017, LB88, § 47.

38-1124 Faculty license; practice; limitations; requirements; renewal; continuing competency.

(1) The department, with the recommendation of the board, shall issue a faculty license to any person who meets the requirements of subsection (3) or (4) of this section. A faculty licensee may practice dentistry as a faculty member at an accredited school or college of dentistry in the State of Nebraska. A faculty licensee may also teach dentistry, conduct research, and participate in an institutionally administered faculty practice. A faculty licensee eligible for licensure under subsection (4) of this section shall limit practice under such license to the clinical disciplines in which the licensee has received education at an accredited school or college of dentistry or, with the approval of the board, the clinical disciplines in which the licensee has practiced under a license, including a faculty license or teaching permit, to practice dentistry within the past three years in another jurisdiction.

(2) Any person who desires a faculty license shall make a written application to the department. The application shall include information regarding the applicant's professional qualifications, experience, and licensure. The application shall be accompanied by a copy of the applicant's dental degree, any other degrees or certificates for postgraduate education of the applicant, the required fee, and certification from the dean of an accredited school or college of

dentistry in the State of Nebraska at which the applicant has a contract to be employed as a full-time faculty member.

(3) An individual who graduated from an accredited school or college of dentistry shall be eligible for a faculty license if the individual:

(a) Has or had a license, including a faculty license or teaching permit, to practice dentistry within the past three years in another jurisdiction; and

(b) Passes a jurisprudence examination administered by the board.

(4) An individual who graduated from a nonaccredited school or college of dentistry shall be eligible for a faculty license if the individual:

(a)(i) Has or had a license, including a faculty license or teaching permit, to practice dentistry within the past three years in another jurisdiction;

(ii) Has completed at least two years of postgraduate education at an accredited school or college of dentistry recognized by the national commission and received a certificate or degree from such school or college of dentistry; or

(iii) Has additional education in dentistry at an accredited school or college of dentistry that is determined by the board to be equivalent to a program recognized by the national commission, including, but not limited to, a postgraduate certificate or degree in operative dentistry;

(b) Passes a jurisprudence examination administered by the board; and

(c) Has passed at least one of the following:

(i) Part I and Part II of the National Board Dental Examinations administered by the joint commission;

(ii) The Integrated National Board Dental Examination administered by the joint commission;

(iii) A specialty board examination recognized by the national commission;

(iv) An examination administered by the National Dental Examining Board of Canada; or

(v) An equivalent examination as determined by the Board of Dentistry.

(5) A faculty license shall expire at the same time and be subject to the same renewal requirements as a regular dental license, except that such license shall remain valid and may only be renewed if the faculty licensee completes continuing education as required by the rules and regulations adopted and promulgated under the Dentistry Practice Act and demonstrates continued employment at an accredited school or college of dentistry in the State of Nebraska.

(6) In order for an applicant to qualify for a faculty license pursuant to subdivision (4)(a)(iii) of this section, the applicant shall present, for review and approval by the board, a portfolio which includes, but is not limited to, academic achievements, credentials and certifications, letters of recommendation, and a list of publications.

(7) For purposes of this section:

(a) Another jurisdiction means some other state in the United States, a territory or jurisdiction of the United States, or a Canadian province;

(b) Joint commission means the American Dental Association Joint Commission on National Dental Examinations; and

(c) National commission means the National Commission on Recognition of Dental Specialties and Certifying Boards.

Source: Laws 2002, LB 1062, § 16; Laws 2003, LB 242, § 36; Laws 2004, LB 1005, § 11; R.S.Supp.,2006, § 71-185.03; Laws 2007, LB463, § 457; Laws 2021, LB628, § 1.

38-1127.01 Expanded function dental assistant; expanded function dental hygienist; display of permit.

Every person who owns, operates, or controls a facility in which an expanded function dental assistant or an expanded function dental hygienist is practicing shall display the permit of such person issued by the board for expanded functions in a conspicuous place in such facility.

Source: Laws 2017, LB18, § 15.

38-1130 Licensed dental hygienist; functions authorized; when; department; duties; Health and Human Services Committee; report; hearing.

(1) Except as otherwise provided in this section, a licensed dental hygienist shall perform the dental hygiene functions listed in section 38-1131 only when authorized to do so by a licensed dentist who shall be responsible for the total oral health care of the patient.

(2) The department may authorize a licensed dental hygienist to perform the following functions in the conduct of public health-related services in a public health setting or in a health care or related facility: Preliminary charting and screening examinations; oral health education, including workshops and inservice training sessions on dental health; and all of the duties that a dental assistant who is not licensed is authorized to perform.

(3)(a) Except for periodontal scaling, root planing, and the administration of local anesthesia and nitrous oxide, the department may authorize a licensed dental hygienist to perform all of the authorized functions within the scope of practice of a licensed dental hygienist in the conduct of public health-related services in a public health setting or in a health care or related facility. In addition, the department may authorize a licensed dental hygienist to perform the following functions in such a setting or facility or for such a patient:

(i) Upon completion of education and testing approved by the board, writing prescriptions for mouth rinses and fluoride products that help decrease risk for tooth decay; and

(ii) Upon completion of education and testing approved by the board, minor denture adjustments.

(b) Authorization shall be granted by the department under this subsection upon (i) filing an application with the department and (ii) providing evidence of current licensure and professional liability insurance coverage. Authorization may be limited by the department as necessary to protect the public health and safety upon good cause shown and may be renewed in connection with renewal of the licensed dental hygienist's license.

(c) A licensed dental hygienist performing dental hygiene functions as authorized under this subsection shall (i) report authorized functions performed by him or her to the department on a form developed and provided by the department and (ii) advise the patient or recipient of services or his or her

authorized representative that such services are preventive in nature and do not constitute a comprehensive dental diagnosis and care.

(4) The department shall compile the data from the reports provided under subdivision (3)(c)(i) of this section and provide an annual report to the Board of Dentistry and the State Board of Health. The department shall annually evaluate the delivery of dental hygiene services in the state and, on or before September 15 of each year beginning in 2021, provide a report electronically to the Clerk of the Legislature regarding such evaluation. The Health and Human Services Committee of the Legislature shall hold a hearing at least once every three years to assess the reports submitted pursuant to this subsection.

(5) For purposes of this section:

(a) Health care or related facility means a hospital, a nursing facility, an assisted-living facility, a correctional facility, a tribal clinic, or a school-based preventive health program; and

(b) Public health setting means a federal, state, or local public health department or clinic, community health center, rural health clinic, or other similar program or agency that serves primarily public health care program recipients.

Source: Laws 1986, LB 572, § 2; Laws 1996, LB 1044, § 415; Laws 1999, LB 800, § 5; R.S.1943, (2003), § 71-193.15; Laws 2007, LB247, § 24; Laws 2007, LB296, § 328; Laws 2007, LB463, § 463; Laws 2013, LB484, § 1; Laws 2017, LB18, § 16; Laws 2020, LB312, § 1.

38-1131 Licensed dental hygienist; procedures and functions authorized; enumerated.

When authorized by and under the general supervision of a licensed dentist, a licensed dental hygienist may perform the following intra and extra oral procedures and functions:

(1) Oral prophylaxis, periodontal scaling, and root planing which includes supragingival and subgingival debridement;

(2) Polish all exposed tooth surfaces, including restorations;

(3) Conduct and assess preliminary charting, probing, screening examinations, and indexing of dental and periodontal disease, with referral, when appropriate, for a dental diagnosis by a licensed dentist;

(4) Brush biopsies;

(5) Pulp vitality testing;

(6) Gingival curettage;

(7) Removal of sutures;

(8) Preventive measures, including the application of fluorides, sealants, and other recognized topical agents for the prevention of oral disease;

(9) Impressions for study casts;

(10) Application of topical and subgingival agents;

(11) Radiographic exposures;

(12) Oral health education, including conducting workshops and inservice training sessions on dental health;

(13) Application or administration of antimicrobial rinses, fluorides, and other anticariogenic agents;

(14) Upon completion of education and testing approved by the board, interim therapeutic restoration technique; and

(15) All of the duties that a dental assistant who is not licensed is authorized to perform.

Upon completion of education and testing approved by the board and when authorized by and under the general supervision of a licensed dentist, a licensed dental hygienist may write prescriptions for mouth rinses and fluoride products that help decrease the risk for tooth decay.

Source: Laws 1986, LB 572, § 3; Laws 1999, LB 800, § 7; R.S.1943, (2003), § 71-193.17; Laws 2007, LB247, § 25; Laws 2007, LB463, § 464; Laws 2017, LB18, § 17.

38-1132 Licensed dental hygienist; activities related to analgesia authorized; administer local anesthesia; when.

(1)(a) A licensed dental hygienist may monitor nitrous oxide analgesia under the indirect supervision of a licensed dentist.

(b) Upon completion of education and testing approved by the board, a licensed dental hygienist may administer and titrate nitrous oxide analgesia under the indirect supervision of a licensed dentist.

(2) A licensed dental hygienist may be approved by the department, with the recommendation of the board, to administer local anesthesia under the indirect supervision of a licensed dentist. The board may prescribe by rule and regulation: The necessary education and preparation, which shall include, but not be limited to, instruction in the areas of head and neck anatomy, osteology, physiology, pharmacology, medical emergencies, and clinical techniques; the necessary clinical experience; and the necessary examination for purposes of determining the competence of licensed dental hygienists to administer local anesthesia. The board may approve successful completion after July 1, 1994, of a course of instruction to determine competence to administer local anesthesia. The course of instruction must be at an accredited school or college of dentistry or an accredited dental hygiene program. The course of instruction must be taught by a faculty member or members of the school or college of dentistry or dental hygiene program presenting the course. The board may approve for purposes of this subsection a course of instruction if such course includes:

(a) At least twelve clock hours of classroom lecture, including instruction in (i) medical history evaluation procedures, (ii) anatomy of the head, neck, and oral cavity as it relates to administering local anesthetic agents, (iii) pharmacology of local anesthetic agents, vasoconstrictor, and preservatives, including physiologic actions, types of anesthetics, and maximum dose per weight, (iv) systemic conditions which influence selection and administration of anesthetic agents, (v) signs and symptoms of reactions to local anesthetic agents, including monitoring of vital signs, (vi) management of reactions to or complications associated with the administration of local anesthetic agents, (vii) selection and preparation of the armamentaria for administering various local anesthetic agents, and (viii) methods of administering local anesthetic agents;

(b) At least twelve clock hours of clinical instruction during which time at least three injections of each of the anterior, middle, and posterior superior

alveolar, naso and greater palatine, inferior alveolar, lingual, mental, long buccal, and infiltration injections are administered; and

(c) Procedures, which shall include an examination, for purposes of determining whether the licensed dental hygienist has acquired the necessary knowledge and proficiency to administer local anesthetic agents.

Source: Laws 1986, LB 572, § 4; Laws 1995, LB 449, § 1; Laws 1996, LB 1044, § 416; Laws 1999, LB 800, § 8; Laws 1999, LB 828, § 75; Laws 2003, LB 242, § 37; R.S.1943, (2003), § 71-193.18; Laws 2007, LB296, § 329; Laws 2007, LB463, § 465; Laws 2017, LB18, § 18.

38-1135 Dental assistants, licensed dental assistants, and expanded function dental assistants; employment; duties performed; rules and regulations.

(1) Any licensed dentist, public institution, or school may employ dental assistants, licensed dental assistants, and expanded function dental assistants. Such dental assistants, under the supervision of a licensed dentist, may perform such duties as are prescribed in the Dentistry Practice Act in accordance with rules and regulations adopted and promulgated by the department, with the recommendation of the board.

(2) The department, with the recommendation of the board, shall adopt and promulgate rules and regulations pursuant to section 38-126 governing the performance of duties by dental assistants, licensed dental assistants, and expanded function dental assistants. The rules and regulations shall include the degree of supervision which must be provided by a licensed dentist and the education and proof of competency requirements that must be met for any procedures performed by a dental assistant, a licensed dental assistant, or an expanded function dental assistant.

(3) A dental assistant may perform duties delegated by a licensed dentist for the purpose of assisting the licensed dentist in the performance of the dentist's clinical and clinical-related duties as allowed in the rules and regulations adopted and promulgated under the Dentistry Practice Act.

(4) Under the indirect supervision of a licensed dentist, a dental assistant may (a) monitor nitrous oxide if the dental assistant has current and valid certification for cardiopulmonary resuscitation approved by the board and (b) place topical local anesthesia.

(5) Upon completion of education and testing approved by the board, a dental assistant may:

(a) Take X-rays under the general supervision of a licensed dentist; and

(b) Perform coronal polishing under the indirect supervision of a licensed dentist.

(6) A licensed dental assistant may perform all procedures authorized for a dental assistant. Upon completion of education and testing approved by the board and with a permit from the department for the respective competency, a licensed dental assistant may, under the indirect supervision of a licensed dentist, (a) take dental impressions for fixed prostheses, (b) take dental impressions and make minor adjustments for removable prostheses, (c) cement prefabricated fixed prostheses on primary teeth, and (d) monitor and administer nitrous oxide analgesia.

(7) Upon completion of education and testing approved by the board and with a permit from the department for the respective competency, an expanded function dental assistant may, under the indirect supervision of a licensed dentist, place (a) restorative level one simple restorations (one surface) and (b) restorative level two complex restorations (multiple surfaces).

(8) A dental assistant may be a graduate of an accredited dental assisting program or may be trained on the job.

(9) No person shall practice as a licensed dental assistant in this state unless he or she holds a license as a licensed dental assistant under the Dentistry Practice Act.

(10) No person shall practice as an expanded function dental assistant in this state unless he or she holds a permit as an expanded function dental assistant under the act.

(11) A licensed dentist shall only delegate duties to a dental assistant, a licensed dental assistant, or an expanded function dental assistant in accordance with rules and regulations adopted and promulgated pursuant to the Dentistry Practice Act. The licensed dentist supervising a dental assistant, a licensed dental assistant, or an expanded function dental assistant shall be responsible for patient care for each patient regardless of whether the patient care is rendered personally by the dentist or by a dental assistant, a licensed dental assistant, or an expanded function dental assistant.

Source: Laws 1971, LB 587, § 13; Laws 1986, LB 572, § 1; Laws 1996, LB 1044, § 413; Laws 1999, LB 800, § 3; R.S.1943, (2003), § 71-193.13; Laws 2007, LB296, § 327; Laws 2007, LB463, § 468; Laws 2017, LB18, § 20.

38-1136 Licensed dental hygienists and expanded function dental hygienists; employment authorized; performance of duties; rules and regulations; license or permit required.

(1) Any licensed dentist, public institution, or school may employ licensed dental hygienists and expanded function dental hygienists.

(2) The department, with the recommendation of the board, shall adopt and promulgate rules and regulations governing the performance of duties by licensed dental hygienists and expanded function dental hygienists. The rules and regulations shall include the degree of supervision which must be provided by a licensed dentist and the education and proof of competency requirements that must be met for any procedures performed by a licensed dental hygienist or an expanded function dental hygienist.

(3) No person shall practice dental hygiene in this state unless he or she holds a license as a licensed dental hygienist under the Dentistry Practice Act.

(4) No person shall practice expanded function dental hygiene in this state unless he or she holds a permit as an expanded function dental hygienist under the act.

(5) A licensed dentist shall only delegate duties to a licensed dental hygienist or an expanded function dental hygienist in accordance with rules and regulations adopted and promulgated pursuant to the Dentistry Practice Act. The licensed dentist supervising a licensed dental hygienist or an expanded function dental hygienist shall be responsible for patient care for each patient regardless

of whether the patient care is rendered personally by the dentist or by a licensed dental hygienist or an expanded function dental hygienist.

Source: Laws 1971, LB 587, § 14; Laws 1996, LB 1044, § 414; Laws 1999, LB 800, § 4; Laws 1999, LB 828, § 74; R.S.1943, (2003), § 71-193.14; Laws 2007, LB463, § 469; Laws 2017, LB18, § 21.

38-1136.01 Licensed dental assistant; additional functions, procedures, and services.

The department, with the recommendation of the board, may, by rule and regulation, prescribe functions, procedures, and services in addition to those in section 38-1135 which may be performed by a licensed dental assistant under the supervision of a licensed dentist when intended to attain or maintain optimal oral health.

Source: Laws 2017, LB18, § 19.

38-1152 Expanded function dental hygienist; authorized activities.

An expanded function dental hygienist may perform all the procedures authorized for a licensed dental hygienist. Upon completion of education and testing approved by the board and with a permit from the department for the respective competency, an expanded function dental hygienist may, under the indirect supervision of a licensed dentist, place (1) restorative level one simple restorations (one surface) and (2) restorative level two complex restorations (multiple surfaces).

Source: Laws 2017, LB18, § 22.

ARTICLE 12

EMERGENCY MEDICAL SERVICES PRACTICE ACT

Section

Section

38-1201 Act, how cited.

Sections 38-1201 to 38-1237 shall be known and may be cited as the Emergency Medical Services Practice Act.

Source: Laws 1997, LB 138, § 1; Laws 2003, LB 242, § 128; R.S.1943, (2003), § 71-5172; Laws 2007, LB463, § 485; Laws 2018, LB1034, § 8; Laws 2020, LB1002, § 11.

38-1202 Legislative intent; act; how construed.

It is the intent of the Legislature in enacting the Emergency Medical Services Practice Act to (1) effectuate the delivery of quality emergency medical care in the state, (2) provide for the appropriate licensure of persons providing emergency medical care and licensure of organizations providing emergency medical services, (3) provide for the establishment of educational requirements and permitted practices for persons providing emergency medical care, (4) provide a system for regulation of emergency medical care which encourages emergency care providers and emergency medical services to provide the highest degree of care which they are capable of providing, and (5) provide a flexible system for the regulation of emergency care providers and emergency medical services that protects public health and safety.

The act shall be liberally construed to effect the purposes of, carry out the intent of, and discharge the responsibilities prescribed in the act.

Source: Laws 1997, LB 138, § 2; R.S.1943, (2003), § 71-5173; Laws 2007, LB463, § 486; Laws 2020, LB1002, § 12.

38-1203 Legislative findings.

The Legislature finds:

(1) That emergency medical care is a primary and essential health care service and that the presence of an adequately equipped ambulance and trained emergency care providers may be the difference between life and death or permanent disability to those persons in Nebraska making use of such services in an emergency;

(2) That effective delivery of emergency medical care may be assisted by a program of training and licensure of emergency care providers and licensure of

emergency medical services in accordance with rules and regulations adopted by the board;

(3) That the Emergency Medical Services Practice Act is essential to aid in advancing the quality of care being provided by emergency care providers and by emergency medical services and the provision of effective, practical, and economical delivery of emergency medical care in the State of Nebraska;

(4) That the services to be delivered by emergency care providers are complex and demanding and that training and other requirements appropriate for delivery of the services must be constantly reviewed and updated; and

(5) That the enactment of a regulatory system that can respond to changing needs of patients and emergency care providers and emergency medical services is in the best interests of the residents of Nebraska.

Source: Laws 1997, LB 138, § 3; R.S.1943, (2003), § 71-5174; Laws 2007, LB463, § 487; Laws 2020, LB1002, § 13.

38-1204 Definitions, where found.

For purposes of the Emergency Medical Services Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-1204.01 to 38-1214 apply.

Source: Laws 1997, LB 138, § 4; R.S.1943, (2003), § 71-5175; Laws 2007, LB296, § 602; Laws 2007, LB463, § 488; Laws 2018, LB1034, § 9; Laws 2020, LB1002, § 14.

38-1204.01 Advanced emergency medical technician practice of emergency medical care, defined.

Advanced emergency medical technician practice of emergency medical care means care provided in accordance with the knowledge and skill acquired through successful completion of an approved program for an advanced emergency medical technician. Such care includes, but is not limited to, (1) all of the acts that an emergency medical technician is authorized to perform and (2) complex interventions, treatments, and pharmacological interventions.

Source: Laws 2018, LB1034, § 10; Laws 2020, LB1002, § 15.

38-1205 Ambulance, defined.

Ambulance means any privately or publicly owned motor vehicle or aircraft that is especially designed, constructed or modified, and equipped and is intended to be used and is maintained or operated for the overland or air transportation of patients upon the streets, roads, highways, airspace, or public ways in this state or any other motor vehicles or aircraft used for such purposes.

Source: Laws 2007, LB463, § 489; Laws 2018, LB1034, § 11.

38-1206.01 Emergency medical responder practice of emergency medical care, defined.

Emergency medical responder practice of emergency medical care means care provided in accordance with the knowledge and skill acquired through successful completion of an approved program for an emergency medical responder. Such care includes, but is not limited to, (1) contributing to the

assessment of the health status of an individual, (2) simple, noninvasive interventions, and (3) minimizing secondary injury to an individual.

Source: Laws 2018, LB1034, § 12; Laws 2020, LB1002, § 19.

38-1206.02 Community paramedic practice of emergency medical care, defined.

Community paramedic practice of emergency medical care means care provided by an advanced emergency medical technician, emergency medical technician, emergency medical technician-intermediate, or paramedic in accordance with the knowledge and skill acquired through successful completion of an approved program for a community paramedic at the respective licensure classification of the emergency care provider except for an emergency medical responder. Such care includes, but is not limited to, (1) the provision of telephone triage, advice, or other assistance to nonurgent 911 calls, (2) the provision of assistance or education to patients with chronic disease management, including posthospital discharge followup to prevent hospital admission or readmission, and (3) all of the acts that the respective licensure classification of an emergency care provider is authorized to perform.

Source: Laws 2020, LB1002, § 16.

38-1206.03 Critical care paramedic practice of emergency medical care, defined.

Critical care paramedic practice of emergency medical care means care provided by a paramedic in accordance with the knowledge and skill acquired through successful completion of an approved program for a critical care paramedic. Such care includes, but is not limited to, (1) all of the acts that a paramedic is licensed to perform, (2) advanced clinical patient assessment, (3) intravenous infusions, and (4) complex interventions, treatments, and pharmacological interventions used to treat critically ill or injured patients within the critical care environment, including transport.

Source: Laws 2020, LB1002, § 17.

38-1206.04 Emergency care provider, defined.

Emergency care provider includes all licensure classifications of emergency care providers established pursuant to the Emergency Medical Services Practice Act. Prior to December 31, 2025, emergency care provider includes advanced emergency medical technician, community paramedic, critical care paramedic, emergency medical responder, emergency medical technician, emergency medical technician-intermediate, and paramedic. On and after December 31, 2025, emergency care provider includes advanced emergency medical technician, community paramedic, critical care paramedic, emergency medical responder, emergency medical technician, and paramedic.

Source: Laws 2007, LB463, § 492; Laws 2018, LB1034, § 15; R.S.Supp.,2018, § 38-1208; Laws 2020, LB1002, § 18.

38-1207.01 Emergency medical technician practice of emergency medical care, defined.

Emergency medical technician practice of emergency medical care means care provided in accordance with the knowledge and skill acquired through

successful completion of an approved program for an emergency medical technician. Such care includes, but is not limited to, (1) all of the acts that an emergency medical responder can perform, and (2) simple invasive interventions, management and transportation of individuals, and nonvisualized intubation.

Source: Laws 2018, LB1034, § 13; Laws 2020, LB1002, § 20.

38-1207.02 Emergency medical technician-intermediate practice of emergency medical care, defined.

Emergency medical technician-intermediate practice of emergency medical care means care provided in accordance with the knowledge and skill acquired through successful completion of an approved program for an emergency medical technician-intermediate. Such care includes, but is not limited to, (1) all of the acts that an advanced emergency medical technician can perform, and (2) visualized intubation. This section terminates on December 31, 2025.

Source: Laws 2018, LB1034, § 14; Laws 2020, LB1002, § 21.

38-1208 Transferred to section 38-1206.04.

38-1208.01 Paramedic practice of emergency medical care, defined.

Paramedic practice of emergency medical care means care provided in accordance with the knowledge and skill acquired through successful completion of an approved program for a paramedic. Such care includes, but is not limited to, (1) all of the acts that an emergency medical technician-intermediate can perform, and (2) surgical cricothyrotomy.

Source: Laws 2018, LB1034, § 16; Laws 2020, LB1002, § 22.

38-1208.02 Practice of emergency medical care, defined.

Practice of emergency medical care means the performance of any act using judgment or skill based upon the United States Department of Transportation education standards and guideline training requirements, the National Highway Traffic Safety Administration's National Emergency Medical Service Scope of Practice Model and National Emergency Medical Services Education Standards, an education program for a community paramedic or a critical care paramedic that is approved by the board and the Department of Health and Human Services, and permitted practices and procedures for the level of licensure listed in section 38-1217. Such acts include the identification of and intervention in actual or potential health problems of individuals and are directed toward addressing such problems based on actual or perceived traumatic or medical circumstances. Such acts are provided under therapeutic regimens ordered by a physician medical director or through protocols as provided by the Emergency Medical Services Practice Act.

Source: Laws 2018, LB1034, § 17; Laws 2020, LB1002, § 23.

38-1209 Patient, defined.

Patient means an individual who either identifies himself or herself as being in need of medical attention or upon assessment by an emergency care provider has an injury or illness requiring treatment.

Source: Laws 2007, LB463, § 493; Laws 2020, LB1002, § 24.

38-1210 Physician medical director, defined.

Physician medical director means a qualified physician who is responsible for the medical supervision of emergency care providers and verification of skill proficiency of emergency care providers pursuant to section 38-1217.

Source: Laws 2007, LB463, § 494; Laws 2020, LB1002, § 25.

38-1211 Protocol, defined.

Protocol means a set of written policies, procedures, and directions from a physician medical director to an emergency care provider concerning the medical procedures to be performed in specific situations.

Source: Laws 2007, LB463, § 495; Laws 2020, LB1002, § 26.

38-1213 Qualified physician surrogate, defined.

Qualified physician surrogate means a qualified, trained medical person designated by a qualified physician in writing to act as an agent for the physician in directing the actions or renewal of licensure of emergency care providers.

Source: Laws 2007, LB463, § 497; Laws 2020, LB1002, § 27.

38-1215 Board; members; terms; meetings; removal.

(1) The board shall have seventeen members appointed by the Governor with the approval of a majority of the Legislature. The appointees may begin to serve immediately following appointment and prior to approval by the Legislature.

(2)(a) Seven members of the board shall be active emergency care providers at the time of and for the duration of their appointment, and each shall have at least five years of experience in his or her level of licensure at the time of his or her appointment or reappointment. Of the seven members who are emergency care providers, two shall be emergency medical responders, two shall be emergency medical technicians, one shall be an advanced emergency medical technician, and two shall be paramedics.

(b) Three of the members shall be qualified physicians actively involved in emergency medical care. At least one of the physician members shall be a board-certified emergency physician, and at least one of the physician members shall specialize in pediatrics.

(c) Five members shall be appointed to include one member who is a representative of an approved training agency, one member who is a physician assistant with at least five years of experience and active in emergency medical care education, one member who is a registered nurse with at least five years of experience and active in emergency medical care education, and two public members who meet the requirements of section 38-165 and who have an expressed interest in the provision of emergency medical care.

(d) The remaining two members shall have any of the qualifications listed in subdivision (a), (b), or (c) of this subsection.

(e) In addition to any other criteria for appointment, among the members of the board appointed after January 1, 2017, there shall be at least three members who are volunteer emergency medical care providers, at least one member who is a paid emergency medical care provider, at least one member who is a firefighter, at least one member who is a law enforcement officer, and

at least one member who is active in the Critical Incident Stress Management Program. If a person appointed to the board is qualified to serve as a member in more than one capacity, all qualifications of such person shall be taken into consideration to determine whether or not the diversity in qualifications required in this subsection has been met.

(f) At least five members of the board shall be appointed from each congressional district, and at least one of such members shall be a physician member described in subdivision (b) of this subsection.

(3) Members shall serve five-year terms beginning on December 1 and may serve for any number of such terms. The terms of the members of the board appointed prior to December 1, 2008, shall be extended by two years and until December 1 of such year. Each member shall hold office until the expiration of his or her term. Any vacancy in membership, other than by expiration of a term, shall be filled within ninety days by the Governor by appointment as provided in subsection (2) of this section.

(4) Special meetings of the board may be called by the department or upon the written request of any six members of the board explaining the reason for such meeting. The place of the meetings shall be set by the department.

(5) The Governor upon recommendation of the department shall have power to remove from office at any time any member of the board for physical or mental incapacity to carry out the duties of a board member, for continued neglect of duty, for incompetency, for acting beyond the individual member's scope of authority, for malfeasance in office, for any cause for which a professional credential may be suspended or revoked pursuant to the Uniform Credentialing Act, or for a lack of license required by the Emergency Medical Services Practice Act.

(6) Except as provided in subsection (5) of this section and notwithstanding subsection (2) of this section, a member of the board who changes his or her licensure classification after appointment or has a licensure classification which is terminated under section 38-1207.02 or 38-1217 when such licensure classification was a qualification for appointment shall be permitted to continue to serve as a member of the board until the expiration of his or her term.

Source: Laws 1997, LB 138, § 5; Laws 1998, LB 1073, § 146; Laws 2004, LB 821, § 18; R.S.Supp.,2006, § 71-5176; Laws 2007, LB463, § 499; Laws 2009, LB195, § 12; Laws 2016, LB952, § 1; Laws 2018, LB1034, § 18; Laws 2020, LB1002, § 28.

Cross References

Critical Incident Stress Management Program, see section 71-7104.

38-1216 Board; duties.

In addition to any other responsibilities prescribed by the Emergency Medical Services Practice Act, the board shall:

(1) Promote the dissemination of public information and education programs to inform the public about emergency medical service and other medical information, including appropriate methods of medical self-help, first aid, and the availability of emergency medical services training programs in the state;

(2) Provide for the collection of information for evaluation of the availability and quality of emergency medical care, evaluate the availability and quality of

emergency medical care, and serve as a focal point for discussion of the provision of emergency medical care;

(3) Establish model procedures for patient management in medical emergencies that do not limit the authority of law enforcement and fire protection personnel to manage the scene during a medical emergency;

(4) Not less than once each five years, undertake a review and evaluation of the act and its implementation together with a review of the emergency medical care needs of the residents of the State of Nebraska and submit electronically a report to the Legislature with any recommendations which it may have; and

(5) Identify communication needs of emergency medical services and make recommendations for development of a communications plan for a communications network for emergency care providers and emergency medical services.

Source: Laws 1997, LB 138, § 6; R.S.1943, (2003), § 71-5177; Laws 2007, LB463, § 500; Laws 2012, LB782, § 38; Laws 2018, LB1034, § 19; Laws 2020, LB1002, § 29.

38-1217 Rules and regulations.

The board shall adopt rules and regulations necessary to:

(1) Create licensure requirements for advanced emergency medical technicians, community paramedics, critical care paramedics, emergency medical responders, emergency medical technicians, and paramedics and, until December 31, 2025, create renewal requirements for emergency medical technicians-intermediate. The rules and regulations shall include all criteria and qualifications for each classification determined to be necessary for protection of public health and safety;

(2) Provide for temporary licensure of an emergency care provider who has completed the educational requirements for a licensure classification enumerated in subdivision (1) of this section but has not completed the testing requirements for licensure under such subdivision. A temporary license shall allow the person to practice only in association with a licensed emergency care provider under physician medical direction and shall be valid until the date on which the results of the next licensure examination are available to the department. The temporary license shall expire immediately if the applicant has failed the examination. In no case may a temporary license be issued for a period extending beyond one year. The rules and regulations shall include qualifications and training necessary for issuance of such temporary license, the practices and procedures authorized for a temporary licensee under this subdivision, and supervision required for a temporary licensee under this subdivision. The requirements of this subdivision and the rules and regulations adopted and promulgated pursuant to this subdivision do not apply to a temporary license issued as provided in section 38-129.01;

(3) Provide for temporary licensure of an emergency care provider relocating to Nebraska, if such emergency care provider is lawfully authorized to practice in another state that has adopted the licensing standards of the EMS Personnel Licensure Interstate Compact. Such temporary licensure shall be valid for one year or until a license is issued and shall not be subject to renewal. The requirements of this subdivision do not apply to a temporary license issued as provided in section 38-129.01;

(4) Set standards for the licensure of basic life support services and advanced life support services. The rules and regulations providing for licensure shall include standards and requirements for: Vehicles, equipment, maintenance, sanitation, inspections, personnel, training, medical direction, records maintenance, practices and procedures to be provided by employees or members of each classification of service, and other criteria for licensure established by the board;

(5) Authorize emergency medical services to provide differing practices and procedures depending upon the qualifications of emergency care providers available at the time of service delivery. No emergency medical service shall be licensed to provide practices or procedures without the use of personnel licensed to provide the practices or procedures;

(6) Authorize emergency care providers to perform any practice or procedure which they are authorized to perform with an emergency medical service other than the service with which they are affiliated when requested by the other service and when the patient for whom they are to render services is in danger of loss of life;

(7) Provide for the approval of training agencies, provide for disciplinary or corrective action against training agencies, and establish minimum standards for services provided by training agencies;

(8) Provide for the minimum qualifications of a physician medical director in addition to the licensure required by section 38-1212;

(9) Provide for the use of physician medical directors, qualified physician surrogates, model protocols, standing orders, operating procedures, and guidelines which may be necessary or appropriate to carry out the purposes of the Emergency Medical Services Practice Act. The model protocols, standing orders, operating procedures, and guidelines may be modified by the physician medical director for use by any emergency care provider or emergency medical service before or after adoption;

(10) Establish renewal and reinstatement requirements for emergency care providers and establish continuing competency requirements. Continuing education is sufficient to meet continuing competency requirements. The requirements may also include, but not be limited to, one or more of the continuing competency activities listed in section 38-145 which a licensed person may select as an alternative to continuing education. The reinstatement requirements for emergency care providers shall allow reinstatement at the same or any lower level of licensure for which the emergency care provider is determined to be qualified;

(11) Create licensure, renewal, and reinstatement requirements for emergency medical service instructors. The rules and regulations shall include the practices and procedures for licensure, renewal, and reinstatement;

(12) Establish criteria for emergency medical technicians-intermediate, advanced emergency medical technicians, emergency medical technicians, community paramedics, critical care paramedics, or paramedics performing activities within their scope of practice and as determined by a licensed health care practitioner as defined in section 38-1224; and

(13) Establish model protocols for compliance with the Stroke System of Care Act by an emergency medical service and an emergency care provider.

Source: Laws 1997, LB 138, § 7; Laws 1999, LB 498, § 2; Laws 2001, LB 238, § 1; Laws 2002, LB 1021, § 87; Laws 2002, LB 1033, § 1; R.S.1943, (2003), § 71-5178; Laws 2007, LB463, § 501; Laws 2009, LB195, § 13; Laws 2016, LB722, § 10; Laws 2017, LB88, § 48; Laws 2018, LB1034, § 20; Laws 2020, LB1002, § 30.

Cross References

EMS Personnel Licensure Interstate Compact, see section 38-3801.
Stroke System of Care Act, see section 71-4201.

38-1218 Curricula for licensure classification; board; powers; military spouse; temporary license.

(1) The board may approve curricula for the licensure classifications listed in the Emergency Medical Services Practice Act.

(2) The department and the board shall consider the following factors, in addition to other factors required or permitted by the Emergency Medical Services Practice Act, when adopting rules and regulations for a licensure classification:

(a) Whether the initial training required for licensure in the classification is sufficient to enable the emergency care provider to perform the practices and procedures authorized for the classification in a manner which is beneficial to the patient and protects public health and safety;

(b) Whether the practices and procedures to be authorized are necessary to the efficient and effective delivery of emergency medical care;

(c) Whether morbidity can be reduced or recovery enhanced by the use of the practices and procedures to be authorized for the classification; and

(d) Whether continuing competency requirements are sufficient to maintain the skills authorized for the classification.

(3) An applicant for licensure for a licensure classification listed in subdivision (1) of section 38-1217 who is a military spouse may apply for a temporary license as provided in section 38-129.01.

Source: Laws 1997, LB 138, § 8; Laws 2002, LB 1021, § 88; R.S.1943, (2003), § 71-5179; Laws 2007, LB463, § 502; Laws 2009, LB195, § 14; Laws 2017, LB88, § 49; Laws 2018, LB1034, § 21; Laws 2020, LB1002, § 31.

38-1218.01 Decisions of Interstate Commission for Emergency Medical Services Personnel Practice; board; duties.

The board shall review decisions of the Interstate Commission for Emergency Medical Services Personnel Practice established pursuant to the EMS Personnel Licensure Interstate Compact. Upon approval by the commission of any action that will have the result of increasing the cost to the state for membership in the compact, the board may recommend to the Legislature that Nebraska withdraw from the compact.

Source: Laws 2018, LB1034, § 22.

Cross References

EMS Personnel Licensure Interstate Compact, see section 38-3801.

38-1219 Department; additional rules and regulations.

The department, with the recommendation of the board, shall adopt and promulgate rules and regulations necessary to:

(1) Administer the Emergency Medical Services Practice Act;

(2) Establish procedures and requirements for applications for licensure, renewal, and reinstatement in any of the licensure classifications created pursuant to the Emergency Medical Services Practice Act;

(3) Provide for the inspection, review, and termination of approval of training agencies. All training for licensure shall be provided through an approved training agency; and

(4) Provide for the inspection, review, and termination of basic life support emergency medical services and advanced life support emergency medical services.

Source: Laws 2007, LB463, § 503; Laws 2009, LB195, § 15; Laws 2018, LB1034, § 23.

38-1220 Act; exemptions.

The following are exempt from the licensing requirements of the Emergency Medical Services Practice Act:

(1) The occasional use of a vehicle or aircraft not designated as an ambulance and not ordinarily used in transporting patients or operating emergency care, rescue, or resuscitation services;

(2) Vehicles or aircraft rendering services as an ambulance in case of a major catastrophe or emergency when licensed ambulances based in the localities of the catastrophe or emergency are incapable of rendering the services required;

(3) Ambulances from another state which are operated from a location or headquarters outside of this state in order to transport patients across state lines, but no such ambulance shall be used to pick up patients within this state for transportation to locations within this state except in case of an emergency;

(4) Ambulances or emergency vehicles owned and operated by an agency of the United States Government and the personnel of such agency;

(5) Except for the provisions of section 38-1232, physicians, physician assistants, registered nurses, or advanced practice registered nurses, who hold current Nebraska licenses and are exclusively engaged in the practice of their respective professions;

(6) Persons authorized to perform emergency care in other states when incidentally working in Nebraska in response to an emergency situation; and

(7) Students under the supervision of (a) a licensed emergency care provider performing emergency medical services that are an integral part of the training provided by an approved training agency or (b) an organization accredited by the Commission on Accreditation of Allied Health Education Programs for the level of training the student is completing.

Source: Laws 1997, LB 138, § 20; Laws 2000, LB 1115, § 76; Laws 2005, LB 256, § 94; R.S.Supp.,2006, § 71-5191; Laws 2007, LB463, § 504; Laws 2019, LB135, § 1; Laws 2020, LB1002, § 32.

38-1221 License; requirements.

To be eligible for a license under the Emergency Medical Services Practice Act, an individual shall have attained the age of eighteen years and met the requirements established in accordance with section 38-1217.

Source: Laws 2007, LB463, § 505; Laws 2009, LB195, § 16; Laws 2016, LB722, § 11; Laws 2018, LB1034, § 24.

Cross References

Credentialing, general requirements and issuance procedures, see section 38-121 et seq.

38-1224 Duties and activities authorized; limitations.

(1) An emergency care provider other than an emergency medical responder may not assume the duties incident to the title or practice the skills of an emergency care provider unless he or she is acting under the supervision of a licensed health care practitioner.

(2) An emergency care provider may only practice the skills he or she is authorized to employ and which are covered by the license issued to such provider pursuant to the Emergency Medical Services Practice Act or as authorized pursuant to the EMS Personnel Licensure Interstate Compact.

(3) A registered nurse may provide for the direction of an emergency care provider in any setting other than an emergency medical service.

(4) For purposes of this section, licensed health care practitioner means (a) a physician medical director or physician surrogate for purposes of supervision of an emergency care provider for an emergency medical service or (b) a physician, a physician assistant, or an advanced practice registered nurse for purposes of supervision of an emergency care provider in a setting other than an emergency medical service.

Source: Laws 1997, LB 138, § 13; Laws 1998, LB 1073, § 147; Laws 2002, LB 1033, § 2; R.S.1943, (2003), § 71-5184; Laws 2007, LB463, § 508; Laws 2009, LB195, § 17; Laws 2018, LB1034, § 25; Laws 2020, LB1002, § 33.

Cross References

EMS Personnel Licensure Interstate Compact, see section 38-3801.

38-1225 Patient data; confidentiality; immunity.

(1) No patient data received or recorded by an emergency medical service or an emergency care provider shall be divulged, made public, or released by an emergency medical service or an emergency care provider, except that patient data may be released for purposes of treatment, payment, and other health care operations as defined and permitted under the federal Health Insurance Portability and Accountability Act of 1996, as such act existed on January 1, 2018, or as otherwise permitted by law. Such data shall be provided to the department for public health purposes pursuant to rules and regulations of the department. For purposes of this section, patient data means any data received or recorded as part of the records maintenance requirements of the Emergency Medical Services Practice Act.

(2) Patient data received by the department shall be confidential with release only (a) in aggregate data reports created by the department on a periodic basis or at the request of an individual, (b) as case-specific data to approved researchers for specific research projects, (c) as protected health information to a public health authority, as such terms are defined under the federal Health

Insurance Portability and Accountability Act of 1996, as such act existed on January 1, 2018, and (d) as protected health information, as defined under the federal Health Insurance Portability and Accountability Act of 1996, as such act existed on January 1, 2018, to an emergency medical service, to an emergency care provider, or to a licensed health care facility for purposes of treatment. A record may be shared with the emergency medical service or emergency care provider that reported that specific record. Approved researchers shall maintain the confidentiality of the data, and researchers shall be approved in the same manner as described in section 81-666. Aggregate reports shall be public documents.

(3) No civil or criminal liability of any kind or character for damages or other relief or penalty shall arise or be enforced against any person or organization by reason of having provided patient data pursuant to this section.

Source: Laws 1997, LB 138, § 14; Laws 2003, LB 667, § 11; R.S.1943, (2003), § 71-5185; Laws 2007, LB185, § 42; Laws 2007, LB463, § 509; Laws 2018, LB1034, § 26; Laws 2020, LB1002, § 34.

38-1226 Ambulance; transportation requirements.

No ambulance shall transport any patient upon any street, road, highway, airspace, or public way in the State of Nebraska unless such ambulance, when so transporting patients, is occupied by at least one licensed emergency care provider. Such requirement shall be met if any of the individuals providing the service is a licensed physician, registered nurse, or licensed physician assistant functioning within the scope of practice of his or her license.

Source: Laws 1997, LB 138, § 15; R.S.1943, (2003), § 71-5186; Laws 2007, LB463, § 510; Laws 2020, LB1002, § 35.

38-1228 Department; waive rule, regulation, or standard; when.

The department, with the approval of the board, may, whenever it deems appropriate, waive any rule, regulation, or standard relating to the licensure of emergency medical services or emergency care providers when the lack of a licensed emergency medical service in a municipality or other area will create an undue hardship in the municipality or other area in meeting the emergency medical service needs of the residents thereof.

Source: Laws 1997, LB 138, § 17; R.S.1943, (2003), § 71-5188; Laws 2007, LB463, § 512; Laws 2020, LB1002, § 36.

38-1229 License; person on national registry.

The department may issue a license to any individual who has a current certificate from the National Registry of Emergency Medical Technicians.

Source: Laws 1997, LB 138, § 18; R.S.1943, (2003), § 71-5189; Laws 2007, LB463, § 513; Laws 2018, LB1034, § 27.

38-1232 Individual liability.

(1) No emergency care provider, physician assistant, registered nurse, or licensed practical nurse who provides public emergency care shall be liable in any civil action to respond in damages as a result of his or her acts of commission or omission arising out of and in the course of his or her rendering in good faith any such care. Nothing in this subsection shall be deemed to grant

any such immunity for liability arising out of the operation of any motor vehicle, aircraft, or boat or while such person was impaired by alcoholic liquor or any controlled substance enumerated in section 28-405 in connection with such care, nor shall immunity apply to any person causing damage or injury by his or her willful, wanton, or grossly negligent act of commission or omission.

(2) No qualified physician or qualified physician surrogate who gives orders, either orally or by communication equipment, to any emergency care provider at the scene of an emergency, no emergency care provider following such orders within the limits of his or her licensure, and no emergency care provider trainee in an approved training program following such orders, shall be liable civilly or criminally by reason of having issued or followed such orders but shall be subject to the rules of law applicable to negligence.

(3) No physician medical director shall incur any liability by reason of his or her use of any unmodified protocol, standing order, operating procedure, or guideline provided by the board pursuant to subdivision (9) of section 38-1217.

Source: Laws 1997, LB 138, § 23; R.S.1943, (2003), § 71-5194; Laws 2007, LB463, § 516; Laws 2009, LB195, § 18; Laws 2018, LB1034, § 28; Laws 2020, LB1002, § 37.

38-1233 Emergency care provider; liability relating to consent.

No emergency care provider shall be subject to civil liability based solely upon failure to obtain consent in rendering emergency medical, surgical, hospital, or health services to any individual regardless of age when the patient is unable to give his or her consent for any reason and there is no other person reasonably available who is legally authorized to consent to the providing of such care.

Source: Laws 1997, LB 138, § 24; R.S.1943, (2003), § 71-5195; Laws 2007, LB463, § 517; Laws 2020, LB1002, § 38.

38-1234 Emergency care provider; liability within scope of practice.

No act of commission or omission of any emergency care provider while rendering emergency medical care within the limits of his or her licensure or status as a trainee to a person who is deemed by the provider to be in immediate danger of injury or loss of life shall impose any liability on any other person, and this section shall not relieve the emergency care provider from personal liability, if any.

Source: Laws 1997, LB 138, § 25; R.S.1943, (2003), § 71-5196; Laws 2007, LB463, § 518; Laws 2020, LB1002, § 39.

38-1237 Prohibited acts.

It shall be unlawful for any person who has not been licensed pursuant to the Emergency Medical Services Practice Act or authorized pursuant to the EMS Personnel Licensure Interstate Compact to hold himself or herself out as an emergency care provider, to use any other term to indicate or imply that he or she is an emergency care provider, or to act as such a provider without a license therefor. It shall be unlawful for any person to operate a training agency for the initial training or renewal or reinstatement of licensure of emergency care providers unless the training agency is approved pursuant to rules and

regulations of the department. It shall be unlawful for any person to operate an emergency medical service unless such service is licensed.

Source: Laws 1997, LB 138, § 28; R.S.1943, (2003), § 71-5199; Laws 2007, LB463, § 521; Laws 2018, LB1034, § 29; Laws 2020, LB1002, § 40.

Cross References

EMS Personnel Licensure Interstate Compact, see section 38-3801.

ARTICLE 13

ENVIRONMENTAL HEALTH SPECIALISTS PRACTICE ACT

Section
38-1312. Registered environmental health specialist; reciprocity; continuing competency requirements; military spouse; temporary certification.

38-1312 Registered environmental health specialist; reciprocity; continuing competency requirements; military spouse; temporary certification.

(1) An applicant for certification as a registered environmental health specialist who has met the standards set by the board pursuant to section 38-126 for certification based on a credential in another jurisdiction but is not practicing at the time of application for certification shall present proof satisfactory to the department that he or she has within the three years immediately preceding the application for certification completed continuing competency requirements approved by the board pursuant to section 38-145.

(2) An applicant who is a military spouse may apply for temporary certification as provided in section 38-129.01.

Source: Laws 2007, LB463, § 533; Laws 2017, LB88, § 50.

ARTICLE 14

FUNERAL DIRECTING AND EMBALMING PRACTICE ACT

Section
38-1414. Funeral directing and embalming; license; requirements.
38-1416. Apprenticeship; apprentice license; examination.
38-1421. Reciprocity; military spouse; temporary license.

38-1414 Funeral directing and embalming; license; requirements.

(1) The department shall issue a single license to practice funeral directing and embalming to applicants who meet the requirements of this section. An applicant for a license as a funeral director and embalmer shall:

(a) Present satisfactory proof that the applicant has earned the equivalent of forty semester hours of college credit in addition to a full course of instruction in an accredited school of mortuary science. Such hours shall include the equivalent of (i) six semester hours of English, (ii) twelve semester hours of business, (iii) four semester hours of chemistry, (iv) twelve semester hours of a biological science relating to the human body, and (v) six semester hours of psychology or counseling; and

(b) Present proof to the department that he or she has completed the following training:

(i) A full course of instruction in an accredited school of mortuary science;

(ii) A twelve-month apprenticeship under the supervision of a licensed funeral director and embalmer practicing in the State of Nebraska, which apprenticeship shall consist of arterially embalming twenty-five bodies and assisting with twenty-five funerals; and

(iii) Successful completion of the licensure examination approved by the board.

(2) Any person holding a valid license as an embalmer on January 1, 1994, may continue to provide services as an embalmer after such date. Upon expiration of such valid license, the person may apply for renewal thereof, and the department shall renew such license to practice embalming.

(3) Any person holding a valid license as a funeral director on January 1, 1994, may continue to provide services as a funeral director after such date. Upon expiration of such valid license, the person may apply for renewal thereof, and the department shall renew such license to practice funeral directing.

Source: Laws 1927, c. 167, § 93, p. 480; C.S.1929, § 71-1302; Laws 1931, c. 123, § 1, p. 355; Laws 1937, c. 155, § 1, p. 612; C.S.Supp.,1941, § 71-1302; R.S.1943, § 71-195; Laws 1955, c. 271, § 1, p. 852; Laws 1986, LB 926, § 43; Laws 1987, LB 473, § 19; Laws 1988, LB 1100, § 35; R.S.1943, (1990), § 71-195; Laws 1993, LB 187, § 14; R.S.1943, (2003), § 71-1302; Laws 2007, LB463, § 550; Laws 2022, LB704, § 1.
Effective date July 21, 2022.

Cross References

Credentialing, general requirements and issuance procedures, see section 38-121 et seq.

38-1416 Apprenticeship; apprentice license; examination.

(1) Before beginning an apprenticeship, an applicant shall apply for an apprentice license. The applicant shall show that he or she has completed twenty of the forty hours required in subdivision (1)(a) of section 38-1414. The applicant may complete the twelve-month apprenticeship in either a split apprenticeship or a full apprenticeship as provided in this section.

(2) A split apprenticeship shall be completed in the following manner:

(a) Application for an apprentice license to complete a six-month apprenticeship prior to attending an accredited school of mortuary science, which license shall be valid for six months from the date of issuance and shall not be extended by the board. The apprenticeship shall be completed over a continuous six-month period;

(b) Successful completion of a full course of study in an accredited school of mortuary science;

(c) Successful passage of the national standardized examination; and

(d) Application for an apprentice license to complete the final six-month apprenticeship, which license shall be valid for six months from the date of issuance and shall not be extended by the board. The apprenticeship shall be completed over a continuous six-month period.

(3) A full apprenticeship shall be completed in the following manner:

(a) Successful completion of a full course of study in an accredited school of mortuary science;

(b) Successful passage of the national standardized examination; and

(c) Application for an apprentice license to complete a twelve-month apprenticeship. This license shall be valid for twelve months from the date of issuance and shall not be extended by the board. The apprenticeship shall be completed over a continuous twelve-month period.

(4) An individual registered as an apprentice on December 1, 2008, shall be deemed to be licensed as an apprentice for the term of the apprenticeship on such date.

Source: Laws 1927, c. 167, § 96, p. 481; C.S.1929, § 71-1305; Laws 1931, c. 123, § 1, p. 357; Laws 1937, c. 155, § 3, p. 613; C.S.Supp.,1941, § 71-1305; R.S.1943, § 71-198; Laws 1986, LB 926, § 44; Laws 1987, LB 473, § 20; Laws 1988, LB 1100, § 36; R.S.1943, (1990), § 71-198; Laws 1993, LB 187, § 16; Laws 2003, LB 242, § 97; R.S.1943, (2003), § 71-1304; Laws 2007, LB463, § 552; Laws 2022, LB704, § 2.
Effective date July 21, 2022.

Cross References

Credentialing, general requirements and issuance procedures, see section 38-121 et seq.

38-1421 Reciprocity; military spouse; temporary license.

The department, with the recommendation of the board, may issue a license based on licensure in another jurisdiction to an individual who meets the requirements of the Funeral Directing and Embalming Practice Act or substantially equivalent requirements as determined by the department, with the recommendation of the board. An applicant for licensure under the act who is a military spouse may apply for a temporary license as provided in section 38-129.01.

Source: Laws 2007, LB463, § 557; Laws 2017, LB88, § 51.

ARTICLE 15

HEARING INSTRUMENT SPECIALISTS PRACTICE ACT

Section
38-1507. Temporary training license, defined.
38-1509. Sale or fitting of hearing instruments; license required; exceptions.
38-1512. License; examination; conditions.
38-1513. Temporary training license; issuance; supervision; renewal.
38-1516. Applicant for licensure; reciprocity; continuing competency requirements; military spouse; temporary license.

38-1507 Temporary training license, defined.

Temporary training license means a hearing instrument specialist license issued while the applicant is in training to become a licensed hearing instrument specialist.

Source: Laws 2007, LB463, § 571; Laws 2009, LB195, § 25; Laws 2017, LB88, § 52.

38-1509 Sale or fitting of hearing instruments; license required; exceptions.

(1) Except as otherwise provided in this section, no person shall engage in the sale of or practice of fitting hearing instruments or display a sign or in any

other way advertise or represent himself or herself as a person who practices the fitting and sale or dispensing of hearing instruments unless he or she holds an unsuspended, unrevoked hearing instrument specialist license issued by the department as provided in the Hearing Instrument Specialists Practice Act. A hearing instrument specialist license shall confer upon the holder the right to select, fit, and sell hearing instruments. A person holding a license issued under the act prior to August 30, 2009, may continue to practice under such license until it expires under the terms of the license.

(2) A licensed audiologist who maintains a practice pursuant to (a) licensure as an audiologist, or (b) a privilege to practice audiology under the Audiology and Speech-Language Pathology Interstate Compact, in which hearing instruments are regularly dispensed, or who intends to maintain such a practice, shall be exempt from the requirement to be licensed as a hearing instrument specialist.

(3) Nothing in the act shall prohibit a corporation, partnership, limited liability company, trust, association, or other like organization maintaining an established business address from engaging in the business of selling or offering for sale hearing instruments at retail without a license if it employs only properly licensed natural persons in the direct sale and fitting of such products.

(4) Nothing in the act shall prohibit the holder of a hearing instrument specialist license from the fitting and sale of wearable instruments or devices designed for or offered for the purpose of conservation or protection of hearing.

Source: Laws 1969, c. 767, § 2, p. 2904; Laws 1986, LB 701, § 2; Laws 1988, LB 1100, § 149; Laws 1992, LB 1019, § 79; Laws 1993, LB 121, § 438; R.S.1943, (2003), § 71-4702; Laws 2007, LB247, § 52; Laws 2007, LB247, § 70; Laws 2007, LB463, § 573; Laws 2009, LB195, § 27; Laws 2017, LB88, § 53; Laws 2021, LB14, § 5.

Cross References

Audiology and Speech-Language Pathology Interstate Compact, see section 38-4101.

38-1512 License; examination; conditions.

(1) Any person may obtain a hearing instrument specialist license under the Hearing Instrument Specialists Practice Act by successfully passing a qualifying examination if the applicant:

(a) Is at least twenty-one years of age; and

(b) Has an education equivalent to a four-year course in an accredited high school.

(2) The qualifying examination shall consist of written and practical tests. The examination shall not be conducted in such a manner that college training is required in order to pass. Nothing in this examination shall imply that the applicant is required to possess the degree of medical competence normally expected of physicians.

(3) The department shall give examinations approved by the board. A minimum of two examinations shall be offered each calendar year.

Source: Laws 1969, c. 767, § 7, p. 2907; Laws 1986, LB 701, § 6; Laws 1987, LB 473, § 53; Laws 1988, LB 1100, § 153; R.S.1943,

(2003), § 71-4707; Laws 2007, LB247, § 53; Laws 2007, LB247, § 71; Laws 2007, LB463, § 576; Laws 2009, LB195, § 30; Laws 2017, LB88, § 54.

Cross References

Credentialing, general requirements and issuance procedures, see section 38-121 et seq.

38-1513 Temporary training license; issuance; supervision; renewal.

(1) The department, with the recommendation of the board, shall issue a temporary training license to any person who has met the requirements for licensure as a hearing instrument specialist pursuant to subsection (1) of section 38-1512. Previous experience or a waiting period shall not be required to obtain a temporary training license.

(2) Any person who desires a temporary training license shall make application to the department. The temporary training license shall be issued for a period of one year. A person holding a valid license as a hearing instrument specialist shall be responsible for the supervision and training of such applicant and shall maintain adequate personal contact with him or her.

(3) If a person who holds a temporary training license under this section has not successfully passed the licensing examination within twelve months of the date of issuance of the temporary training license, the temporary training license may be renewed or reissued for a twelve-month period. In no case may a temporary training license be renewed or reissued more than once. A renewal or reissuance may take place any time after the expiration of the first twelve-month period.

Source: Laws 1969, c. 767, § 8, p. 2907; Laws 1973, LB 515, § 22; Laws 1986, LB 701, § 7; Laws 1987, LB 473, § 55; Laws 1988, LB 1100, § 154; Laws 1991, LB 456, § 36; Laws 1997, LB 752, § 185; Laws 2003, LB 242, § 125; R.S.1943, (2003), § 71-4708; Laws 2007, LB463, § 577; Laws 2009, LB195, § 31; Laws 2017, LB88, § 55.

38-1516 Applicant for licensure; reciprocity; continuing competency requirements; military spouse; temporary license.

(1) An applicant for licensure as a hearing instrument specialist who has met the standards set by the board pursuant to section 38-126 for a license based on licensure in another jurisdiction but is not practicing at the time of application for licensure shall present proof satisfactory to the department that he or she has within the three years immediately preceding the application for licensure completed continuing competency requirements approved by the board pursuant to section 38-145.

(2) An applicant who is a military spouse may apply for a temporary license as provided in section 38-129.01.

Source: Laws 2007, LB463, § 580; Laws 2009, LB195, § 34; Laws 2017, LB88, § 56.

ARTICLE 16

LICENSED PRACTICAL NURSE-CERTIFIED PRACTICE ACT

Section
38-1601. Repealed. Laws 2017, LB88, § 96.

Section
38-1602. Repealed. Laws 2017, LB88, § 96.
38-1603. Repealed. Laws 2017, LB88, § 96.
38-1604. Repealed. Laws 2017, LB88, § 96.
38-1605. Repealed. Laws 2017, LB88, § 96.
38-1606. Repealed. Laws 2017, LB88, § 96.
38-1607. Repealed. Laws 2017, LB88, § 96.
38-1608. Repealed. Laws 2017, LB88, § 96.
38-1609. Repealed. Laws 2017, LB88, § 96.
38-1610. Repealed. Laws 2017, LB88, § 96.
38-1611. Repealed. Laws 2017, LB88, § 96.
38-1612. Repealed. Laws 2017, LB88, § 96.
38-1613. Repealed. Laws 2017, LB88, § 96.
38-1614. Repealed. Laws 2017, LB88, § 96.
38-1615. Repealed. Laws 2017, LB88, § 96.
38-1616. Repealed. Laws 2017, LB88, § 96.
38-1617. Repealed. Laws 2017, LB88, § 96.
38-1618. Repealed. Laws 2017, LB88, § 96.
38-1619. Repealed. Laws 2017, LB88, § 96.
38-1620. Repealed. Laws 2017, LB88, § 96.
38-1621. Repealed. Laws 2017, LB88, § 96.
38-1622. Repealed. Laws 2017, LB88, § 96.
38-1623. Repealed. Laws 2017, LB88, § 96.
38-1624. Repealed. Laws 2017, LB88, § 96.
38-1625. Repealed. Laws 2017, LB88, § 96.

38-1601 Repealed. Laws 2017, LB88, § 96.

38-1602 Repealed. Laws 2017, LB88, § 96.

38-1603 Repealed. Laws 2017, LB88, § 96.

38-1604 Repealed. Laws 2017, LB88, § 96.

38-1605 Repealed. Laws 2017, LB88, § 96.

38-1606 Repealed. Laws 2017, LB88, § 96.

38-1607 Repealed. Laws 2017, LB88, § 96.

38-1608 Repealed. Laws 2017, LB88, § 96.

38-1609 Repealed. Laws 2017, LB88, § 96.

38-1610 Repealed. Laws 2017, LB88, § 96.

38-1611 Repealed. Laws 2017, LB88, § 96.

38-1612 Repealed. Laws 2017, LB88, § 96.

38-1613 Repealed. Laws 2017, LB88, § 96.

38-1614 Repealed. Laws 2017, LB88, § 96.

38-1615 Repealed. Laws 2017, LB88, § 96.

38-1616 Repealed. Laws 2017, LB88, § 96.

38-1617 Repealed. Laws 2017, LB88, § 96.

38-1618 Repealed. Laws 2017, LB88, § 96.

38-1619 Repealed. Laws 2017, LB88, § 96.

38-1620 Repealed. Laws 2017, LB88, § 96.

38-1621 Repealed. Laws 2017, LB88, § 96.

38-1622 Repealed. Laws 2017, LB88, § 96.

38-1623 Repealed. Laws 2017, LB88, § 96.

38-1624 Repealed. Laws 2017, LB88, § 96.

38-1625 Repealed. Laws 2017, LB88, § 96.

ARTICLE 17

MASSAGE THERAPY PRACTICE ACT

Section

38-1701 Act, how cited.

Sections 38-1701 to 38-1725 shall be known and may be cited as the Massage Therapy Practice Act.

Source: Laws 2007, LB463, § 608; Laws 2019, LB244, § 1.

38-1702 Definitions, where found.

For purposes of the Massage Therapy Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-1703 to 38-1707.01 apply.

Source: Laws 1955, c. 273, § 1, p. 861; Laws 1987, LB 473, § 42; R.S.Supp.,1987, § 71-2701; Laws 1988, LB 1100, § 132; Laws 1990, LB 1064, § 14; Laws 1991, LB 10, § 2; Laws 1993, LB 48, § 2; Laws 1999, LB 828, § 142; Laws 2003, LB 242, § 69; R.S.1943, (2003), § 71-1,278; Laws 2007, LB463, § 609; Laws 2019, LB244, § 2.

38-1707 Massage therapy establishment, defined.

Massage therapy establishment means any duly licensed place in which a massage therapist practices his or her profession of massage therapy. Massage therapy establishment includes a mobile massage therapy establishment.

Source: Laws 2007, LB463, § 614; Laws 2019, LB244, § 3.

38-1707.01 Mobile massage therapy establishment, defined.

Mobile massage therapy establishment means a self-contained, self-supporting, enclosed mobile unit licensed under the Massage Therapy Practice Act as a mobile site for the performance of the practices of massage therapy by persons licensed under the act.

Source: Laws 2019, LB244, § 4.

38-1711 Massage therapy; temporary license; requirements; applicability of section.

(1) A temporary license to practice massage therapy may be granted to any person who meets all the requirements for a license except passage of the licensure examination required by section 38-1710. A temporary licensee shall be supervised in his or her practice by a licensed massage therapist. A temporary license shall be valid for sixty days or until the temporary licensee takes the examination, whichever occurs first. In the event a temporary licensee fails the examination required by such section, the temporary license shall be null and void, except that the department, with the recommendation of the board, may extend the temporary license upon a showing of good cause why such license should be extended. A temporary license may not be extended beyond six months. A temporary license shall not be issued to any person failing the examination if such person did not hold a valid temporary license prior to his or her failure to pass the examination.

(2) This section shall not apply to a temporary license issued as provided under section 38-129.01.

Source: Laws 1993, LB 48, § 3; Laws 1999, LB 828, § 144; Laws 2003, LB 242, § 70; R.S.1943, (2003), § 71-1,281.01; Laws 2007, LB463, § 618; Laws 2017, LB88, § 57.

38-1712 Reciprocity; military spouse; temporary license.

The department, with the recommendation of the board, may issue a license based on licensure in another jurisdiction to an individual who meets the requirements of the Massage Therapy Practice Act or substantially equivalent requirements as determined by the department, with the recommendation of the board. An applicant for a license to practice under the act who is a military spouse may apply for a temporary license as provided in section 38-129.01.

Source: Laws 2007, LB463, § 619; Laws 2017, LB88, § 58.

38-1715 Transferred to section 38-1725.

38-1716 Massage therapy establishment; license required.

No person shall operate or profess or attempt to operate a massage therapy establishment unless such establishment is licensed by the department under the Massage Therapy Practice Act. The department shall not issue or renew a

license for a massage therapy establishment until all requirements of the act have been complied with. No person shall engage in any of the practices of massage therapy in any location or premises other than a licensed massage therapy establishment except as specifically permitted in the act.

Source: Laws 2019, LB244, § 5.

38-1717 Mobile massage therapy establishment; applicant; requirements.

In order to be licensed as a mobile massage therapy establishment by the department, an applicant shall meet the following requirements:

(1) The proposed establishment is a self-contained, self-supporting, enclosed mobile unit;

(2) The establishment has an automobile insurance liability policy which meets the requirements of the department for the mobile unit;

(3) The establishment is clearly identified as such to the public by a sign placed on the outside of the establishment which includes the establishment's license number;

(4) The establishment complies with the sanitary requirements of the Massage Therapy Practice Act and the rules and regulations adopted and promulgated by the department under the act;

(5) The entrance into the proposed establishment used by the general public provides safe access by the public;

(6) The proposed establishment has at least forty-four square feet of floor space. If more than one practitioner is to be employed in the establishment at the same time, the establishment shall contain an additional space of at least fifty square feet for each additional practitioner; and

(7) The proposed establishment includes a functional sink and toilet facilities and maintains an adequate supply of clean water and wastewater storage capacity.

Source: Laws 2019, LB244, § 6.

38-1718 Mobile massage therapy establishment; application; floor plan or blueprint.

Any person seeking a license to operate a mobile massage therapy establishment shall submit a completed application to the department, and along with the application, the applicant shall submit a detailed floor plan or blueprint of the proposed establishment sufficient to demonstrate compliance with the requirements of section 38-1717.

Source: Laws 2019, LB244, § 7.

38-1719 Mobile massage therapy establishment; application; review; denial; inspection; issuance of permanent license.

Each application for a license to operate a mobile massage therapy establishment shall be reviewed by the department for compliance with the requirements of the Massage Therapy Practice Act and the rules and regulations adopted and promulgated by the department under the act. If an application is denied, the applicant shall be informed in writing of the grounds for denial, and such denial shall not prejudice future applications by the applicant. If an application is approved, the department shall issue the applicant a certificate of

consideration to operate a mobile massage therapy establishment. The department shall conduct an operation inspection of each establishment issued a certificate of consideration within six months after the issuance of such certificate. An establishment which passes the inspection shall be issued a permanent license. An establishment which fails the inspection shall submit within fifteen days evidence of corrective action taken to improve those aspects of operation found deficient. If evidence is not submitted within fifteen days or if after a second inspection the establishment does not receive a satisfactory rating, it shall immediately relinquish its certificate of consideration and cease operation.

Source: Laws 2019, LB244, § 8.

38-1720 Mobile massage therapy establishment; operation; requirements.

In order to maintain its license in good standing, each mobile massage therapy establishment shall operate in accordance with the following requirements:

(1) The establishment shall at all times comply with all applicable provisions of the Massage Therapy Practice Act and all rules and regulations adopted and promulgated under the act;

(2) The establishment owner or his or her agent shall notify the department of any change of ownership, name, or office address and if an establishment is permanently closed;

(3) No establishment shall permit any unlicensed person to perform any of the practices of massage therapy within its confines or employment;

(4) The establishment shall display a name upon, over, or near the entrance door distinguishing it as a mobile massage therapy establishment;

(5) The establishment shall permit any duly authorized agent of the department to conduct an operation inspection or investigation at any time during the normal operating hours of the establishment, without prior notice, and the owner and manager shall assist the inspector by providing access to all areas of the establishment, all personnel, and all records requested by the inspector;

(6) The establishment shall display in a conspicuous place the following records:

(a) The current license or certificate of consideration to operate an establishment;

(b) The current licenses of all persons licensed under the act who are employed by or working in the establishment; and

(c) The rating sheet from the most recent operation inspection;

(7) At no time shall an establishment employ more employees than permitted by the square footage requirements of the Massage Therapy Practice Act;

(8) No massage therapy services may be performed in an establishment while the establishment is moving. The establishment must be safely and legally parked in a legal parking space at all times while clients are present inside the establishment. An establishment shall not park or conduct business within three hundred feet of another brick and mortar licensed massage therapy establishment. The department is not responsible for monitoring for enforcement of this subdivision but may discipline a license for a reported and verified violation;

(9) The owner of the establishment shall maintain a permanent business address at which correspondence from the department may be received and

records of appointments, license numbers, and vehicle identification numbers shall be kept for each establishment being operated by the owner. The owner shall make such records available for verification and inspection by the department; and

(10) The establishment shall not knowingly permit its employees or clients to use, consume, serve, or in any manner possess or distribute intoxicating beverages or controlled substances upon its premises.

Source: Laws 2019, LB244, § 9.

38-1721 Mobile massage therapy establishment license; renewal; procedure; insurance.

The procedure for renewing a mobile massage therapy establishment license shall be in accordance with section 38-143, except that in addition to all other requirements, the establishment shall submit evidence of minimal property damage, bodily injury, and liability insurance coverage for the establishment and evidence of coverage which meets the requirements of the Motor Vehicle Registration Act for the establishment.

Source: Laws 2019, LB244, § 10.

Cross References

Motor Vehicle Registration Act, see section 60-301.

38-1722 Mobile massage therapy establishment license revoked or expired; not reinstated.

The license of a mobile massage therapy establishment that has been revoked or expired for any reason shall not be reinstated. An original application for licensure shall be submitted and approved before such establishment may reopen for business.

Source: Laws 2019, LB244, § 11.

38-1723 Mobile massage therapy establishment license; change of ownership or mobile unit; effect.

Each mobile massage therapy establishment license issued shall be in effect solely for the owner or owners and the mobile unit named thereon and shall expire automatically upon any change of ownership or mobile unit. An original application for licensure shall be submitted and approved before such establishment may reopen for business.

Source: Laws 2019, LB244, § 12.

38-1724 Mobile massage therapy establishment; owner; duties.

The owner of each mobile massage therapy establishment shall have full responsibility for ensuring that the establishment is operated in compliance with all applicable laws, rules, and regulations and shall be liable for any and all violations occurring in the establishment.

Source: Laws 2019, LB244, § 13.

38-1725 Rules and regulations.

The department may adopt and promulgate rules and regulations as it may deem necessary with reference to the conditions under which the practice of

massage therapy shall be carried on and the precautions necessary to be employed to prevent the spread of infectious and contagious diseases, other than the practice of massage in mobile massage therapy establishments. The department may, if it deems necessary, adopt and promulgate rules and regulations related to mobile massage therapy establishments. The department shall have the power to enforce the Massage Therapy Practice Act and all necessary inspections in connection therewith.

Source: Laws 2007, LB463, § 622; R.S.1943, (2016), § 38-1715; Laws 2019, LB244, § 14.

ARTICLE 18

MEDICAL NUTRITION THERAPY PRACTICE ACT

Section
38-1813. Licensed medical nutrition therapist; qualifications; practice; limitations.
38-1814. Reciprocity; military spouse; temporary license.

38-1813 Licensed medical nutrition therapist; qualifications; practice; limitations.

(1) A person shall be qualified to be a licensed medical nutrition therapist if such person furnishes evidence that he or she:

(a) Has met the requirements for and is a registered dietitian by the American Dietetic Association or an equivalent entity recognized by the board;

(b)(i) Has satisfactorily passed an examination approved by the board;

(ii) Has received a baccalaureate degree from an accredited college or university with a major course of study in human nutrition, food and nutrition, dietetics, or an equivalent major course of study approved by the board; and

(iii) Has satisfactorily completed a program of supervised clinical experience approved by the department. Such clinical experience shall consist of not less than nine hundred hours of a planned continuous experience in human nutrition, food and nutrition, or dietetics under the supervision of an individual meeting the qualifications of this section; or

(c)(i) Has satisfactorily passed an examination approved by the board; and

(ii)(A) Has received a master's or doctorate degree from an accredited college or university in human nutrition, nutrition education, food and nutrition, or public health nutrition or in an equivalent major course of study approved by the board; or

(B) Has received a master's or doctorate degree from an accredited college or university which includes a major course of study in clinical nutrition. Such course of study shall consist of not less than a combined two hundred hours of biochemistry and physiology and not less than seventy-five hours in human nutrition.

(2) For purposes of this section, accredited college or university means an institution currently listed with the United States Secretary of Education as accredited. Applicants who have obtained their education outside of the United States and its territories shall have their academic degrees validated as equivalent to a baccalaureate or master's degree conferred by a United States accredited college or university.

(3)(a) The practice of medical nutrition therapy shall be performed under the consultation of a physician licensed pursuant to section 38-2026 or sections 38-2029 to 38-2033.

(b) A licensed medical nutrition therapist may order patient diets, including therapeutic diets, in accordance with this subsection.

Source: Laws 1988, LB 557, § 5; Laws 1995, LB 406, § 24; R.S.1943, (2003), § 71-1,289; Laws 2007, LB463, § 635; Laws 2020, LB1002, § 41; Laws 2021, LB528, § 8.

Cross References

Credentialing, general requirements and issuance procedures, see section 38-121 et seq.

38-1814 Reciprocity; military spouse; temporary license.

The department, with the recommendation of the board, may issue a license based on licensure in another jurisdiction to an individual who meets the requirements of the Medical Nutrition Therapy Practice Act or substantially equivalent requirements as determined by the department, with the recommendation of the board. An applicant for a license to practice under the act who is a military spouse may apply for a temporary license as provided in section 38-129.01.

Source: Laws 2007, LB463, § 636; Laws 2017, LB88, § 59.

ARTICLE 19

MEDICAL RADIOGRAPHY PRACTICE ACT

Section

38-1917 Student; provisions not applicable; temporary medical radiographer license; term; applicability of section.

(1) The requirements of sections 38-1915 and 38-1916 do not apply to a student while enrolled and participating in an educational program in medical radiography who, as a part of an educational program, applies X-rays to humans while under the supervision of the licensed practitioners or medical radiographers associated with the educational program. Students who have completed at least twelve months of the training course described in subsection (1) of section 38-1918 may apply for licensure as a temporary medical radiographer. Temporary medical radiographer licenses issued under this section shall expire eighteen months after issuance and shall not be renewed. Persons licensed under this section as temporary medical radiographers shall be permitted to perform the duties of a limited radiographer licensed in all anatomical regions of subdivision (2)(b) of section 38-1918 and Abdomen.

(2) This section shall not apply to a temporary credential issued as provided under section 38-129.01.

Source: Laws 2007, LB463, § 655; Laws 2017, LB88, § 60.

38-1917.02 Student; provisions not applicable; temporary limited computed tomography radiographer license; term; applicability of section.

(1) The requirements of section 38-1917.01 do not apply to a student while enrolled and participating in an educational program in nuclear medicine technology who, as part of the educational program, applies X-rays to humans using a computed tomography system while under the supervision of the licensed practitioners, medical radiographers, or limited computed tomography radiographers associated with the educational program. A person registered by the Nuclear Medicine Technology Certification Board or the American Registry of Radiologic Technologists in nuclear medicine technology may apply for a license as a temporary limited computed tomography radiographer. Temporary limited computed tomography radiographer licenses issued under this section shall expire twenty-four months after issuance and shall not be renewed. Persons licensed under this section as temporary limited computed tomography radiographers shall be permitted to perform medical radiography restricted to computed tomography while under the direct supervision and in the physical presence of licensed practitioners, medical radiographers, or limited computed tomography radiographers.

(2) This section shall not apply to a temporary credential issued as provided under section 38-129.01.

Source: Laws 2008, LB928, § 12; Laws 2017, LB88, § 61.

ARTICLE 20

MEDICINE AND SURGERY PRACTICE ACT

Section

38-2001 Act, how cited.

Sections 38-2001 to 38-2064 shall be known and may be cited as the Medicine and Surgery Practice Act.

Source: Laws 2007, LB463, § 659; Laws 2009, LB394, § 1; Laws 2011, LB406, § 1; Laws 2018, LB701, § 5; Laws 2019, LB29, § 3; Laws 2020, LB755, § 3; Laws 2022, LB905, § 8.
Effective date July 21, 2022.

38-2002 Definitions, where found.

For the purposes of the Medicine and Surgery Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-2003 to 38-2022 apply.

Source: Laws 1969, c. 560, § 7, p. 2283; Laws 1971, LB 150, § 4; Laws 1989, LB 342, § 17; Laws 1996, LB 1044, § 425; Laws 1999, LB 828, § 83; R.S.1943, (2003), § 71-1,107.01; Laws 2007, LB463, § 660; Laws 2020, LB755, § 4; Laws 2022, LB905, § 9.
Effective date July 21, 2022.

38-2008 Approved program, defined.

Approved program means a program for the education of physician assistants which is accredited by the Accreditation Review Commission on Education for the Physician Assistant or its predecessor or successor agency and which the board formally approves.

Source: Laws 2007, LB463, § 666; Laws 2009, LB195, § 37; Laws 2020, LB755, § 5.

38-2013.01 Licensed health care professional, defined.

Licensed health care professional means a physician, an osteopathic physician, or a physician assistant licensed pursuant to the Uniform Credentialing Act.

Source: Laws 2022, LB905, § 10.
Effective date July 21, 2022.

38-2013.02 Perinatal mental health disorder, defined.

Perinatal mental health disorder means a mental health condition that occurs during pregnancy or during the postpartum period, including depression, anxiety, or postpartum psychosis.

Source: Laws 2022, LB905, § 11.
Effective date July 21, 2022.

38-2014 Physician assistant, defined.

Physician assistant means any person who graduates from an approved program, who has passed a proficiency examination, and who the department, with the recommendation of the board, approves to perform medical services under a collaborative agreement with the supervision of a physician or under a

collaborative agreement with the supervision of a podiatrist as provided by section 38-3013.

Source: Laws 1973, LB 101, § 2; R.S.Supp.,1973, § 85-179.05; Laws 1985, LB 132, § 2; Laws 1993, LB 316, § 1; Laws 1996, LB 1044, § 436; Laws 1996, LB 1108, § 8; Laws 1999, LB 828, § 92; Laws 2001, LB 209, § 8; R.S.1943, (2003), § 71-1,107.16; Laws 2007, LB296, § 338; Laws 2007, LB463, § 672; Laws 2009, LB195, § 38; Laws 2020, LB755, § 6.

38-2014.01 Physician group, defined.

Physician group means two or more physicians practicing medicine within or employed by the same business entity.

Source: Laws 2020, LB755, § 7.

38-2014.02 Postnatal care, defined.

Postnatal care means an office visit to a licensed health care professional occurring after birth, with reference to the infant or mother.

Source: Laws 2022, LB905, § 12.
Effective date July 21, 2022.

38-2014.03 Prenatal care, defined.

Prenatal care means an office visit to a licensed health care professional for pregnancy-related care occurring before birth.

Source: Laws 2022, LB905, § 13.
Effective date July 21, 2022.

38-2015.01 Questionnaire, defined.

Questionnaire means a screening tool administered by a licensed health care professional to detect perinatal mental health disorders, such as the Edinburgh Postnatal Depression Scale, the Postpartum Depression Screening Scale, the Beck Depression Inventory, the Patient Health Questionnaire, or other validated screening methods.

Source: Laws 2022, LB905, § 14.
Effective date July 21, 2022.

38-2017 Supervising physician, defined.

Supervising physician means a licensed physician who supervises a physician assistant under a collaborative agreement.

Source: Laws 2007, LB463, § 675; Laws 2009, LB195, § 40; Laws 2020, LB755, § 8.

38-2018 Supervision, defined.

Supervision means the ready availability of the supervising physician for consultation and collaboration on the activities of the physician assistant.

Source: Laws 2007, LB463, § 676; Laws 2009, LB195, § 41; Laws 2020, LB755, § 9.

38-2021 Unprofessional conduct, defined.

Unprofessional conduct means any departure from or failure to conform to the standards of acceptable and prevailing practice of medicine and surgery or the ethics of the profession, regardless of whether a person, patient, or entity is injured, or conduct that is likely to deceive or defraud the public or is detrimental to the public interest, including, but not limited to:

(1) Performance by a physician of an abortion as defined in subdivision (1) of section 28-326 under circumstances when he or she will not be available for a period of at least forty-eight hours for postoperative care unless such postoperative care is delegated to and accepted by another physician;

(2) Performing an abortion upon a minor without having satisfied the requirements of sections 71-6901 to 71-6911;

(3) The intentional and knowing performance of a partial-birth abortion as defined in subdivision (8) of section 28-326, unless such procedure is necessary to save the life of the mother whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself; and

(4) Performance by a physician of an abortion in violation of the Pain-Capable Unborn Child Protection Act.

Source: Laws 2007, LB463, § 679; Laws 2010, LB594, § 16; Laws 2010, LB1103, § 12; Laws 2011, LB690, § 1; Laws 2020, LB814, § 10.

Cross References

Pain-Capable Unborn Child Protection Act, see section 28-3,102.

38-2023 Board; membership; qualifications.

The board shall consist of eight members, including at least two public members. Two of the six professional members of the board shall be officials or members of the instructional staff of an accredited medical school in this state. One of the six professional members of the board shall be a person who has a license to practice osteopathic medicine and surgery in this state. Beginning December 1, 2020, one of the six professional members of the board shall be a physician with experience in practice with physician assistants.

Source: Laws 2007, LB463, § 681; Laws 2020, LB755, § 10.

38-2025 Medicine and surgery; practice; persons excepted.

The following classes of persons shall not be construed to be engaged in the unauthorized practice of medicine:

(1) Persons rendering gratuitous services in cases of emergency;

(2) Persons administering ordinary household remedies;

(3) The members of any church practicing its religious tenets, except that they shall not prescribe or administer drugs or medicines, perform surgical or physical operations, nor assume the title of or hold themselves out to be physicians, and such members shall not be exempt from the quarantine laws of this state;

(4) Students of medicine who are studying in an accredited school or college of medicine and who gratuitously prescribe for and treat disease under the supervision of a licensed physician;

(5) Physicians who serve in the armed forces of the United States or the United States Public Health Service or who are employed by the United States

Department of Veterans Affairs or other federal agencies, if their practice is limited to that service or employment;

(6) Physicians who are licensed in good standing to practice medicine under the laws of another state when incidentally called into this state or contacted via electronic or other medium for consultation with a physician licensed in this state. For purposes of this subdivision, consultation means evaluating the medical data of the patient as provided by the treating physician and rendering a recommendation to such treating physician as to the method of treatment or analysis of the data. The interpretation of a radiological image by a physician who specializes in radiology is not a consultation;

(7) Physicians who are licensed in good standing to practice medicine in another state but who, from such other state, order diagnostic or therapeutic services on an irregular or occasional basis, to be provided to an individual in this state, if such physicians do not maintain and are not furnished for regular use within this state any office or other place for the rendering of professional services or the receipt of calls;

(8) Physicians who are licensed in good standing to practice medicine in another state and who, on an irregular and occasional basis, are granted temporary hospital privileges to practice medicine and surgery at a hospital or other medical facility licensed in this state;

(9) Persons providing or instructing as to use of braces, prosthetic appliances, crutches, contact lenses, and other lenses and devices prescribed by a physician licensed to practice medicine while working under the direction of such physician;

(10) Dentists practicing their profession when licensed and practicing in accordance with the Dentistry Practice Act;

(11) Optometrists practicing their profession when licensed and practicing under and in accordance with the Optometry Practice Act;

(12) Osteopathic physicians practicing their profession if licensed and practicing under and in accordance with sections 38-2029 to 38-2033;

(13) Chiropractors practicing their profession if licensed and practicing under the Chiropractic Practice Act;

(14) Podiatrists practicing their profession when licensed to practice in this state and practicing under and in accordance with the Podiatry Practice Act;

(15) Psychologists practicing their profession when licensed to practice in this state and practicing under and in accordance with the Psychology Interjurisdictional Compact or the Psychology Practice Act;

(16) Advanced practice registered nurses practicing in their clinical specialty areas when licensed under the Advanced Practice Registered Nurse Practice Act and practicing under and in accordance with their respective practice acts;

(17) Surgical first assistants practicing in accordance with the Surgical First Assistant Practice Act;

(18) Persons licensed or certified under the laws of this state to practice a limited field of the healing art, not specifically named in this section, when confining themselves strictly to the field for which they are licensed or certified, not assuming the title of physician, surgeon, or physician and surgeon, and not professing or holding themselves out as qualified to prescribe drugs in any form or to perform operative surgery;

(19) Persons obtaining blood specimens while working under an order of or protocols and procedures approved by a physician, registered nurse, or other independent health care practitioner licensed to practice by the state if the scope of practice of that practitioner permits the practitioner to obtain blood specimens;

(20) Physicians who are licensed in good standing to practice medicine under the laws of another state or jurisdiction who accompany an athletic team or organization into this state for an event from the state or jurisdiction of licensure. This exemption is limited to treatment provided to such athletic team or organization while present in Nebraska;

(21) Persons who are not licensed, certified, or registered under the Uniform Credentialing Act, to whom are assigned tasks by a physician or osteopathic physician licensed under the Medicine and Surgery Practice Act, if such assignment of tasks is in a manner consistent with accepted medical standards and appropriate to the skill and training, on the job or otherwise, of the persons to whom the tasks are assigned. For purposes of this subdivision, assignment of tasks means the routine care, activities, and procedures that (a) are part of the routine functions of such persons who are not so licensed, certified, or registered, (b) reoccur frequently in the care of a patient or group of patients, (c) do not require such persons who are not so licensed, certified, or registered to exercise independent clinical judgment, (d) do not require the performance of any complex task, (e) have results which are predictable and have minimal potential risk, and (f) utilize a standard and unchanging procedure; and

(22) Other trained persons employed by a licensed health care facility or health care service defined in the Health Care Facility Licensure Act or clinical laboratory certified pursuant to the federal Clinical Laboratories Improvement Act of 1967, as amended, or Title XVIII or XIX of the federal Social Security Act to withdraw human blood for scientific or medical purposes.

Any person who has held or applied for a license to practice medicine and surgery in this state, and such license or application has been denied or such license has been refused renewal or disciplined by order of limitation, suspension, or revocation, shall be ineligible for the exceptions described in subdivisions (5) through (8) of this section until such license or application is granted or such license is renewed or reinstated. Every act or practice falling within the practice of medicine and surgery as defined in section 38-2024 and not specially excepted in this section shall constitute the practice of medicine and surgery and may be performed in this state only by those licensed by law to practice medicine in Nebraska.

Source: Laws 1927, c. 167, § 101, p. 482; C.S.1929, § 71-1402; Laws 1943, c. 150, § 19, p. 547; R.S.1943, § 71-1,103; Laws 1961, c. 337, § 12, p. 1056; Laws 1969, c. 563, § 2, p. 2291; Laws 1969, c. 564, § 1, p. 2297; Laws 1971, LB 150, § 1; Laws 1984, LB 724, § 1; Laws 1989, LB 342, § 15; Laws 1991, LB 2, § 11; Laws 1992, LB 291, § 17; Laws 1992, LB 1019, § 40; Laws 1994, LB 1210, § 55; Laws 1996, LB 414, § 3; Laws 1996, LB 1044, § 420; Laws 1997, LB 452, § 2; Laws 1999, LB 366, § 9; Laws 1999, LB 828, § 78; Laws 2000, LB 819, § 86; Laws 2000, LB 1115, § 14; Laws 2002, LB 1062, § 17; Laws 2005, LB 256, § 23; Laws 2006,

LB 833, § 3; R.S.Supp.,2006, § 71-1,103; Laws 2007, LB463, § 683; Laws 2016, LB721, § 20; Laws 2018, LB1034, § 30; Laws 2020, LB783, § 1.

Cross References

Advanced Practice Registered Nurse Practice Act, see section 38-201.
Chiropractic Practice Act, see section 38-801.
Dentistry Practice Act, see section 38-1101.
Health Care Facility Licensure Act, see section 71-401.
Optometry Practice Act, see section 38-2601.
Podiatry Practice Act, see section 38-3001.
Psychology Interjurisdictional Compact, see section 38-3901.
Psychology Practice Act, see section 38-3101.
Surgical First Assistant Practice Act, see section 38-3501.

38-2026 Medicine and surgery; license; qualifications; foreign medical graduates; requirements.

Except as otherwise provided in sections 38-2026.01 and 38-2027, each applicant for a license to practice medicine and surgery shall:

(1)(a) Present proof that he or she is a graduate of an accredited school or college of medicine, (b) if a foreign medical graduate, provide a copy of a permanent certificate issued by the Educational Commission for Foreign Medical Graduates that is currently effective and relates to such applicant or provide such credentials as are necessary to certify that such foreign medical graduate has successfully passed the Visa Qualifying Examination or its successor or equivalent examination required by the United States Department of Health and Human Services and the United States Citizenship and Immigration Services, or (c) if a graduate of a foreign medical school who has successfully completed a program of American medical training designated as the Fifth Pathway and who additionally has successfully passed the Educational Commission for Foreign Medical Graduates examination but has not yet received the permanent certificate attesting to the same, provide such credentials as certify the same to the Division of Public Health of the Department of Health and Human Services;

(2) Present proof that he or she has served at least one year of graduate medical education approved by the board or, if a foreign medical graduate, present proof that he or she has served at least two years of graduate medical education approved by the board;

(3) Pass a licensing examination approved by the board covering appropriate medical subjects; and

(4) Present proof satisfactory to the department that he or she, within the three years immediately preceding the application for licensure, (a) has been in the active practice of the profession of medicine and surgery in some other state, a territory, the District of Columbia, or Canada for a period of one year, (b) has had at least one year of graduate medical education as described in subdivision (2) of this section, (c) has completed continuing education in medicine and surgery approved by the board, (d) has completed a refresher course in medicine and surgery approved by the board, or (e) has completed the special purposes examination approved by the board.

Source: Laws 1927, c. 167, § 102, p. 483; C.S.1929, § 71-1403; Laws 1943, c. 150, § 20, p. 548; R.S.1943, § 71-1,104; Laws 1963, c. 408, § 6, p. 1312; Laws 1969, c. 563, § 3, p. 2293; Laws 1971, LB 150, § 2; Laws 1975, LB 92, § 3; Laws 1976, LB 877, § 25;

Laws 1978, LB 761, § 1; Laws 1985, LB 250, § 13; Laws 1987, LB 390, § 1; Laws 1990, LB 1064, § 13; Laws 1991, LB 400, § 22; Laws 1994, LB 1210, § 56; Laws 1994, LB 1223, § 14; Laws 1996, LB 1044, § 421; Laws 1999, LB 828, § 79; Laws 2002, LB 1062, § 18; Laws 2003, LB 242, § 39; R.S.1943, (2003), § 71-1,104; Laws 2007, LB296, § 332; Laws 2007, LB463, § 684; Laws 2011, LB406, § 2; Laws 2018, LB1034, § 31.

Cross References

Credentialing, general requirements and issuance procedures, see section 38-121 et seq.

38-2028 Reciprocity; requirements; military spouse; temporary license.

(1) An applicant for a license to practice medicine and surgery based on a license in another state or territory of the United States or the District of Columbia shall comply with the requirements of the Interstate Medical Licensure Compact beginning on the effective date of the compact or meet the standards set by the board pursuant to section 38-126, except that an applicant who has not passed one of the licensing examinations specified in the rules and regulations but has been duly licensed to practice medicine and surgery in some other state or territory of the United States of America or in the District of Columbia and obtained that license based upon a state examination, as approved by the board, may be issued a license by the department, with the recommendation of the board, to practice medicine and surgery.

(2) An applicant who is a military spouse may apply for a temporary license as provided in section 38-129.01.

Source: Laws 2007, LB463, § 686; Laws 2017, LB88, § 62.

Cross References

Interstate Medical Licensure Compact, see section 38-3601.

38-2034 Applicant; reciprocity; requirements; military spouse; temporary license.

(1) An applicant for a license to practice osteopathic medicine and surgery based on a license in another state or territory of the United States or the District of Columbia shall comply with the requirements of the Interstate Medical Licensure Compact beginning on the effective date of the compact or meet the standards set by the board pursuant to section 38-126, except that an applicant who has not passed one of the licensing examinations specified in the rules and regulations but has been duly licensed to practice osteopathic medicine and surgery in some other state or territory of the United States of America or in the District of Columbia and obtained that license based upon a state examination, as approved by the board, may be issued a license by the department, upon the recommendation of the board, to practice osteopathic medicine and surgery.

(2) An applicant who is a military spouse may apply for a temporary license as provided in section 38-129.01.

Source: Laws 2007, LB463, § 692; Laws 2017, LB88, § 63.

Cross References

Interstate Medical Licensure Compact, see section 38-3601.

38-2046 Physician assistants; legislative findings.

The Legislature finds that:

(1) In its concern with the geographic maldistribution of health care services in Nebraska it is essential to develop additional health personnel; and

(2) It is essential to encourage the more effective utilization of the skills of physicians and podiatrists by enabling them to delegate health care tasks to qualified physician assistants when such delegation is consistent with the patient's health and welfare.

It is the intent of the Legislature to encourage the utilization of physician assistants.

Source: Laws 1973, LB 101, § 1; R.S.Supp.,1973, § 85-179.04; Laws 1985, LB 132, § 1; R.S.1943, (2003), § 71-1,107.15; Laws 2007, LB463, § 704; Laws 2020, LB755, § 11.

Cross References

Student loan program, Rural Health Systems and Professional Incentive Act, see section 71-5650.

38-2047 Physician assistants; services performed; supervision requirements.

(1) A physician assistant may perform medical services that (a) are delegated by and provided under the supervision of a licensed physician who meets the requirements of section 38-2050, (b) are appropriate to the level of education, experience, and training of the physician assistant, (c)(i) form a component of the supervising physician's scope of practice or (ii) form a component of the scope of practice of a physician who meets the requirements of section 38-2050 working in the same physician group as the physician assistant if delegated by and provided under the supervision of and collaboration with such physician, (d) are medical services for which the physician assistant has been prepared by education, experience, and training and that the physician assistant is competent to perform, and (e) are not otherwise prohibited by law.

(2) A physician assistant shall have at least one supervising physician for each employer. If the employer is a multispecialty practice, the physician assistant shall have a supervising physician for each specialty practice area in which the physician assistant performs medical services.

(3) Each physician assistant and his or her supervising physician shall be responsible to ensure that (a) the scope of practice of the physician assistant is identified, (b) the delegation of medical tasks is appropriate to the level of education, experience, and training of the physician assistant, (c) the relationship of and access to the supervising physician is defined, and (d) a process for evaluation of the performance of the physician assistant is established.

(4) A physician assistant may pronounce death and may complete and sign death certificates and any other forms if such acts are within the scope of practice of the physician assistant.

(5) A physician assistant may practice under the supervision of a podiatrist as provided in section 38-3013.

Source: Laws 1973, LB 101, § 3; R.S.Supp.,1973, § 85-179.06; Laws 1985, LB 132, § 3; Laws 1993, LB 316, § 2; Laws 1996, LB 1108, § 9; R.S.1943, (2003), § 71-1,107.17; Laws 2007, LB463, § 705; Laws 2009, LB195, § 43; Laws 2020, LB755, § 12.

Cross References

Liability limitations:

Malpractice, Nebraska Hospital-Medical Liability Act, see section 44-2801 et seq.
Rendering emergency aid, see section 25-21,186.

38-2049 Physician assistants; licenses; temporary licenses; issuance; military spouse; temporary license.

(1) The department, with the recommendation of the board, shall issue licenses to persons who are graduates of an approved program and have passed a proficiency examination.

(2) The department, with the recommendation of the board, shall issue temporary licenses under this subsection to persons who have successfully completed an approved program but who have not yet passed a proficiency examination. Any temporary license issued pursuant to this subsection shall be issued for a period not to exceed one year and under such conditions as determined by the department, with the recommendation of the board. The temporary license issued under this subsection may be extended by the department, with the recommendation of the board.

(3) Physician assistants approved by the board prior to April 16, 1985, shall not be required to complete the proficiency examination.

(4) An applicant who is a military spouse applying for a license to practice as a physician assistant may apply for a temporary license as provided in section 38-129.01.

Source: Laws 1973, LB 101, § 5; R.S.Supp.,1973, § 85-179.08; Laws 1985, LB 132, § 5; Laws 1996, LB 1108, § 10; R.S.1943, (2003), § 71-1,107.19; Laws 2007, LB463, § 707; Laws 2009, LB195, § 44; Laws 2017, LB88, § 64.

Cross References

Credentialing, general requirements and issuance procedures, see section 38-121 et seq.

38-2050 Physician assistants; supervision; supervising physician; requirements; collaborative agreement.

(1) To be a supervising physician, a person shall:

(a) Be licensed to practice medicine and surgery under the Uniform Credentialing Act;

(b) Have no restriction imposed by the board on his or her ability to supervise or collaborate with a physician assistant; and

(c) Be a party to a collaborative agreement with the physician assistant.

(2) The supervising physician shall keep the collaborative agreement on file at his or her primary practice site, shall keep a copy of the collaborative agreement on file at each practice site where the physician assistant provides medical services, and shall make the collaborative agreement available to the board and the department upon request.

(3) Supervision of a physician assistant by a supervising physician shall be continuous but shall not require the physical presence of the supervising physician at the time and place that the services are rendered. A physician assistant may render services in a setting that is geographically remote from the supervising physician.

(4) A supervising physician may supervise no more than four physician assistants at any one time. The board may consider an application for waiver of this limit and may waive the limit upon a showing that the supervising

physician meets the minimum requirements for the waiver. The department may adopt and promulgate rules and regulations establishing minimum requirements for such waivers.

Source: Laws 1973, LB 101, § 6; R.S.Supp.,1973, § 85-179.09; Laws 1985, LB 132, § 6; Laws 1993, LB 316, § 3; R.S.1943, (2003), § 71-1,107.20; Laws 2007, LB463, § 708; Laws 2009, LB195, § 45; Laws 2020, LB755, § 13.

38-2053 Physician assistants; negligent acts; liability.

Any physician or physician groups utilizing physician assistants shall be liable for any negligent acts or omissions of physician assistants while acting under their supervision.

Source: Laws 1973, LB 101, § 14; R.S.Supp.,1973, § 85-179.17; Laws 1985, LB 132, § 13; R.S.1943, (2003), § 71-1,107.28; Laws 2007, LB463, § 711; Laws 2020, LB755, § 14.

38-2054 Physician assistants; licensed; not engaged in unauthorized practice of medicine.

Any physician assistant who is licensed and who renders services under the supervision of a licensed physician as provided by the Medicine and Surgery Practice Act shall not be construed to be engaged in the unauthorized practice of medicine.

Source: Laws 1973, LB 101, § 15; R.S.Supp.,1973, § 85-179.18; Laws 1985, LB 132, § 14; Laws 1996, LB 1108, § 13; R.S.1943, (2003), § 71-1,107.29; Laws 2007, LB463, § 712; Laws 2020, LB755, § 15.

38-2055 Physician assistants; prescribe drugs and devices; restrictions; therapeutic regimen; powers.

(1) A physician assistant, under a collaborative agreement with a supervising physician, may prescribe drugs and devices.

(2) All such prescriptions and prescription container labels shall bear the name of the physician assistant. A physician assistant who prescribes controlled substances listed in Schedule II, III, IV, or V of section 28-405 shall obtain a federal Drug Enforcement Administration registration number. A physician assistant may dispense drug samples to patients and may request, receive, or sign for drug samples.

(3) A physician assistant, under a collaborative agreement with a supervising physician, may plan and initiate a therapeutic regimen, which includes ordering and prescribing nonpharmacological interventions, including, but not limited to, durable medical equipment, nutrition, blood and blood products, and diagnostic support services, such as home health care, hospice, physical therapy, and occupational therapy.

Source: Laws 1985, LB 132, § 15; Laws 1992, LB 1019, § 41; Laws 1999, LB 379, § 4; Laws 1999, LB 828, § 94; Laws 2005, LB 175, § 1; R.S.Supp.,2006, § 71-1,107.30; Laws 2007, LB463, § 713; Laws 2009, LB195, § 46; Laws 2020, LB755, § 16.

Cross References

Schedules of controlled substances, see section 28-405.

38-2056 Physician Assistant Committee; created; membership; powers and duties; per diem; expenses.

(1) There is hereby created the Physician Assistant Committee which shall review and make recommendations to the board regarding all matters relating to physician assistants that come before the board. Such matters shall include, but not be limited to, (a) applications for licensure, (b) physician assistant education, (c) scope of practice, (d) proceedings arising pursuant to sections 38-178 and 38-179, (e) physician assistant licensure requirements, and (f) continuing competency. The committee shall be directly responsible to the board.

(2) The committee shall be appointed by the State Board of Health. The committee shall be composed of two physician assistants, one supervising physician, one member of the Board of Medicine and Surgery who shall be a nonvoting member of the committee, and one public member. The chairperson of the committee shall be elected by a majority vote of the committee members.

(3) At the expiration of the four-year terms of the members serving on December 1, 2008, appointments shall be for five-year terms. Members shall serve no more than two consecutive full five-year terms. Reappointments shall be made by the State Board of Health.

(4) The committee shall meet on a regular basis and committee members shall, in addition to necessary traveling and lodging expenses, receive a per diem for each day actually engaged in the discharge of his or her duties, including compensation for the time spent in traveling to and from the place of conducting business. Traveling and lodging expenses shall be reimbursed on the same basis as provided in sections 81-1174 to 81-1177. The compensation shall not exceed fifty dollars per day and shall be determined by the committee with the approval of the department.

Source: Laws 1973, LB 101, § 11; R.S.Supp.,1973, § 85-179.14; Laws 1985, LB 132, § 10; Laws 1996, LB 1108, § 11; Laws 1999, LB 828, § 93; Laws 2002, LB 1021, § 18; R.S.1943, (2003), § 71-1,107.25; Laws 2007, LB463, § 714; Laws 2020, LB755, § 17.

38-2058 Acupuncture; license required; standard of care.

It is unlawful to practice acupuncture on a person in this state unless the acupuncturist is licensed to practice acupuncture under the Uniform Credentialing Act. An acupuncturist licensed under the Uniform Credentialing Act shall provide the same standard of care to patients as that provided by a person licensed under the Uniform Credentialing Act to practice medicine and surgery, osteopathy, or osteopathic medicine and surgery. An acupuncturist licensed under the Uniform Credentialing Act shall refer a patient to an appropriate practitioner when the problem of the patient is beyond the training, experience, or competence of the acupuncturist.

Source: Laws 2001, LB 270, § 10; R.S.1943, (2003), § 71-1,346; Laws 2007, LB463, § 716; Laws 2017, LB19, § 1.

38-2063 Repealed. Laws 2019, LB29, § 5.

38-2064 Perinatal mental health disorders; referral network; questionnaire.

The board may work with accredited hospitals and licensed health care professionals and may create a referral network in Nebraska to develop policies, procedures, information, and educational materials to meet each of the following requirements concerning perinatal mental health disorders:

(1) A licensed health care professional providing prenatal care may:

(a) Provide education to a pregnant patient and, if possible and with permission, to the patient's family about perinatal mental health disorders in accordance with the formal opinions and recommendations of the American College of Obstetricians and Gynecologists; and

(b) Invite each pregnant patient to complete a questionnaire in accordance with the formal opinions and recommendations of the American College of Obstetricians and Gynecologists. Screening for perinatal mental health disorders may be repeated when, in the professional judgment of the licensed health care professional, the patient is at increased risk for developing a perinatal mental health disorder;

(2) A licensed health care professional providing postnatal care may invite each postpartum patient to complete a questionnaire and, if completed, shall review the questionnaire in accordance with the formal opinions and recommendations of the American College of Obstetricians and Gynecologists; and

(3) A licensed health care professional providing pediatric care to an infant may invite the infant's mother to complete a questionnaire at any well-child checkup occurring during the first year of life at which the mother is present and, if completed, shall review the questionnaire in accordance with the formal opinions and recommendations of the American Academy of Pediatrics, in order to ensure that the health and well-being of the infant are not compromised by an undiagnosed perinatal mental health disorder in the mother.

Source: Laws 2022, LB905, § 15.
Effective date July 21, 2022.

ARTICLE 21

MENTAL HEALTH PRACTICE ACT

Section

Section
38-2136. Mental health practitioners; confidentiality; exception.
38-2137. Mental health practitioner; duty to warn of patient's threatened violent behavior; limitation on liability.
38-2138. Code of ethics; board; duties; duty to report violations.
38-2139. Additional grounds for disciplinary action.

38-2101 Act, how cited.

Sections 38-2101 to 38-2139 shall be known and may be cited as the Mental Health Practice Act.

Source: Laws 2007, LB247, § 72; Laws 2007, LB463, § 720; Laws 2022, LB752, § 10.
Effective date July 21, 2022.

38-2104 Approved educational program, defined.

(1) Approved educational program means a program of education and training accredited by an agency listed in subsection (2) of this section or approved by the board. Such approval may be based on the program's accreditation by an accrediting agency with requirements similar to an agency listed in subsection (2) of this section or on standards established by the board in the manner and form provided in section 38-133.

(2) Approved educational program includes a program of education and training accredited by:

(a) The Commission on Accreditation for Marriage and Family Therapy Education;

(b) The Council for Accreditation of Counseling and Related Educational Programs;

(c) The Council on Rehabilitation Education;

(d) The Council on Social Work Education; or

(e) The American Psychological Association for a doctoral degree program enrolled in by a person who has a master's degree or its equivalent in psychology.

Source: Laws 1986, LB 286, § 12; R.S.1943, (1990), § 71-1,255; Laws 1993, LB 669, § 16; R.S.1943, (2003), § 71-1,297; Laws 2007, LB463, § 723; Laws 2018, LB1034, § 32.

38-2112 Consultation, defined.

Consultation means a professional collaborative relationship which is between a licensed mental health practitioner and a consultant who is a psychologist licensed to engage in the practice of psychology in this state as provided in section 38-3111 or as provided in similar provisions of the Psychology Interjurisdictional Compact, a qualified physician, a licensed independent mental health practitioner, or a professional counselor holding a privilege to practice in Nebraska under the Licensed Professional Counselors Interstate Compact and in which (1) the consultant makes a diagnosis based on information supplied by the licensed mental health practitioner and any additional assessment deemed necessary by the consultant and (2) the consultant and the licensed mental health practitioner jointly develop a treatment plan which

indicates the responsibility of each professional for implementing elements of the plan, updating the plan, and assessing the client's progress.

Source: Laws 1993, LB 669, § 24; Laws 1994, LB 1210, § 95; R.S.1943, (2003), § 71-1,305; Laws 2007, LB463, § 731; Laws 2008, LB1108, § 1; Laws 2018, LB1034, § 33; Laws 2022, LB752, § 11.
Effective date July 21, 2022.

Cross References

Licensed Professional Counselors Interstate Compact, see section 38-4201.
Psychology Interjurisdictional Compact, see section 38-3901.

38-2115 Mental health practice, defined; limitation on practice.

(1) Mental health practice means the provision of treatment, assessment, psychotherapy, counseling, or equivalent activities to individuals, couples, families, or groups for behavioral, cognitive, social, mental, or emotional disorders, including interpersonal or personal situations.

(2) Mental health practice does not include:

(a) The practice of psychology or medicine;

(b) Prescribing drugs or electroconvulsive therapy;

(c) Treating physical disease, injury, or deformity;

(d) Diagnosing major mental illness or disorder except in consultation with a qualified physician, a psychologist licensed to engage in the practice of psychology in this state as provided in section 38-3111 or as provided in similar provisions of the Psychology Interjurisdictional Compact, a licensed independent mental health practitioner, or a professional counselor holding a privilege to practice in Nebraska under the Licensed Professional Counselors Interstate Compact;

(e) Measuring personality or intelligence for the purpose of diagnosis or treatment planning;

(f) Using psychotherapy with individuals suspected of having major mental or emotional disorders except in consultation with a qualified physician, a licensed psychologist, or a licensed independent mental health practitioner; or

(g) Using psychotherapy to treat the concomitants of organic illness except in consultation with a qualified physician or licensed psychologist.

(3) Mental health practice includes the initial assessment of organic mental or emotional disorders for the purpose of referral or consultation.

(4) Nothing in sections 38-2114, 38-2118, and 38-2119 shall be deemed to constitute authorization to engage in activities beyond those described in this section. Persons who are certified under the Mental Health Practice Act but who do not hold a license under section 38-2122 or a privilege to practice in Nebraska as a professional counselor under the Licensed Professional Counselors Interstate Compact shall not engage in mental health practice.

Source: Laws 1993, LB 669, § 26; Laws 1994, LB 1210, § 96; R.S.1943, (2003), § 71-1,307; Laws 2007, LB247, § 40; Laws 2007, LB463, § 733; Laws 2008, LB1108, § 2; Laws 2018, LB1034, § 34; Laws 2022, LB752, § 12.
Effective date July 21, 2022.

Cross References

Licensed Professional Counselors Interstate Compact, see section 38-4201.
Psychology Interjurisdictional Compact, see section 38-3901.

38-2116 Mental health practitioner, independent mental health practitioner, defined; use of titles.

(1)(a) Mental health practitioner means a person who holds himself or herself out as a person qualified to engage in mental health practice or a person who offers or renders mental health practice services.

(b) Independent mental health practitioner means a person who holds himself or herself out as a person qualified to engage in independent mental health practice or a person who offers or renders independent mental health practice services.

(2)(a) A person who is licensed as a mental health practitioner and certified as a master social worker may use the title licensed clinical social worker.

(b) A person who is licensed as a mental health practitioner and certified as a professional counselor may use the title licensed professional counselor.

(c) A person who is licensed as a mental health practitioner and certified as a marriage and family therapist may use the title licensed marriage and family therapist.

(d) No person shall use the title licensed clinical social worker, licensed professional counselor, or licensed marriage and family therapist unless he or she is licensed and certified as provided in this subsection.

(3)(a) A person who is licensed as an independent mental health practitioner and certified as a master social worker may use the title licensed independent clinical social worker.

(b) A person who is licensed as an independent mental health practitioner and certified as a professional counselor or who holds a privilege to practice in Nebraska as a professional counselor under the Licensed Professional Counselors Interstate Compact may use the title licensed independent professional counselor.

(c) A person who is licensed as an independent mental health practitioner and certified as a marriage and family therapist may use the title licensed independent marriage and family therapist.

(d) No person shall use the title licensed independent clinical social worker, licensed independent professional counselor, or licensed independent marriage and family therapist unless he or she is licensed and certified or holds a privilege as provided in this subsection.

(4) A mental health practitioner shall not represent himself or herself as a physician or psychologist and shall not represent his or her services as being medical or psychological in nature. An independent mental health practitioner shall not represent himself or herself as a physician or psychologist.

Source: Laws 1993, LB 669, § 27; R.S.1943, (2003), § 71-1,308; Laws 2007, LB247, § 41; Laws 2007, LB463, § 734; Laws 2008, LB1108, § 3; Laws 2022, LB752, § 13.
Effective date July 21, 2022.

Cross References

Licensed Professional Counselors Interstate Compact, see section 38-4201.

38-2117 Mental health program, defined.

Mental health program means an approved educational program in a field such as, but not limited to, social work, professional counseling, marriage and family therapy, human development, psychology, or family relations, the content of which contains an emphasis on therapeutic mental health and course work in psychotherapy and the assessment of mental disorders.

Source: Laws 1993, LB 669, § 28; R.S.1943, (2003), § 71-1,309; Laws 2007, LB463, § 735; Laws 2018, LB1034, § 35.

38-2121 License; required; exceptions.

The requirement to be licensed as a mental health practitioner pursuant to the Uniform Credentialing Act in order to engage in mental health practice shall not be construed to prevent:

(1) Qualified members of other professions who are licensed, certified, or registered by this state from practice of any mental health activity consistent with the scope of practice of their respective professions;

(2) Alcohol and drug counselors who are licensed by the Division of Public Health of the Department of Health and Human Services and problem gambling counselors who are certified by the Department of Health and Human Services prior to July 1, 2013, or by the Nebraska Commission on Problem Gambling beginning on July 1, 2013, from practicing their profession. Such exclusion shall include students training and working under the supervision of an individual qualified under section 38-315;

(3) Any person employed by an agency, bureau, or division of the federal government from discharging his or her official duties, except that if such person engages in mental health practice in this state outside the scope of such official duty or represents himself or herself as a licensed mental health practitioner, he or she shall be licensed;

(4) Teaching or the conduct of research related to mental health services or consultation with organizations or institutions if such teaching, research, or consultation does not involve the delivery or supervision of mental health services to individuals or groups of individuals who are themselves, rather than a third party, the intended beneficiaries of such services;

(5) The delivery of mental health services by:

(a) Students, interns, or residents whose activities constitute a part of the course of study for medicine, psychology, nursing, school psychology, social work, clinical social work, counseling, marriage and family therapy, or other health care or mental health service professions; or

(b) Individuals seeking to fulfill postgraduate requirements for licensure when those individuals are supervised by a licensed professional consistent with the applicable regulations of the appropriate professional board;

(6) Duly recognized members of the clergy from providing mental health services in the course of their ministerial duties and consistent with the codes of ethics of their profession if they do not represent themselves to be mental health practitioners;

(7) The incidental exchange of advice or support by persons who do not represent themselves as engaging in mental health practice, including participation in self-help groups when the leaders of such groups receive no compen-

sation for their participation and do not represent themselves as mental health practitioners or their services as mental health practice;

(8) Any person providing emergency crisis intervention or referral services or limited services supporting a service plan developed by and delivered under the supervision of a licensed mental health practitioner, licensed physician, or a psychologist licensed to engage in the practice of psychology if such persons are not represented as being licensed mental health practitioners or their services are not represented as mental health practice;

(9) Staff employed in a program designated by an agency of state government to provide rehabilitation and support services to individuals with mental illness from completing a rehabilitation assessment or preparing, implementing, and evaluating an individual rehabilitation plan; or

(10) A person who holds a privilege to practice in Nebraska as a professional counselor under the Licensed Professional Counselors Interstate Compact from acting as authorized by such privilege.

Source: Laws 1993, LB 669, § 31; Laws 1994, LB 1210, § 99; Laws 1995, LB 275, § 5; Laws 1996, LB 1044, § 479; Laws 2004, LB 1083, § 114; R.S.Supp.,2006, § 71-1,312; Laws 2007, LB296, § 361; Laws 2007, LB463, § 739; Laws 2013, LB6, § 11; Laws 2022, LB752, § 14.
Effective date July 21, 2022.

Cross References

Licensed Professional Counselors Interstate Compact, see section 38-4201.

38-2122 Mental health practitioner; qualifications.

A person shall be qualified to be a licensed mental health practitioner if he or she:

(1) Has received a master's degree, a doctoral degree, or the equivalent of a master's degree, as determined by the board, that consists of course work and training which was primarily therapeutic mental health in content and included a practicum or internship and was from an approved educational program. Practicums or internships completed after September 1, 1995, must include a minimum of three hundred clock hours of direct client contact under the supervision of a qualified physician, a licensed psychologist, or a licensed mental health practitioner;

(2) Has successfully completed three thousand hours of supervised experience in mental health practice of which fifteen hundred hours were in direct client contact in a setting where mental health services were being offered and the remaining fifteen hundred hours included, but were not limited to, review of client records, case conferences, direct observation, and video observation. For purposes of this subdivision, supervised means monitored by a qualified physician, a licensed clinical psychologist, or a certified master social worker, certified professional counselor, or marriage and family therapist qualified for certification on September 1, 1994, for any hours completed before such date or by a qualified physician, a psychologist licensed to engage in the practice of psychology, or a licensed mental health practitioner for any hours completed after such date, including evaluative face-to-face contact for a minimum of one hour per week. Such three thousand hours shall be accumulated after comple-

tion of the master's degree, doctoral degree, or equivalent of the master's degree; and

(3) Has satisfactorily passed an examination approved by the board. An individual who by reason of educational background is eligible for certification as a certified master social worker, a certified professional counselor, or a certified marriage and family therapist shall take and pass a certification examination approved by the board before becoming licensed as a mental health practitioner.

Source: Laws 1993, LB 669, § 33; Laws 1994, LB 1210, § 100; Laws 1995, LB 406, § 31; Laws 1997, LB 622, § 84; Laws 1997, LB 752, § 160; R.S.1943, (2003), § 71-1,314; Laws 2007, LB463, § 740; Laws 2018, LB1034, § 36.

Cross References

Credentialing, general requirements and issuance procedures, see section 38-121 et seq.

38-2123 Provisional mental health practitioner license; qualifications; application; expiration; disclosure required.

(1) A person who needs to obtain the required three thousand hours of supervised experience in mental health practice as specified in section 38-2122 to qualify for a mental health practitioner license shall obtain a provisional mental health practitioner license. To qualify for a provisional mental health practitioner license, such person shall:

(a) Have a master's degree, a doctoral degree, or the equivalent of a master's degree, as determined by the board, that consists of course work and training which was primarily therapeutic mental health in content and included a practicum or internship and was from a mental health program as specified in section 38-2122;

(b) Apply prior to earning the three thousand hours of supervised experience; and

(c) Pay the provisional mental health practitioner license fee.

(2) The rules and regulations approved by the board and adopted and promulgated by the department shall not require that the applicant have a supervisor in place at the time of application for a provisional mental health practitioner license.

(3) A provisional mental health practitioner license shall expire upon receipt of licensure as a mental health practitioner or five years after the date of issuance, whichever comes first.

(4) A person who holds a provisional mental health practitioner license shall inform all clients that he or she holds a provisional license and is practicing mental health under supervision and shall identify the supervisor. Failure to make such disclosure is a ground for discipline as set forth in section 38-2139.

Source: Laws 1997, LB 622, § 81; Laws 2003, LB 242, § 73; R.S.1943, (2003), § 71-1,314.01; Laws 2007, LB463, § 741; Laws 2018, LB1034, § 37.

38-2124 Independent mental health practitioner; qualifications.

(1) No person shall hold himself or herself out as an independent mental health practitioner unless he or she is licensed as such by the department or

unless he or she holds a privilege to practice in Nebraska as a professional counselor under the Licensed Professional Counselors Interstate Compact. A person shall be qualified to be a licensed independent mental health practitioner if he or she:

(a)(i)(A) Graduated with a master's or doctoral degree from an educational program which is accredited, at the time of graduation or within four years after graduation, by the Council for Accreditation of Counseling and Related Educational Programs, the Commission on Accreditation for Marriage and Family Therapy Education, or the Council on Social Work Education or (B) graduated with a master's or doctoral degree from an educational program deemed by the board to be equivalent in didactic content and supervised clinical experience to an accredited program;

(ii)(A) Is licensed as a licensed mental health practitioner or (B) is licensed as a provisional mental health practitioner and has satisfactorily passed an examination approved by the board pursuant to subdivision (3) of section 38-2122; and

(iii) Has three thousand hours of experience supervised by a licensed physician, a licensed psychologist, or a licensed independent mental health practitioner, one-half of which is comprised of experience with clients diagnosed under the major mental illness or disorder category; or

(b)(i) Graduated from an educational program which does not meet the requirements of subdivision (a)(i) of this subsection;

(ii)(A) Is licensed as a licensed mental health practitioner or (B) is licensed as a provisional mental health practitioner and has satisfactorily passed an examination approved by the board pursuant to subdivision (3) of section 38-2122; and

(iii) Has seven thousand hours of experience obtained in a period of not less than ten years and supervised by a licensed physician, a licensed psychologist, or a licensed independent mental health practitioner, one-half of which is comprised of experience with clients diagnosed under the major mental illness or disorder category.

(2) The experience required under this section shall be documented in a reasonable form and manner as prescribed by the board, which may consist of sworn statements from the applicant and his or her employers and supervisors. The board shall not in any case require the applicant to produce individual case records.

(3) The application for an independent mental health practitioner license shall include the applicant's social security number.

Source: Laws 2007, LB247, § 42; R.S.Supp.,2007, § 71-1,314.02; Laws 2008, LB1108, § 4; Laws 2018, LB1034, § 38; Laws 2022, LB752, § 15.
Effective date July 21, 2022.

Cross References

Credentialing, general requirements and issuance procedures, see section 38-121 et seq.
Licensed Professional Counselors Interstate Compact, see section 38-4201.

38-2125 Reciprocity; privilege to practice under compact; military spouse; temporary license.

(1) The department, with the recommendation of the board, may issue a license based on licensure in another jurisdiction to an individual who:

(a) Meets the licensure requirements of the Mental Health Practice Act or substantially equivalent requirements as determined by the department, with the recommendation of the board; or

(b) Has been in active practice in the appropriate discipline for at least five years following initial licensure or certification in another jurisdiction and has passed the Nebraska jurisprudence examination.

(2) The department may issue a license based on a privilege to practice in Nebraska under the Licensed Professional Counselors Interstate Compact as provided in section 5 of such compact.

(3) An applicant for a license who is a military spouse may apply for a temporary license as provided in section 38-129.01.

Source: Laws 2007, LB463, § 742; Laws 2017, LB88, § 65; Laws 2018, LB1034, § 39; Laws 2022, LB752, § 17.
Effective date July 21, 2022.

Cross References

Licensed Professional Counselors Interstate Compact, see section 38-4201.

38-2130 Certified marriage and family therapist, certified professional counselor, social worker; reciprocity; military spouse; temporary certificate.

The department, with the recommendation of the board, may issue a certificate based on licensure in another jurisdiction to represent oneself as a certified marriage and family therapist, a certified professional counselor, or a social worker to an individual who meets the requirements of the Mental Health Practice Act relating to marriage and family therapy, professional counseling, or social work, as appropriate, or substantially equivalent requirements as determined by the department, with the recommendation of the board. An applicant for a certificate who is a military spouse may apply for a temporary certificate as provided in section 38-129.01.

Source: Laws 2007, LB463, § 747; Laws 2017, LB88, § 66.

38-2132.01 Certified professional counselor; eligibility for licensure under compact.

The only persons credentialed pursuant to the Mental Health Practice Act that are eligible to be licensed professional counselors under the Licensed Professional Counselors Interstate Compact are licensed independent mental health practitioners with a certification in professional counseling.

Source: Laws 2022, LB752, § 16.
Effective date July 21, 2022.

Cross References

Licensed Professional Counselors Interstate Compact, see section 38-4201.

38-2136 Mental health practitioners; confidentiality; exception.

No person who is licensed or certified pursuant to the Mental Health Practice Act or who holds a privilege to practice in Nebraska as a professional counselor under the Licensed Professional Counselors Interstate Compact shall disclose

any information he or she may have acquired from any person consulting him or her in his or her professional capacity except:

(1) With the written consent of the person or, in the case of death or disability, of the person's personal representative, any other person authorized to sue on behalf of the person, or the beneficiary of an insurance policy on the person's life, health, or physical condition. When more than one person in a family receives therapy conjointly, each such family member who is legally competent to execute a waiver shall agree to the waiver referred to in this subdivision. Without such a waiver from each family member legally competent to execute a waiver, a practitioner shall not disclose information received from any family member who received therapy conjointly;

(2) As such privilege against disclosure is limited by the laws of the State of Nebraska or as the board may determine by rule and regulation;

(3) When the person waives the privilege against disclosure by bringing charges against the licensee; or

(4) When there is a duty to warn under the limited circumstances set forth in section 38-2137.

Source: Laws 1993, LB 669, § 54; Laws 1994, LB 1210, § 109; Laws 1999, LB 828, § 150; R.S.1943, (2003), § 71-1,335; Laws 2007, LB247, § 46; Laws 2007, LB463, § 753; Laws 2022, LB752, § 18.
Effective date July 21, 2022.

Cross References

Licensed Professional Counselors Interstate Compact, see section 38-4201.

38-2137 Mental health practitioner; duty to warn of patient's threatened violent behavior; limitation on liability.

(1) There shall be no monetary liability on the part of, and no cause of action shall arise against, any person who is licensed or certified pursuant to the Mental Health Practice Act or who holds a privilege to practice in Nebraska as a professional counselor under the Licensed Professional Counselors Interstate Compact for failing to warn of and protect from a patient's threatened violent behavior or failing to predict and warn of and protect from a patient's violent behavior except when the patient has communicated to the mental health practitioner a serious threat of physical violence against himself, herself, or a reasonably identifiable victim or victims.

(2) The duty to warn of or to take reasonable precautions to provide protection from violent behavior shall arise only under the limited circumstances specified in subsection (1) of this section. The duty shall be discharged by the mental health practitioner if reasonable efforts are made to communicate the threat to the victim or victims and to a law enforcement agency.

(3) No monetary liability and no cause of action shall arise under section 38-2136 against a licensee or certificate or privilege holder for information disclosed to third parties in an effort to discharge a duty arising under subsection (1) of this section according to the provisions of subsection (2) of this section.

Source: Laws 1993, LB 669, § 55; R.S.1943, (2003), § 71-1,336; Laws 2007, LB247, § 47; Laws 2007, LB463, § 754; Laws 2022, LB752, § 19.
Effective date July 21, 2022.

Cross References

Licensed Professional Counselors Interstate Compact, see section 38-4201.

38-2138 Code of ethics; board; duties; duty to report violations.

(1) The board shall adopt a code of ethics which is essentially in agreement with the current code of ethics of the national and state associations of the specialty professions included in mental health practice and which the board deems necessary to assure adequate protection of the public in the provision of mental health services to the public. A violation of the code of ethics shall be considered an act of unprofessional conduct.

(2) The board shall ensure through the code of ethics and the rules and regulations adopted and promulgated under the Mental Health Practice Act that persons licensed or certified pursuant to the act or holding privileges to practice in Nebraska as professional counselors under the Licensed Professional Counselors Interstate Compact limit their practice to demonstrated areas of competence as documented by relevant professional education, training, and experience.

(3) Intentional failure by a mental health practitioner to report known acts of unprofessional conduct by a mental health practitioner to the department or the board shall be considered an act of unprofessional conduct and shall be grounds for disciplinary action under appropriate sections of the Uniform Credentialing Act unless the mental health practitioner has acquired such knowledge in a professional relationship otherwise protected by confidentiality.

Source: Laws 1993, LB 669, § 56; Laws 1999, LB 828, § 151; R.S.1943, (2003), § 71-1,337; Laws 2007, LB247, § 48; Laws 2007, LB463, § 755; Laws 2022, LB752, § 20.
Effective date July 21, 2022.

Cross References

Licensed Professional Counselors Interstate Compact, see section 38-4201.

38-2139 Additional grounds for disciplinary action.

In addition to the grounds for disciplinary action found in sections 38-178 and 38-179, a credential or privilege to practice in Nebraska subject to the Mental Health Practice Act may be denied, refused renewal, limited, revoked, or suspended or have other disciplinary measures taken against it in accordance with section 38-196 when the applicant, licensee, or privilege holder fails to disclose the information required by section 38-2123 or 38-2129 or the Licensed Professional Counselors Interstate Compact.

Source: Laws 2007, LB463, § 756; Laws 2022, LB752, § 21.
Effective date July 21, 2022.

Cross References

Licensed Professional Counselors Interstate Compact, see section 38-4201.

ARTICLE 22

NURSE PRACTICE ACT

Section
38-2201. Act, how cited.
38-2211. Practice of nursing by a licensed practical nurse, defined.

Section
38-2216. Board; rules and regulations; powers and duties; enumerated.
38-2220. Nursing; license; application; requirements.
38-2223. Registered nurse; licensed practical nurse; reciprocity; continuing competency requirements; military spouse; temporary license.
38-2225. Nursing; temporary license; issuance; conditions; how long valid; extension.
38-2237. Intravenous therapy; requirements.
38-2238. Licenses issued under Licensed Practical Nurse-Certified Practice Act; how treated.

38-2201 Act, how cited.

Sections 38-2201 to 38-2238 shall be known and may be cited as the Nurse Practice Act.

Source: Laws 1995, LB 563, § 4; Laws 2000, LB 523, § 2; R.S.1943, (2003), § 71-1,132.01; Laws 2007, LB463, § 757; Laws 2017, LB88, § 67.

38-2211 Practice of nursing by a licensed practical nurse, defined.

(1) Practice of nursing by a licensed practical nurse means the assumption of responsibilities and accountability for nursing practice in accordance with knowledge and skills acquired through an approved program of practical nursing. A licensed practical nurse may function at the direction of a licensed practitioner or a registered nurse.

(2) Such responsibilities and performances of acts must utilize procedures leading to predictable outcomes and must include, but not be limited to:

(a) Contributing to the assessment of the health status of individuals and groups;

(b) Participating in the development and modification of a plan of care;

(c) Implementing the appropriate aspects of the plan of care;

(d) Maintaining safe and effective nursing care rendered directly or indirectly;

(e) Participating in the evaluation of response to interventions;

(f) Providing intravenous therapy if the licensed practical nurse meets the requirements of section 38-2237; and

(g) Assigning and directing nursing interventions that may be performed by others and that do not conflict with the Nurse Practice Act.

Source: Laws 2007, LB463, § 767; Laws 2017, LB88, § 68.

38-2216 Board; rules and regulations; powers and duties; enumerated.

In addition to the duties listed in sections 38-126 and 38-161, the board shall:

(1) Adopt reasonable and uniform standards for nursing practice and nursing education;

(2) If requested, issue or decline to issue advisory opinions defining acts which in the opinion of the board are or are not permitted in the practice of nursing. Such opinions shall be considered informational only and are nonbinding. Practice-related information provided by the board to registered nurses or licensed practical nurses licensed under the Nurse Practice Act shall be made available by the board on request to nurses practicing in this state under a license issued by a state that is a party to the Nurse Licensure Compact;

(3) Establish rules and regulations for approving and classifying programs preparing nurses, taking into consideration administrative and organizational patterns, the curriculum, students, student services, faculty, and instructional resources and facilities, and provide surveys for each educational program as determined by the board;

(4) Approve educational programs which meet the requirements of the Nurse Practice Act;

(5) Keep a record of all its proceedings and compile an annual report for distribution;

(6) Adopt rules and regulations establishing standards for delegation of nursing activities, including training or experience requirements, competency determination, and nursing supervision;

(7) Collect data regarding nursing;

(8) Provide consultation and conduct conferences, forums, studies, and research on nursing practice and education;

(9) Join organizations that develop and regulate the national nursing licensure examinations and exclusively promote the improvement of the legal standards of the practice of nursing for the protection of the public health, safety, and welfare; and

(10) Administer the Nurse Licensure Compact. In reporting information to the coordinated licensure information system under Article VII of the compact, the department may disclose personal identifying information about a nurse, including his or her social security number.

Source: Laws 1953, c. 245, § 5, p. 839; Laws 1959, c. 310, § 3, p. 1172; Laws 1965, c. 414, § 1, p. 1322; Laws 1975, LB 422, § 6; Laws 1976, LB 692, § 1; Laws 1978, LB 653, § 24; Laws 1978, LB 658, § 1; Laws 1980, LB 847, § 3; Laws 1981, LB 379, § 36; Laws 1991, LB 703, § 19; Laws 1995, LB 563, § 15; Laws 1996, LB 414, § 6; Laws 1999, LB 594, § 36; Laws 2000, LB 523, § 6; Laws 2000, LB 1115, § 17; Laws 2002, LB 1021, § 19; Laws 2002, LB 1062, § 22; Laws 2005, LB 256, § 27; R.S.Supp.,2006, § 71-1,132.11; Laws 2007, LB463, § 772; Laws 2017, LB88, § 70.

Cross References

Nurse Licensure Compact, see sections 71-1795 to 71-1795.02.

38-2220 Nursing; license; application; requirements.

An applicant for a license to practice as a registered nurse shall submit satisfactory proof that the applicant has completed four years of high school study or its equivalent as determined by the board and has completed the basic professional curriculum in and holds a diploma from an accredited program of registered nursing approved by the board. There is no minimum age requirement for licensure as a registered nurse. Graduates of foreign nursing programs shall pass a board-approved examination and, unless a graduate of a nursing program in Canada, provide a satisfactory evaluation of the education program attended by the applicant from a board-approved foreign credentials evaluation service.

Source: Laws 1953, c. 245, § 7, p. 841; Laws 1965, c. 414, § 2, p. 1323; Laws 1974, LB 811, § 12; Laws 1975, LB 422, § 8; Laws 1980, LB 847, § 4; Laws 1989, LB 344, § 6; Laws 1995, LB 563, § 17;

Laws 1997, LB 752, § 157; Laws 1999, LB 594, § 37; Laws 2002, LB 1062, § 23; Laws 2003, LB 242, § 44; R.S.1943, (2003), § 71-1,132.13; Laws 2007, LB463, § 776; Laws 2017, LB88, § 71.

Cross References

Credentialing, general requirements and issuance procedures, see section 38-121 et seq.

38-2223 Registered nurse; licensed practical nurse; reciprocity; continuing competency requirements; military spouse; temporary license.

(1) An applicant for a license as a registered nurse or a licensed practical nurse based on licensure in another jurisdiction shall meet the continuing competency requirements as specified in rules and regulations adopted and promulgated by the board in addition to the standards set by the board pursuant to section 38-126.

(2) An applicant who is a military spouse may apply for a temporary license as provided in section 38-129.01.

Source: Laws 1953, c. 245, § 8(2), p. 841; Laws 1975, LB 422, § 10; Laws 1980, LB 847, § 6; Laws 1995, LB 563, § 19; R.S.1943, (2003), § 71-1,132.15; Laws 2007, LB463, § 779; Laws 2017, LB88, § 72.

38-2225 Nursing; temporary license; issuance; conditions; how long valid; extension.

(1) A temporary license to practice nursing may be issued to:

(a) An individual seeking to obtain licensure or reinstatement of his or her license as a registered nurse or licensed practical nurse when he or she has not practiced nursing in the last five years. A temporary license issued under this subdivision is valid only for the duration of the review course of study and only for nursing practice required for the review course of study;

(b) Graduates of approved programs of nursing who have passed the licensure examination, pending the completion of application for Nebraska licensure as a registered nurse or licensed practical nurse. A temporary license issued under this subdivision is valid for a period not to exceed sixty days;

(c) Nurses currently licensed in another state as either a registered nurse or a licensed practical nurse who have graduated from an educational program approved by the board, pending completion of application for Nebraska licensure as a registered nurse or licensed practical nurse. A temporary license issued under this subdivision shall be valid for a period not to exceed sixty days; or

(d) Military spouses as provided in section 38-129.01.

(2) A temporary license issued pursuant to subdivision (1)(a), (b), or (c) of this section may be extended by the department, with the recommendation of the board.

Source: Laws 1953, c. 245, § 8(3), p. 841; Laws 1975, LB 422, § 11; Laws 1980, LB 847, § 7; Laws 1994, LB 1210, § 58; Laws 1995, LB 563, § 20; Laws 2002, LB 1062, § 24; R.S.1943, (2003), § 71-1,132.16; Laws 2007, LB463, § 781; Laws 2017, LB88, § 73.

38-2237 Intravenous therapy; requirements.

(1) A licensed practical nurse may provide intravenous therapy if he or she (a) holds a valid license issued before May 1, 2016, by the department pursuant to the Licensed Practical Nurse-Certified Practice Act as such act existed on such date, (b) graduates from an approved program of practical nursing on or after May 1, 2016, or (c) holds a valid license as a licensed practical nurse issued on or before May 1, 2016, and completes, within five years after August 24, 2017, (i) an eight-hour didactic course in intravenous therapy which shall include, but not be limited to, peripheral intravenous lines, central lines, and legal aspects of intravenous therapy and (ii) an approved employer-specific intravenous therapy skills course.

(2) This section does not require a licensed practical nurse who does not provide intravenous therapy in the course of employment to complete the course described in subdivision (1)(c)(ii) of this section.

Source: Laws 2017, LB88, § 69.

38-2238 Licenses issued under Licensed Practical Nurse-Certified Practice Act; how treated.

On and after November 1, 2017, all licenses issued pursuant to the Licensed Practical Nurse-Certified Practice Act before such date shall be renewed as licenses to practice as a licensed practical nurse pursuant to section 38-2221.

Source: Laws 2017, LB88, § 74.

ARTICLE 23

NURSE PRACTITIONER PRACTICE ACT

Section

38-2305 Approved nurse practitioner program, defined.

Approved nurse practitioner program means a program which:

(1) Is a graduate-level program accredited by a national accrediting body recognized by the United States Department of Education;

(2) Includes, but is not limited to, instruction in biological, behavioral, and health sciences relevant to practice as a nurse practitioner in a specific clinical area; and

(3) For the specialties of women's health and neonatal, grants a post-master certificate, master's degree, or doctoral degree for all applicants who graduated on or after July 1, 2007, and for all other specialties, grants a post-master certificate, master's degree, or doctoral degree for all applicants who graduated on or after July 19, 1996.

Source: Laws 1981, LB 379, § 14; Laws 1984, LB 724, § 12; Laws 1993, LB 536, § 67; Laws 1996, LB 414, § 22; Laws 2000, LB 1115, § 41; Laws 2005, LB 256, § 56; R.S.Supp.,2006, § 71-1717; Laws 2007, LB463, § 797; Laws 2017, LB88, § 75.

38-2314.01 Transition-to-practice agreement, defined.

Transition-to-practice agreement means a collaborative agreement for two thousand hours of initial practice between a nurse practitioner and a supervising provider which provides for the delivery of health care through a collaborative practice and which meets the requirements of section 38-2322.

Source: Laws 1984, LB 724, § 9; Laws 1996, LB 414, § 21; Laws 2000, LB 1115, § 39; Laws 2005, LB 256, § 54; R.S.Supp.,2006, § 71-1716.03; Laws 2007, LB463, § 802; R.S.1943, (2008), § 38-2310; Laws 2015, LB107, § 4; Laws 2017, LB88, § 76.

38-2316 Unlicensed person; acts permitted.

The Nurse Practitioner Practice Act does not prohibit the performance of activities of a nurse practitioner by a person who does not have a license or temporary license under the act if performed:

(1) In an emergency situation;

(2) By a legally qualified person from another state employed by the United States Government and performing official duties in this state; or

(3) By a person enrolled in an approved nurse practitioner program for the preparation of nurse practitioners as part of that approved program.

Source: Laws 1984, LB 724, § 25; Laws 1996, LB 414, § 40; Laws 2000, LB 1115, § 58; Laws 2005, LB 256, § 71; R.S.Supp.,2006, § 71-1726.01; Laws 2007, LB185, § 12; Laws 2007, LB463, § 808; Laws 2017, LB88, § 77.

38-2317 Nurse practitioner; licensure; requirements.

(1) An applicant for licensure under the Advanced Practice Registered Nurse Practice Act to practice as a nurse practitioner shall have:

(a) A license as a registered nurse in the State of Nebraska or the authority based upon the Nurse Licensure Compact to practice as a registered nurse in Nebraska;

(b) Evidence of having successfully completed a graduate-level program in the clinical specialty area of nurse practitioner practice, which program is accredited by a national accrediting body;

(c) Proof of having passed an examination pertaining to the specific nurse practitioner role in nursing adopted or approved by the board with the approval of the department. Such examination may include any recognized national credentialing examination for nurse practitioners conducted by an approved certifying body which administers an approved certification program; and

(d) Evidence of completion of two thousand hours of practice as a nurse practitioner which have been completed under a transition-to-practice agreement, under a collaborative agreement, under an integrated practice agreement, through independent practice, or under any combination of such agreements and practice, as allowed in this state or another state.

(2) If more than five years have elapsed since the completion of the nurse practitioner program or since the applicant has practiced in the specific nurse practitioner role, the applicant shall meet the requirements in subsection (1) of

this section and provide evidence of continuing competency as required by the board.

Source: Laws 1981, LB 379, § 19; Laws 1984, LB 724, § 20; Laws 1986, LB 926, § 55; Laws 1993, LB 536, § 70; Laws 1996, LB 414, § 30; Laws 1997, LB 752, § 173; Laws 2000, LB 1115, § 46; Laws 2002, LB 1021, § 57; Laws 2003, LB 242, § 101; Laws 2005, LB 256, § 59; R.S.Supp.,2006, § 71-1722; Laws 2007, LB185, § 6; Laws 2007, LB463, § 809; Laws 2017, LB88, § 78.

Cross References

Advanced Practice Registered Nurse Practice Act, see section 38-201.
Credentialing, general requirements and issuance procedures, see section 38-121 et seq.
Nurse Licensure Compact, see sections 71-1795 to 71-1795.02.

38-2318 Nurse practitioner; temporary license; requirements; military spouse; temporary license.

(1)(a) The department may grant a temporary license to practice as a nurse practitioner for up to one hundred twenty days upon application:

(i) To graduates of an approved nurse practitioner program pending results of the first credentialing examination following graduation;

(ii) To a nurse practitioner lawfully authorized to practice in another state pending completion of the application for a Nebraska license; and

(iii) To applicants for purposes of a reentry program or supervised practice as part of continuing competency activities established by the board.

(b) A temporary license issued pursuant to this subsection may be extended for up to one year with the approval of the board.

(2) An applicant who is a military spouse may apply for a temporary license as provided in section 38-129.01.

Source: Laws 1984, LB 724, § 22; Laws 1993, LB 536, § 72; Laws 1996, LB 414, § 37; Laws 2000, LB 1115, § 53; Laws 2002, LB 1021, § 59; Laws 2005, LB 256, § 66; R.S.Supp.,2006, § 71-1724.01; Laws 2007, LB185, § 11; Laws 2007, LB463, § 810; Laws 2017, LB88, § 79.

38-2322 Nurse practitioner; licensed on or before August 30, 2015; requirements; transition-to-practice agreement; contents.

(1)(a) A transition-to-practice agreement shall be a formal written agreement that provides that the nurse practitioner and the supervising provider practice collaboratively within the framework of their respective scopes of practice.

(b) The nurse practitioner and the supervising provider shall each be responsible for his or her individual decisions in managing the health care of patients through consultation, collaboration, and referral. The nurse practitioner and the supervising provider shall have joint responsibility for the delivery of health care to a patient based upon the scope of practice of the nurse practitioner and the supervising provider.

(c) The supervising provider shall be responsible for supervision of the nurse practitioner to ensure the quality of health care provided to patients.

(d) In order for a nurse practitioner to be a supervising provider for purposes of a transition-to-practice agreement, the nurse practitioner shall submit to the department evidence of completion of ten thousand hours of practice as a nurse

practitioner which have been completed under a transition-to-practice agreement, under a collaborative agreement, under an integrated practice agreement, through independent practice, or under any combination of such agreements or practice, as allowed in this state or another state.

(2) A nurse practitioner who was licensed in good standing in Nebraska on or before August 30, 2015, and had attained the equivalent of an initial two thousand hours of practice supervised by a physician or osteopathic physician shall be allowed to practice without a transition-to-practice agreement.

(3) For purposes of this section:

(a) Supervising provider means a physician, osteopathic physician, or nurse practitioner licensed and practicing in Nebraska and practicing in the same practice specialty, related specialty, or field of practice as the nurse practitioner being supervised; and

(b) Supervision means the ready availability of the supervising provider for consultation and direction of the activities of the nurse practitioner being supervised within such nurse practitioner's defined scope of practice.

Source: Laws 1996, LB 414, § 33; Laws 2000, LB 1115, § 49; Laws 2002, LB 1062, § 46; Laws 2005, LB 256, § 62; R.S.Supp.,2006, § 71-1723.02; Laws 2007, LB185, § 9; Laws 2007, LB463, § 814; Laws 2015, LB107, § 6; Laws 2017, LB88, § 80.

ARTICLE 24

NURSING HOME ADMINISTRATOR PRACTICE ACT

Section
38-2421. License; reciprocity; military spouse; temporary license.

38-2421 License; reciprocity; military spouse; temporary license.

The department may issue a license to any person who holds a current nursing home administrator license from another jurisdiction and is at least nineteen years old. An applicant for a license who is a military spouse may apply for a temporary license as provided in section 38-129.01.

Source: Laws 1988, LB 693, § 5; Laws 1989, LB 733, § 3; R.S.Supp.,1989, § 71-2041.04; Laws 1991, LB 455, § 2; Laws 1992, LB 1019, § 85; Laws 1999, LB 411, § 4; Laws 2002, LB 1062, § 57; R.S.1943, (2003), § 71-6056; Laws 2007, LB463, § 836; Laws 2017, LB88, § 81.

ARTICLE 25

OCCUPATIONAL THERAPY PRACTICE ACT

Section
38-2516. Occupational therapist; therapy assistant; licensure required; activities and services not prohibited.
38-2517. Occupational therapist; therapy assistant; temporary license; applicability of section.
38-2518. Occupational therapist; license; application; requirements.
38-2519. Occupational therapy assistant; license; application; requirements; term.
38-2521. Continuing competency requirements; waiver.
38-2523. Applicant for licensure; reciprocity; continuing competency requirements; military spouse; temporary license.

38-2516 Occupational therapist; therapy assistant; licensure required; activities and services not prohibited.

(1) No person may represent himself or herself to be a licensed occupational therapist or occupational therapy assistant unless the person is licensed in accordance with the Occupational Therapy Practice Act or has a compact privilege to practice in accordance with the Occupational Therapy Practice Interstate Compact.

(2) Nothing in the Occupational Therapy Practice Act shall be construed to prevent:

(a) Any person licensed in this state pursuant to the Uniform Credentialing Act from engaging in the profession or occupation for which he or she is licensed;

(b) The activities and services of any person employed as an occupational therapist or occupational therapy assistant who serves in the armed forces of the United States or the United States Public Health Service or who is employed by the United States Department of Veterans Affairs or other federal agencies, if their practice is limited to that service or employment;

(c) The activities and services of any person pursuing an accredited course of study leading to a degree or certificate in occupational therapy if such activities and services constitute a part of a supervised course of study and if such a person is designated by a title which clearly indicates his or her status as a student or trainee;

(d) The activities and services of any person fulfilling the supervised fieldwork experience requirements of sections 38-2518 and 38-2519 if such activities and services constitute a part of the experience necessary to meet the requirements of such sections; or

(e) Qualified members of other professions or occupations, including, but not limited to, recreation specialists or therapists, special education teachers, independent living specialists, work adjustment trainers, caseworkers, and persons pursuing courses of study leading to a degree or certification in such fields, from doing work similar to occupational therapy which is consistent with their training if they do not represent themselves by any title or description to be occupational therapists.

Source: Laws 1984, LB 761, § 32; Laws 1991, LB 2, § 14; Laws 2004, LB 1005, § 122; R.S.Supp.,2006, § 71-6104; Laws 2007, LB463, § 856; Laws 2022, LB752, § 22.
Effective date July 21, 2022.

Cross References

Occupational Therapy Practice Interstate Compact, see section 38-4301.

38-2517 Occupational therapist; therapy assistant; temporary license; applicability of section.

(1) Any person who has applied to take the examination under section 38-2518 or 38-2519 and who has completed the education and experience requirements of the Occupational Therapy Practice Act may be granted a temporary license to practice as an occupational therapist or an occupational therapy assistant. A temporary license shall allow the person to practice only in association with a licensed occupational therapist and shall be valid until the

date on which the results of the next licensure examination are available to the department. The temporary license shall not be renewed if the applicant has failed the examination. The temporary license may be extended by the department, with the recommendation of the board. In no case may a temporary license be extended beyond one year.

(2) This section does not apply to a temporary license issued as provided in section 38-129.01.

Source: Laws 1984, LB 761, § 33; Laws 1988, LB 1100, § 175; R.S.1943, (2003), § 71-6105; Laws 2007, LB463, § 857; Laws 2017, LB88, § 82.

38-2518 Occupational therapist; license; application; requirements.

(1) An applicant applying for a license as an occupational therapist shall show to the satisfaction of the department that he or she:

(a) Has successfully completed the academic requirements of an educational program in occupational therapy recognized by the department and accredited by a nationally recognized medical association or nationally recognized occupational therapy association;

(b) Has successfully completed a period of supervised fieldwork experience at an educational institution approved by the department and where the applicant's academic work was completed or which is part of a training program approved by such educational institution. A minimum of six months of supervised fieldwork experience shall be required for an occupational therapist; and

(c) Has passed an examination as provided in section 38-2520.

(2) In the case of an applicant who has been trained as an occupational therapist in a foreign country, the applicant shall:

(a) Present documentation of completion of an educational program in occupational therapy that is substantially equivalent to an approved program accredited by the Accreditation Council for Occupational Therapy Education or by an equivalent accrediting agency as determined by the board;

(b) Present proof of proficiency in the English language; and

(c) Have passed an examination as provided in section 38-2520.

(3) Residency in this state shall not be a requirement of licensure. A corporation, partnership, limited liability company, or association shall not be licensed as an occupational therapist pursuant to the Occupational Therapy Practice Act.

Source: Laws 1984, LB 761, § 34; Laws 1989, LB 344, § 33; Laws 1993, LB 121, § 452; Laws 1997, LB 752, § 194; Laws 2003, LB 242, § 139; R.S.1943, (2003), § 71-6106; Laws 2007, LB463, § 858; Laws 2018, LB1034, § 40.

Cross References

Credentialing, general requirements and issuance procedures, see section 38-121 et seq.

38-2519 Occupational therapy assistant; license; application; requirements; term.

(1) An applicant applying for a license as an occupational therapy assistant shall show to the satisfaction of the department that he or she:

(a) Has successfully completed the academic requirements of an educational program in occupational therapy recognized by the department and accredited by a nationally recognized medical association or nationally recognized occupational therapy association;

(b) Has successfully completed a period of supervised fieldwork experience at an educational institution approved by the department and where the applicant's academic work was completed or which is part of a training program approved by such educational institution. A minimum of two months of supervised fieldwork experience shall be required for an occupational therapy assistant; and

(c) Has passed an examination as provided in section 38-2520.

(2) In the case of an applicant who has been trained as an occupational therapy assistant in a foreign country, the applicant shall:

(a) Present documentation of completion of an educational program for occupational therapy assistants that is substantially equivalent to an approved program accredited by the Accreditation Council for Occupational Therapy Education or by an equivalent accrediting agency as determined by the board;

(b) Present proof of proficiency in the English language; and

(c) Have passed an examination as provided in section 38-2520.

(3) Residency in this state shall not be a requirement of licensure as an occupational therapy assistant. A corporation, partnership, limited liability company, or association shall not be licensed as an occupational therapy assistant pursuant to the Occupational Therapy Practice Act.

Source: Laws 1984, LB 761, § 35; Laws 1989, LB 344, § 34; Laws 1993, LB 121, § 453; Laws 2003, LB 242, § 140; R.S.1943, (2003), § 71-6107; Laws 2007, LB463, § 859; Laws 2018, LB1034, § 41.

Cross References

Credentialing, general requirements and issuance procedures, see section 38-121 et seq.

38-2521 Continuing competency requirements; waiver.

The department, with the recommendation of the board, may waive continuing competency requirements, in part or in total, for any two-year licensing period when a licensee submits documentation that circumstances beyond his or her control prevented completion of such requirements as provided in section 38-146. In addition to circumstances determined by the department to be beyond the licensee's control pursuant to such section, such circumstances shall include situations in which:

(1) The licensee holds a Nebraska license but does not reside or practice in Nebraska;

(2) The licensee has submitted proof that he or she was suffering from a serious or disabling illness or physical disability which prevented completion of the required continuing competency activities during the twenty-four months preceding the license renewal date; and

(3) The licensee has successfully completed two or more semester hours of formal credit instruction biennially offered by a school or college approved by

the board which contributes to meeting the requirements of an advanced degree in a postgraduate program relating to occupational therapy.

Source: Laws 1984, LB 761, § 41; Laws 1994, LB 1223, § 77; Laws 2001, LB 346, § 2; Laws 2002, LB 1021, § 96; Laws 2003, LB 242, § 142; Laws 2004, LB 1005, § 129; R.S.Supp.,2006, § 71-6113; Laws 2007, LB463, § 861; Laws 2018, LB1034, § 42.

38-2523 Applicant for licensure; reciprocity; continuing competency requirements; military spouse; temporary license.

(1) An applicant for licensure to practice as an occupational therapist or to practice as an occupational therapy assistant who has met the standards set by the board pursuant to section 38-126 for a license based on licensure in another jurisdiction but is not practicing at the time of application for licensure shall present proof satisfactory to the department that he or she has within the three years immediately preceding the application for licensure completed continuing competency requirements approved by the board pursuant to section 38-145.

(2) An applicant who is a military spouse may apply for a temporary license as provided in section 38-129.01.

Source: Laws 2007, LB463, § 863; Laws 2017, LB88, § 83.

ARTICLE 26

OPTOMETRY PRACTICE ACT

Section
38-2609. Applicant for licensure based on license outside the state; requirements; military spouse; temporary license.
38-2613. Optometrist; diagnostic pharmaceutical agents; use; certification.
38-2616. Optometry; approved schools; requirements.

38-2609 Applicant for licensure based on license outside the state; requirements; military spouse; temporary license.

(1) In addition to the standards set by the board pursuant to section 38-126, an applicant for licensure based on a license in another state or territory of the United States or the District of Columbia must have been actively engaged in the practice of optometry for at least two of the three years immediately preceding the application for licensure in Nebraska and must provide satisfactory evidence of being credentialed in such other jurisdiction at a level with requirements that are at least as stringent as or more stringent than the requirements for the comparable credential being applied for in this state.

(2) An applicant who is a military spouse may apply for a temporary license as provided in section 38-129.01.

Source: Laws 2007, LB463, § 881; Laws 2008, LB972, § 1; Laws 2017, LB88, § 84.

38-2613 Optometrist; diagnostic pharmaceutical agents; use; certification.

(1) An optometrist licensed in this state may use topical ocular pharmaceutical agents for diagnostic purposes authorized under subdivision (1)(b) of section 38-2605, if such person is certified by the department, with the recommendation of the board, as qualified to use topical ocular pharmaceutical agents for diagnostic purposes.

(2) Such certification shall require (a) satisfactory completion of a pharmacology course at an institution accredited by an accrediting organization which is recognized by the United States Department of Education and approved by the board and passage of an examination approved by the board or (b) evidence provided by the optometrist of certification in another state for use of diagnostic pharmaceutical agents which is deemed by the board as satisfactory validation of such qualifications.

Source: Laws 1979, LB 9, § 5; Laws 1986, LB 131, § 3; Laws 1987, LB 116, § 2; Laws 1988, LB 1100, § 41; Laws 1994, LB 987, § 1; Laws 1996, LB 1044, § 439; Laws 1998, LB 369, § 5; Laws 1999, LB 828, § 96; Laws 2003, LB 242, § 50; R.S.1943, (2003), § 71-1,135.02; Laws 2007, LB236, § 23; Laws 2007, LB247, § 73; Laws 2007, LB296, § 341; Laws 2007, LB463, § 885; Laws 2021, LB528, § 9.

38-2616 Optometry; approved schools; requirements.

No school of optometry shall be approved by the board as an accredited school unless the school is accredited by an accrediting organization which is recognized by the United States Department of Education.

Source: Laws 1927, c. 167, § 114, p. 488; C.S.1929, § 71-1604; R.S.1943, § 71-1,136; Laws 1965, c. 415, § 1, p. 1325; Laws 1979, LB 9, § 8; Laws 1994, LB 987, § 3; Laws 1996, LB 1044, § 440; R.S.1943, (2003), § 71-1,136; Laws 2007, LB236, § 26; Laws 2007, LB296, § 342; Laws 2007, LB463, § 889; Laws 2021, LB528, § 10.

ARTICLE 27

PERFUSION PRACTICE ACT

Section
38-2701. Act, how cited.
38-2703. Terms, defined.
38-2707. Temporary license.
38-2712. Repealed. Laws 2017, LB644, § 21.

38-2701 Act, how cited.

Sections 38-2701 to 38-2711 shall be known and may be cited as the Perfusion Practice Act.

Source: Laws 2007, LB236, § 8; R.S.Supp.,2007, § 71-1,390; Laws 2007, LB247, § 76; Laws 2017, LB644, § 4.

38-2703 Terms, defined.

For purposes of the Perfusion Practice Act:

(1) Board means the Board of Medicine and Surgery;

(2) Extracorporeal circulation means the diversion of a patient's blood through a heart-lung machine or a similar device that assumes the functions of the patient's heart, lungs, kidney, liver, or other organs;

(3) Perfusion means the functions necessary for the support, treatment, measurement, or supplementation of the cardiovascular, circulatory, and respiratory systems or other organs, or a combination of such activities, and to

ensure the safe management of physiologic functions by monitoring and analyzing the parameters of the systems under an order and under the supervision of a licensed physician, including:

(a) The use of extracorporeal circulation, long-term cardiopulmonary support techniques including extracorporeal carbon dioxide removal and extracorporeal membrane oxygenation, and associated therapeutic and diagnostic technologies;

(b) Counterpulsation, ventricular assistance, autotransfusion, blood conservation techniques, myocardial and organ preservation, extracorporeal life support, and isolated limb perfusion;

(c) The use of techniques involving blood management, advanced life support, and other related functions; and

(d) In the performance of the acts described in subdivisions (a) through (c) of this subdivision:

(i) The administration of:

(A) Pharmacological and therapeutic agents; and

(B) Blood products or anesthetic agents through the extracorporeal circuit or through an intravenous line as ordered by a physician;

(ii) The performance and use of:

(A) Anticoagulation monitoring and analysis;

(B) Physiologic monitoring and analysis;

(C) Blood gas and chemistry monitoring and analysis;

(D) Hematologic monitoring and analysis;

(E) Hypothermia and hyperthermia;

(F) Hemoconcentration and hemodilution; and

(G) Hemodialysis; and

(iii) The observation of signs and symptoms related to perfusion services, the determination of whether the signs and symptoms exhibit abnormal characteristics, and the implementation of appropriate reporting, clinical perfusion protocols, or changes in, or the initiation of, emergency procedures; and

(4) Perfusionist means a person who is licensed to practice perfusion pursuant to the Perfusion Practice Act.

Source: Laws 2007, LB236, § 10; R.S.Supp.,2007, § 71-1,392; Laws 2017, LB644, § 5.

38-2707 Temporary license.

(1) The department shall issue a temporary license to a person who has applied for licensure pursuant to the Perfusion Practice Act and who, in the judgment of the department, with the recommendation of the board, is eligible for examination. An applicant with a temporary license issued under this subsection may practice only under the direct supervision of a perfusionist. The board may adopt and promulgate rules and regulations governing such direct supervision which do not require the immediate physical presence of the supervising perfusionist. A temporary license issued under this subsection shall expire one year after the date of issuance and may be renewed for a subsequent one-year period, subject to the rules and regulations adopted under the act. A

temporary license issued under this subsection shall be surrendered to the department upon its expiration.

(2) An applicant for licensure pursuant to the act who is a military spouse may apply for a temporary license as provided in section 38-129.01.

Source: Laws 2007, LB236, § 14; R.S.Supp.,2007, § 71-1,396; Laws 2017, LB88, § 85.

38-2712 Repealed. Laws 2017, LB644, § 21.

ARTICLE 28

PHARMACY PRACTICE ACT

Section
38-2801. Act, how cited.
38-2802. Definitions, where found.
38-2807.01. Bioequivalent, defined.
38-2807.02. Biological product, defined.
38-2807.03. Brand name, defined.
38-2810.01. Chemically equivalent, defined.
38-2818.02. Drug product, defined.
38-2818.03. Drug product select, defined.
38-2821.01. Equivalent, defined.
38-2823.01. Generic name, defined.
38-2825.02. Interchangeable biological product, defined.
38-2826. Labeling, defined.
38-2826.01. Long-term care facility, defined.
38-2833. Pharmacist in charge, defined.
38-2836.01. Practice agreement, defined.
38-2843.01. Repackage, defined.
38-2843.02. Remote dispensing, defined.
38-2843.03. Remote dispensing pharmacy, defined.
38-2843.04. Supervising pharmacy, defined.
38-2845. Supervision, defined.
38-2846.01. Validation, defined.
38-2847. Verification, defined.
38-2848. Written protocol, defined.
38-2853. Repealed. Laws 2017, LB166, § 27.
38-2866.01. Pharmacist; supervision of pharmacy technicians and pharmacist interns.
38-2867.03. Pharmacist; practice agreement; notice; contents; form; pharmacist intern participation.
38-2870. Prescriptions for controlled substances; requirements; medical order; duration; dispensing; transmission.
38-2891. Pharmacy technicians; authorized tasks.
38-2891.01. Pharmacy technician; validate acts, tasks, and functions of pharmacy technician; policies and procedures.
38-2892. Pharmacy technicians; responsibility for supervision and performance.
38-2894. Pharmacy technician; registration; disciplinary measures; procedure; Licensee Assistance Program; participation.
38-2897. Duty to report impaired practitioner; immunity.
38-28,106. Communication of prescription, chart order, or refill authorization; limitation.
38-28,107. Collection or return of dispensed drugs and devices; conditions; fee; liability; professional disciplinary action.
38-28,109. Drug product selection; purposes of act.
38-28,110. Transferred to section 38-2807.01.
38-28,111. Drug product selection; when; pharmacist; duty.
38-28,112. Pharmacist; drug product selection; effect on reimbursement; label; price.
38-28,113. Drug product selection; pharmacist; practitioner; negligence; what constitutes.

Section
38-28,116. Drug product selection; rules and regulations; department; duty.

38-2801 Act, how cited.

Sections 38-2801 to 38-28,107 and the Nebraska Drug Product Selection Act shall be known and may be cited as the Pharmacy Practice Act.

Source: Laws 2007, LB247, § 79; Laws 2007, LB463, § 897; Laws 2009, LB195, § 47; Laws 2009, LB604, § 1; Laws 2011, LB179, § 2; Laws 2015, LB37, § 29; Laws 2017, LB166, § 9; Laws 2017, LB481, § 1; Laws 2018, LB731, § 67; Laws 2019, LB74, § 1.

Cross References

Nebraska Drug Product Selection Act, see section 38-28,108.

38-2802 Definitions, where found.

For purposes of the Pharmacy Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-2803 to 38-2848 apply.

Source: Laws 2007, LB463, § 898; Laws 2009, LB195, § 48; Laws 2009, LB604, § 2; Laws 2011, LB179, § 3; Laws 2015, LB37, § 30; Laws 2017, LB166, § 10; Laws 2017, LB481, § 2; Laws 2018, LB731, § 68; Laws 2019, LB74, § 2.

38-2807.01 Bioequivalent, defined.

Bioequivalent means drug products: (1) That are legally marketed under regulations promulgated by the federal Food and Drug Administration; (2) that are the same dosage form of the identical active ingredients in the identical amounts as the drug product prescribed; (3) that comply with compendial standards and are consistent from lot to lot with respect to (a) purity of ingredients, (b) weight variation, (c) uniformity of content, and (d) stability; and (4) for which the federal Food and Drug Administration has established bioequivalent standards or has determined that no bioequivalence problems exist.

Source: Laws 1977, LB 103, § 2; Laws 1983, LB 476, § 21; Laws 1989, LB 342, § 36; Laws 1996, LB 1044, § 720; Laws 1998, LB 1073, § 148; Laws 2001, LB 398, § 76; Laws 2003, LB 667, § 15; Laws 2005, LB 382, § 11; Laws 2007, LB296, § 622; Laws 2007, LB463, § 1232; R.S.1943, (2009), § 71-5402; Laws 2015, LB37, § 61; R.S.1943, (2016), § 38-28,110; Laws 2017, LB481, § 3.

38-2807.02 Biological product, defined.

Biological product has the same meaning as in 42 U.S.C. 262, as such section existed on January 1, 2017.

Source: Laws 2017, LB481, § 4.

38-2807.03 Brand name, defined.

Brand name means the proprietary or trade name selected by the manufacturer, distributor, or packager for a drug product and placed upon the labeling of such product at the time of packaging.

Source: Laws 2017, LB481, § 5.

38-2810.01 Chemically equivalent, defined.

Chemically equivalent means drug products that contain amounts of the identical therapeutically active ingredients in the identical strength, quantity, and dosage form and that meet present compendial standards.

Source: Laws 2017, LB481, § 6.

38-2818.02 Drug product, defined.

Drug product means any drug or device as defined in section 38-2841.

Source: Laws 2017, LB481, § 7.

38-2818.03 Drug product select, defined.

Drug product select means to dispense, without the practitioner's express authorization, an equivalent drug product or an interchangeable biological product in place of the brand-name drug or the biological product contained in a medical order of such practitioner.

Source: Laws 2017, LB481, § 8.

38-2821.01 Equivalent, defined.

Equivalent means drug products that are both chemically equivalent and bioequivalent.

Source: Laws 2017, LB481, § 9.

38-2823.01 Generic name, defined.

Generic name means the official title of a drug or drug combination as determined by the United States Adopted Names Council and accepted by the federal Food and Drug Administration of those drug products having the same active chemical ingredients in the same strength and quantity.

Source: Laws 2017, LB481, § 10.

38-2825.02 Interchangeable biological product, defined.

Interchangeable biological product means a biological product that the federal Food and Drug Administration:

(1) Has licensed and has determined meets the standards for interchangeability pursuant to 42 U.S.C. 262(k)(4), as such section existed on January 1, 2017, or as set forth in the Lists of Licensed Biological Products with Reference Product Exclusivity and Biosimilarity or Interchangeability Evaluations published by the federal Food and Drug Administration, as such publication existed on January 1, 2017; or

(2) Has determined is therapeutically equivalent as set forth in the Approved Drug Products with Therapeutic Equivalence Evaluations of the federal Food and Drug Administration, as such publication existed on January 1, 2017.

Source: Laws 2017, LB481, § 11.

38-2826 Labeling, defined.

Labeling means the process of preparing and affixing a label to any drug container or device container, exclusive of the labeling by a manufacturer, packager, or distributor of a nonprescription drug or commercially packaged

legend drug or device. Any such label shall include all information required by federal and state law or regulation. Compliance with labeling requirements under federal law for devices described in subsection (2) of section 38-2841, medical gases, and medical gas devices constitutes compliance with state law and regulations for purposes of this section. Labeling does not include affixing an auxiliary sticker or other such notation to a container after a drug has been dispensed when the sticker or notation is affixed by a person credentialed under the Uniform Credentialing Act in a facility licensed under the Health Care Facility Licensure Act.

Source: Laws 2007, LB463, § 922; Laws 2009, LB604, § 6; Laws 2010, LB849, § 8; Laws 2020, LB1052, § 2.

Cross References

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

38-2826.01 Long-term care facility, defined.

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

Source: Laws 2009, LB195, § 49; Laws 2013, LB23, § 8; Laws 2018, LB1034, § 43.

Cross References

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

38-2833 Pharmacist in charge, defined.

Pharmacist in charge means a pharmacist who is designated on a pharmacy license or a remote dispensing pharmacy license or designated by a hospital as being responsible for the practice of pharmacy in the pharmacy for which a pharmacy license or a remote dispensing pharmacy license is issued or in a hospital pharmacy and who works within the physical confines of such pharmacy or hospital pharmacy, except that the pharmacist in charge is not required to work within the physical confines of a remote dispensing pharmacy unless otherwise required by law.

Source: Laws 2007, LB463, § 929; Laws 2015, LB37, § 37; Laws 2018, LB731, § 69.

38-2836.01 Practice agreement, defined.

Practice agreement means a document signed by a pharmacist and a practitioner with independent prescribing authority, in which the pharmacist agrees to design, implement, and monitor a therapeutic plan based on a written protocol.

Source: Laws 2017, LB166, § 11.

38-2843.01 Repackage, defined.

Repackage means the act of taking a drug product from the container in which it was distributed by the manufacturer and placing it into a different container without further manipulation of the drug. Repackaging also includes

the act of placing the contents of multiple containers, such as vials, of the same finished drug product into one container so long as the container does not contain other ingredients or is not further manipulated to change the drug product in any way.

Source: Laws 2017, LB166, § 12.

38-2843.02 Remote dispensing, defined.

Remote dispensing has the same meaning as in section 71-427.02.

Source: Laws 2018, LB731, § 70.

38-2843.03 Remote dispensing pharmacy, defined.

Remote dispensing pharmacy has the same meaning as in section 71-427.03.

Source: Laws 2018, LB731, § 71.

38-2843.04 Supervising pharmacy, defined.

Supervising pharmacy has the same meaning as in section 71-427.04.

Source: Laws 2018, LB731, § 72.

38-2845 Supervision, defined.

Supervision means the personal guidance and direction by a pharmacist of the performance by a pharmacy technician of authorized activities or functions subject to (1) verification by such pharmacist or (2) validation by a certified pharmacy technician subject to section 38-2891.01. Supervision of a pharmacy technician may occur by means of a real-time audiovisual communication system.

Source: Laws 2007, LB463, § 941; Laws 2013, LB326, § 1; Laws 2019, LB74, § 3.

38-2846.01 Validation, defined.

Validation means the action of a certified pharmacy technician checking the accuracy and completeness of the acts, tasks, or functions undertaken by another certified pharmacy technician as provided in section 38-2891.01.

Source: Laws 2019, LB74, § 4.

38-2847 Verification, defined.

(1) Verification means the confirmation by a supervising pharmacist of the accuracy and completeness of the acts, tasks, or functions undertaken by a pharmacy technician to assist the pharmacist in the practice of pharmacy.

(2) Verification shall occur by a pharmacist on duty in the facility, except that verification may occur by means of a real-time audiovisual communication system if (a) a pharmacy technician performs authorized activities or functions to assist a pharmacist and the prescribed drugs or devices will be administered to persons who are patients or residents of a facility by a credentialed individual authorized to administer medications or (b) a pharmacy technician is engaged in remote dispensing in compliance with section 71-436.02.

Source: Laws 2007, LB463, § 943; Laws 2013, LB326, § 2; Laws 2018, LB731, § 73.

38-2848 Written protocol, defined.

Written protocol means a written template, agreed to by pharmacists and practitioners with independent prescribing authority, working in concert, which directs how the pharmacists will implement and monitor a therapeutic plan.

Source: Laws 2017, LB166, § 13.

38-2853 Repealed. Laws 2017, LB166, § 27.

38-2866.01 Pharmacist; supervision of pharmacy technicians and pharmacist interns.

A pharmacist may supervise any combination of pharmacy technicians and pharmacist interns at any time up to a total of three people. A pharmacist intern shall be supervised at all times while performing the functions of a pharmacist intern which may include all aspects of the practice of pharmacy unless otherwise restricted. This section does not apply to a pharmacist intern who is receiving experiential training directed by the accredited pharmacy program in which he or she is enrolled.

Source: Laws 2015, LB37, § 43; Laws 2017, LB166, § 14.

38-2867.03 Pharmacist; practice agreement; notice; contents; form; pharmacist intern participation.

(1) A pharmacist may enter into a practice agreement as provided in this section with a licensed health care practitioner authorized to prescribe independently to provide pharmaceutical care according to written protocols. The pharmacist shall notify the board of any practice agreement at the initiation of the agreement and at the time of any change in parties to the agreement or written protocols. The notice shall be given to both the Board of Pharmacy and the board which licensed the health care practitioner. The notice shall contain the name of each pharmacist participating in the agreement and each licensed health care practitioner authorized to prescribe independently participating in the agreement and a description of the therapy being monitored or initiated.

(2) A copy of the practice agreement and written protocols shall be available for review by a representative of the department. A copy of the practice agreement shall be sent to the Board of Pharmacy upon request by the board.

(3) A practice agreement shall be in writing. Each pharmacist participating in the agreement and each licensed health care practitioner authorized to prescribe independently participating in the agreement shall sign the agreement and the written protocols at the initiation of the agreement and shall review, sign, and date the documents every two years thereafter. A practice agreement is active after it is signed by all the parties listed in the agreement.

(4) A practice agreement and written protocols cease immediately upon (a) the death of either the pharmacist or the practitioner, (b) the loss of license to practice by either the pharmacist or the practitioner, (c) a disciplinary action limiting the ability of either the pharmacist or practitioner to enter into practice agreement, or (d) the individual decision of either the pharmacist or practitioner or mutual agreement by the parties to terminate the agreement.

(5) A pharmacist intern may participate in a practice agreement without expressly being mentioned in the agreement if the pharmacist intern is supervised by a pharmacist who is a party to the agreement.

Source: Laws 2017, LB166, § 15.

38-2870 Prescriptions for controlled substances; requirements; medical order; duration; dispensing; transmission.

(1) Beginning January 1, 2022, prescriptions for controlled substances listed in section 28-405 shall be subject to section 38-1,146, except that all such prescriptions issued by a practitioner who is a dentist shall be subject to section 38-1,146 beginning January 1, 2024.

(2) All medical orders shall be written, oral, or electronic and shall be valid for the period stated in the medical order, except that (a) if the medical order is for a controlled substance listed in section 28-405, such period shall not exceed six months from the date of issuance at which time the medical order shall expire and (b) if the medical order is for a drug or device which is not a controlled substance listed in section 28-405 or is an order issued by a practitioner for pharmaceutical care, such period shall not exceed twelve months from the date of issuance at which time the medical order shall expire.

(3) Prescription drugs or devices may only be dispensed by a pharmacist or pharmacist intern pursuant to a medical order, by an individual dispensing pursuant to a delegated dispensing permit, or as otherwise provided in section 38-2850. Notwithstanding any other provision of law to the contrary, a pharmacist or a pharmacist intern may dispense drugs or devices pursuant to a medical order or an individual dispensing pursuant to a delegated dispensing permit may dispense drugs or devices pursuant to a medical order. The Pharmacy Practice Act shall not be construed to require any pharmacist or pharmacist intern to dispense, compound, administer, or prepare for administration any drug or device pursuant to any medical order. A pharmacist or pharmacist intern shall retain the professional right to refuse to dispense.

(4) Except as otherwise provided in sections 28-414 and 28-414.01, a practitioner or the practitioner's agent may transmit a medical order to a pharmacist or pharmacist intern and an authorized refill to a pharmacist, pharmacist intern, or pharmacy technician by the following means: (a) In writing, (b) orally, (c) by facsimile transmission of a written medical order or electronic transmission of a medical order signed by the practitioner, or (d) by facsimile transmission of a written medical order or electronic transmission of a medical order which is not signed by the practitioner. Such an unsigned medical order shall be verified with the practitioner.

(5)(a) Except as otherwise provided in sections 28-414 and 28-414.01, any medical order transmitted by facsimile or electronic transmission shall:

(i) Be transmitted by the practitioner or the practitioner's agent directly to a pharmacist or pharmacist intern in a licensed pharmacy of the patient's choice; and any authorized refill transmitted by facsimile or electronic transmission shall be transmitted by the practitioner or the practitioner's agent directly to a pharmacist, pharmacist intern, or pharmacy technician. No intervening person shall be permitted access to the medical order to alter such order or the licensed pharmacy chosen by the patient. Such medical order may be transmitted through a third-party intermediary who shall facilitate the transmission of the order from the practitioner or practitioner's agent to the pharmacy;

(ii) Identify the transmitter's telephone number or other suitable information necessary to contact the transmitter for written or oral confirmation, the time and date of the transmission, the identity of the pharmacy intended to receive the transmission, and other information as required by law; and

(iii) Serve as the original medical order if all other requirements of this subsection are satisfied.

(b) Medical orders transmitted by electronic transmission shall be signed by the practitioner either with an electronic signature for legend drugs which are not controlled substances or a digital signature for legend drugs which are controlled substances.

(6) The pharmacist shall exercise professional judgment regarding the accuracy, validity, and authenticity of any medical order transmitted by facsimile or electronic transmission.

(7) The quantity of drug indicated in a medical order for a resident of a long-term care facility shall be sixty days unless otherwise limited by the prescribing practitioner.

Source: Laws 2001, LB 398, § 35; Laws 2005, LB 382, § 7; R.S.Supp.,2006, § 71-1,146.01; Laws 2007, LB463, § 966; Laws 2014, LB811, § 26; Laws 2015, LB37, § 48; Laws 2017, LB166, § 16; Laws 2018, LB731, § 74; Laws 2021, LB583, § 5.

38-2891 Pharmacy technicians; authorized tasks.

(1) A pharmacy technician shall only perform tasks which do not require the professional judgment of a pharmacist and which are subject to verification to assist a pharmacist in the practice of pharmacy.

(2) The functions and tasks which shall not be performed by pharmacy technicians include, but are not limited to:

(a) Receiving oral medical orders from a practitioner or his or her agent except as otherwise provided in subsection (4) of section 38-2870;

(b) Providing patient counseling;

(c) Performing any evaluation or necessary clarification of a medical order or performing any functions other than strictly clerical functions involving a medical order;

(d) Supervising or verifying the tasks and functions of pharmacy technicians;

(e) Interpreting or evaluating the data contained in a patient's record maintained pursuant to section 38-2869;

(f) Releasing any confidential information maintained by the pharmacy;

(g) Performing any professional consultations; and

(h) Drug product selection, with regard to an individual medical order, in accordance with the Nebraska Drug Product Selection Act.

(3) The director shall, with the recommendation of the board, waive any of the limitations in subsection (2) of this section for purposes of a scientific study of the role of pharmacy technicians approved by the board. Such study shall be based upon providing improved patient care or enhanced pharmaceutical care. Any such waiver shall state the length of the study and shall require that all study data and results be made available to the board upon the completion of

the study. Nothing in this subsection requires the board to approve any study proposed under this subsection.

Source: Laws 2007, LB236, § 32; R.S.Supp.,2007, § 71-1,147.66; Laws 2007, LB247, § 82; Laws 2018, LB731, § 75; Laws 2021, LB583, § 6.

Cross References

Nebraska Drug Product Selection Act, see section 38-28,108.

38-2891.01 Pharmacy technician; validate acts, tasks, and functions of pharmacy technician; policies and procedures.

(1) A pharmacy technician may validate the acts, tasks, and functions of another pharmacy technician only if:

(a) Both pharmacy technicians are certified by a state or national certifying body which is approved by the board;

(b) Both certified pharmacy technicians are working within the confines of a hospital preparing medications for administration in the hospital;

(c) Using bar code technology, radio frequency identification technology, or similar technology to validate the accuracy of medication;

(d) Validating medication that is prepackaged by the manufacturer or prepackaged and verified by a pharmacist; and

(e) Acting in accordance with policies and procedures applicable in the hospital established by the pharmacist in charge.

(2) The pharmacist in charge in a hospital shall establish policies and procedures for validation of medication by two or more certified pharmacy technicians before such validation process is implemented in the hospital.

Source: Laws 2019, LB74, § 5.

38-2892 Pharmacy technicians; responsibility for supervision and performance.

(1) The pharmacist in charge of a pharmacy, remote dispensing pharmacy, or hospital pharmacy employing pharmacy technicians shall be responsible for the supervision and performance of the pharmacy technicians.

(2) Except as otherwise provided in the Automated Medication Systems Act, the supervision of pharmacy technicians at a pharmacy shall be performed by the pharmacist who is on duty in the facility with the pharmacy technicians or located in pharmacies that utilize a real-time, online database and have a pharmacist in all pharmacies. The supervision of pharmacy technicians at a remote dispensing pharmacy or hospital pharmacy shall be performed by the pharmacist assigned by the pharmacist in charge to be responsible for the supervision and verification of the activities of the pharmacy technicians.

Source: Laws 2007, LB236, § 33; R.S.Supp.,2007, § 71-1,147.67; Laws 2015, LB37, § 52; Laws 2017, LB166, § 17; Laws 2018, LB731, § 76.

Cross References

Automated Medication Systems Act, see section 71-2444.

38-2894 Pharmacy technician; registration; disciplinary measures; procedure; Licensee Assistance Program; participation.

(1) A registration to practice as a pharmacy technician may be denied, refused renewal, removed, or suspended or have other disciplinary measures taken against it by the department, with the recommendation of the board, for failure to meet the requirements of or for violation of any of the provisions of subdivisions (1) through (18) and (20) through (26) of section 38-178 and sections 38-2890 to 38-2897 or the rules and regulations adopted under such sections.

(2) If the department proposes to deny, refuse renewal of, or remove or suspend a registration, it shall send the applicant or registrant a notice setting forth the action to be taken and the reasons for the determination. The denial, refusal to renew, removal, or suspension shall become final thirty days after mailing the notice unless the applicant or registrant gives written notice to the department of his or her desire for an informal conference or for a formal hearing.

(3) Notice may be served by any method specified in section 25-505.01, or the department may permit substitute or constructive service as provided in section 25-517.02 when service cannot be made with reasonable diligence by any of the methods specified in section 25-505.01.

(4) Pharmacy technicians may participate in the Licensee Assistance Program described in section 38-175.

Source: Laws 2007, LB236, § 35; R.S.Supp.,2007, § 71-1,147.69; Laws 2007, LB247, § 83; Laws 2009, LB288, § 3; Laws 2019, LB449, § 5; Laws 2022, LB752, § 23.
Effective date July 21, 2022.

38-2897 Duty to report impaired practitioner; immunity.

(1) The requirement to file a report under subsection (1) of section 38-1,125 shall not apply to pharmacist interns or pharmacy technicians, except that a pharmacy technician shall, within thirty days after having first-hand knowledge of facts giving him or her reason to believe that any person in his or her profession, or any person in another profession under the regulatory provisions of the department, may be practicing while his or her ability to practice is impaired by alcohol, controlled substances, or narcotic drugs, report to the department in such manner and form as the department may require. A report made to the department under this section shall be confidential. The identity of any person making such report or providing information leading to the making of such report shall be confidential.

(2) A pharmacy technician making a report to the department under this section, except for self-reporting, shall be completely immune from criminal or civil liability of any nature, whether direct or derivative, for filing a report or for disclosure of documents, records, or other information to the department under this section. The immunity granted under this section shall not apply to any person causing damage or injury by his or her willful, wanton, or grossly negligent act of commission or omission.

(3) A report submitted by a professional liability insurance company on behalf of a credential holder within the thirty-day period prescribed in this section shall be sufficient to satisfy the credential holder's reporting requirement under this section.

(4) Persons who are members of committees established under the Health Care Quality Improvement Act, the Patient Safety Improvement Act, or section 25-12,123 or witnesses before such committees shall not be required to report under this section. Any person who is a witness before such a committee shall not be excused from reporting matters of first-hand knowledge that would otherwise be reportable under this section only because he or she attended or testified before such committee.

(5) Documents from original sources shall not be construed as immune from discovery or use in actions under this section.

Source: Laws 2007, LB236, § 38; R.S.Supp.,2007, § 71-1,147.72; Laws 2017, LB166, § 18.

Cross References

Health Care Quality Improvement Act, see section 71-7904.
Patient Safety Improvement Act, see section 71-8701.

38-28,106 Communication of prescription, chart order, or refill authorization; limitation.

An employee or agent of a prescribing practitioner may communicate a prescription, chart order, or refill authorization issued by the prescribing practitioner to a pharmacist or a pharmacist intern except for an emergency oral authorization for a controlled substance listed in Schedule II of section 28-405. An employee or agent of a prescribing practitioner may communicate a refill authorization issued by the prescribing practitioner to a pharmacy technician.

Source: Laws 2015, LB37, § 57; Laws 2018, LB731, § 77.

38-28,107 Collection or return of dispensed drugs and devices; conditions; fee; liability; professional disciplinary action.

(1) To protect the public safety, dispensed drugs or devices:

(a) May be collected in a pharmacy for disposal;

(b) May be returned to a pharmacy in response to a recall by the manufacturer, packager, or distributor or if a device is defective or malfunctioning;

(c) Shall not be returned to saleable inventory nor made available for subsequent relabeling and redispensing, except as provided in subdivision (1)(d) of this section; or

(d) May be accepted from a long-term care facility by the pharmacy from which they were dispensed for credit or for relabeling and redispensing, except that:

(i) No controlled substance may be returned;

(ii) No prescription drug or medical device that has restricted distribution by the federal Food and Drug Administration may be returned;

(iii) The decision to accept the return of the dispensed drug or device shall rest solely with the pharmacist;

(iv) The dispensed drug or device shall have been in the control of the long-term care facility at all times;

(v) The dispensed drug or device shall be in the original and unopened labeled container with a tamper-evident seal intact, as dispensed by the phar-

macist. Such container shall bear the expiration date or calculated expiration date and lot number; and

(vi) Tablets or capsules shall have been dispensed in a unit dose container which is impermeable to moisture and approved by the board.

(2) Pharmacies may charge a fee for collecting dispensed drugs or devices for disposal or from a long-term care facility for credit or for relabeling and redispensing.

(3) Any person or entity which exercises reasonable care in collecting dispensed drugs or devices for disposal or from a long-term care facility for credit or for relabeling and redispensing pursuant to this section shall be immune from civil or criminal liability or professional disciplinary action of any kind for any injury, death, or loss to person or property relating to such activities.

(4) A drug manufacturer which exercises reasonable care shall be immune from civil or criminal liability for any injury, death, or loss to persons or property relating to the relabeling and redispensing of drugs returned from a long-term care facility.

(5) Notwithstanding subsection (4) of this section, the relabeling and redispensing of drugs returned from a long-term care facility does not absolve a drug manufacturer of any criminal or civil liability that would have existed but for the relabeling and redispensing and such relabeling and redispensing does not increase the liability of such drug manufacturer that would have existed but for the relabeling and redispensing.

(6) The pharmacist may package drugs and devices at the request of a patient or patient's caregiver if the drugs and devices were originally dispensed from a different pharmacy.

Source: Laws 1999, LB 333, § 1; Laws 2001, LB 398, § 74; Laws 2002, LB 1062, § 53; Laws 2007, LB247, § 51; Laws 2007, LB463, § 1199; Laws 2011, LB274, § 1; R.S.Supp.,2014, § 71-2421; Laws 2015, LB37, § 58; Laws 2020, LB1052, § 3.

38-28,109 Drug product selection; purposes of act.

The purposes of the Nebraska Drug Product Selection Act are to provide for the drug product selection of equivalent drug products or interchangeable biological products and to promote the greatest possible use of such products.

Source: Laws 2003, LB 667, § 14; R.S.1943, (2009), § 71-5401.02; Laws 2015, LB37, § 60; Laws 2017, LB481, § 12.

38-28,110 Transferred to section 38-2807.01.

38-28,111 Drug product selection; when; pharmacist; duty.

(1) A pharmacist may drug product select except when:

(a) A practitioner designates that drug product selection is not permitted by specifying in the written, oral, or electronic prescription that there shall be no drug product selection. For written or electronic prescriptions, the practitioner shall specify ''no drug product selection'', ''dispense as written'', ''brand medically necessary'', or ''no generic substitution'' or the notation ''N.D.P.S.'', ''D.A.W.'', or ''B.M.N.'' or words or notations of similar import to indicate that drug product selection is not permitted. The pharmacist shall note ''N.D.P.S.'',

''D.A.W.'', ''B.M.N.'', ''no drug product selection'', ''dispense as written'', ''brand medically necessary'', ''no generic substitution'', or words or notations of similar import on the prescription to indicate that drug product selection is not permitted if such is communicated orally by the prescribing practitioner; or

(b) A patient or designated representative or caregiver of such patient instructs otherwise.

(2) A pharmacist shall not drug product select unless:

(a) The drug product, if it is in solid dosage form, has been marked with an identification code or monogram directly on the dosage unit;

(b) The drug product has been labeled with an expiration date;

(c) The manufacturer, distributor, or packager of the drug product provides reasonable services, as determined by the board, to accept the return of drug products that have reached their expiration date; and

(d) The manufacturer, distributor, or packager maintains procedures for the recall of unsafe or defective drug products.

(3) If a pharmacist receives a prescription for a biological product and chooses to dispense an interchangeable biological product for the prescribed product, the pharmacist must advise the patient or the patient's caregiver that drug product selection has occurred.

(4) Within three business days after the dispensing of a biological product, the dispensing pharmacist or the pharmacist's designee shall make an entry of the specific product provided to the patient, including the name of the product and the manufacturer. The communication shall be conveyed by making an entry that is electronically accessible to the prescriber through an interoperable electronic medical records system, electronic prescribing technology, a pharmacy benefit management system, or a pharmacy record. Entry into an electronic records system described in this subsection is presumed to provide notice to the prescriber. Otherwise, the pharmacist shall communicate the biological product dispensed to the prescriber using facsimile, telephone, electronic transmission, or other prevailing means, except that communication shall not be required if (a) there is no interchangeable biological product approved by the federal Food and Drug Administration for the product prescribed or (b) a refill prescription is not changed from the product dispensed on the prior filling.

Source: Laws 1977, LB 103, § 3; Laws 1978, LB 689, § 2; Laws 1983, LB 476, § 22; Laws 1989, LB 353, § 1; Laws 1991, LB 363, § 1; Laws 1998, LB 1073, § 149; Laws 1999, LB 828, § 174; Laws 2003, LB 667, § 16; Laws 2005, LB 382, § 12; Laws 2007, LB247, § 54; Laws 2009, LB195, § 83; R.S.1943, (2009), § 71-5403; Laws 2015, LB37, § 62; Laws 2017, LB481, § 13.

38-28,112 Pharmacist; drug product selection; effect on reimbursement; label; price.

(1) Whenever a drug product has been prescribed with the notation that no drug product selection is permitted for a patient who has a contract whereunder he or she is reimbursed for the cost of health care, directly or indirectly, the party that has contracted to reimburse the patient, directly or indirectly, shall make reimbursements on the basis of the price of the brand-name drug product and not on the basis of the equivalent drug product or interchangeable

biological product, unless the contract specifically requires generic reimbursement under the Code of Federal Regulations.

(2) A prescription drug or device when dispensed shall bear upon the label the name of the drug or device in the container unless the practitioner writes do not label or words of similar import in the prescription or so designates orally.

(3) Nothing in this section shall (a) require a pharmacy to charge less than its established minimum price for the filling of any prescription or (b) prohibit any hospital from developing, using, and enforcing a formulary.

Source: Laws 1977, LB 103, § 4; Laws 1983, LB 476, § 23; Laws 1996, LB 1044, § 721; Laws 1998, LB 1073, § 150; Laws 2003, LB 667, § 17; Laws 2005, LB 382, § 13; R.S.1943, (2009), § 71-5404; Laws 2015, LB37, § 63; Laws 2017, LB481, § 14.

38-28,113 Drug product selection; pharmacist; practitioner; negligence; what constitutes.

(1) Drug product selection by a pharmacist pursuant to the Nebraska Drug Product Selection Act shall not constitute the practice of medicine.

(2) Drug product selection by a pharmacist pursuant to the act or any rules and regulations adopted and promulgated under the act shall not constitute evidence of negligence if the drug product selection was made within the reasonable and prudent practice of pharmacy.

(3) When drug product selection by a pharmacist is permissible under the act, such drug product selection shall not constitute evidence of negligence on the part of the prescribing practitioner. The failure of a prescribing practitioner to provide that there shall be no drug product selection in any case shall not constitute evidence of negligence or malpractice on the part of such prescribing practitioner.

Source: Laws 1977, LB 103, § 5; Laws 2001, LB 398, § 77; Laws 2003, LB 667, § 18; R.S.1943, (2009), § 71-5405; Laws 2015, LB37, § 64; Laws 2017, LB481, § 15.

38-28,116 Drug product selection; rules and regulations; department; duty.

(1) The department may adopt and promulgate rules and regulations necessary to implement the Nebraska Drug Product Selection Act upon the joint recommendation of the Board of Medicine and Surgery and the Board of Pharmacy.

(2) The department shall maintain a link on its website to the current list of all biological products that the federal Food and Drug Administration has determined to be interchangeable biological products.

Source: Laws 2003, LB 667, § 21; R.S.1943, (2009), § 71-5409; Laws 2015, LB37, § 67; Laws 2017, LB481, § 16.

ARTICLE 29

PHYSICAL THERAPY PRACTICE ACT

Section

38-2924 Applicant; reciprocity; continuing competency requirements; military spouse; temporary license.

(1) An applicant for licensure to practice as a physical therapist or to practice as a physical therapist assistant who has met the standards set by the board pursuant to section 38-126 for a license based on licensure in another jurisdiction but is not practicing at the time of application for licensure shall present proof satisfactory to the department that he or she has within the three years immediately preceding the application for licensure completed continuing competency requirements approved by the board pursuant to section 38-145.

(2) An applicant who is a military spouse may apply for a temporary license as provided in section 38-129.01.

Source: Laws 2007, LB463, § 1017; Laws 2017, LB88, § 87.

ARTICLE 30

PODIATRY PRACTICE ACT

Section

38-3001 Act, how cited.

Sections 38-3001 to 38-3014 shall be known and may be cited as the Podiatry Practice Act.

Source: Laws 2007, LB463, § 1023; Laws 2020, LB755, § 18.

38-3002 Definitions, where found.

For purposes of the Podiatry Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-3003 to 38-3005.02 apply.

Source: Laws 2007, LB463, § 1024; Laws 2020, LB755, § 19.

38-3005.01 Supervising podiatrist, defined.

Supervising podiatrist means a licensed podiatrist who supervises a physician assistant under a collaborative agreement.

Source: Laws 2020, LB755, § 20.

38-3005.02 Supervision, defined.

Supervision means the ready availability of the supervising podiatrist for consultation and collaboration on the activities of the physician assistant.

Source: Laws 2020, LB755, § 21.

38-3013 Physician assistants; services performed; collaborative agreement; supervision; requirements.

Under a collaborative agreement with a supervising podiatrist, a physician assistant may perform services that (1) are delegated by and provided under the supervision of a licensed podiatrist who meets the requirements of section 38-3014, (2) are appropriate to the level of education, experience, and training of the physician assistant, (3) form a component of the supervising podiatrist's scope of practice, (4) are medical services for which the physician assistant has been prepared by education, experience, and training and that the physician assistant is competent to perform within the scope of practice of the supervising podiatrist, and (5) are not otherwise prohibited by law. A physician assistant shall have at least one supervising podiatrist for each employer.

Source: Laws 2020, LB755, § 22.

38-3014 Physician assistants; supervision; supervising podiatrist; requirements; collaborative agreement.

(1) To supervise a physician assistant, a podiatrist shall:

(a) Be licensed to practice podiatry under the Podiatry Practice Act;

(b) Have no restriction imposed by the board on such podiatrist's ability to supervise a physician assistant; and

(c) Maintain a collaborative agreement with the physician assistant.

(2) The podiatrist shall keep the collaborative agreement on file at the podiatrist's primary practice site, shall keep a copy of the collaborative agreement on file at each practice site where the physician assistant provides podiatry services, and shall make the collaborative agreement available to the board and the department upon request.

(3) Supervision of a physician assistant by a supervising podiatrist shall be continuous but shall not require the physical presence of the supervising podiatrist at the time and place that the services are rendered. A physician assistant may render services in a setting that is geographically remote from the supervising podiatrist.

(4) A supervising podiatrist may supervise no more than four physician assistants at any one time. The board may consider an application for waiver of this limit and may waive the limit upon a showing that the supervising podiatrist meets the minimum requirements for the waiver. The department may adopt and promulgate rules and regulations establishing minimum requirements for such waivers.

Source: Laws 2020, LB755, § 23.

ARTICLE 31
PSYCHOLOGY PRACTICE ACT

Section

38-3101 Act, how cited.

Sections 38-3101 to 38-3133 shall be known and may be cited as the Psychology Practice Act.

Source: Laws 2007, LB463, § 1035; Laws 2018, LB1034, § 44.

38-3106 Institution of higher education, defined.

Institution of higher education means a university, professional school, or other institution of higher learning that:

(1) In the United States, is accredited by an accrediting organization recognized by the United States Department of Education;

(2) In Canada, holds a membership in the Association of Universities and Colleges of Canada; or

(3) In other countries, is accredited by the respective official organization having such authority.

Source: Laws 1994, LB 1210, § 68; R.S.1943, (2003), § 71-1,206.06; Laws 2007, LB463, § 1040; Laws 2021, LB528, § 11.

38-3111 Psychology; references; how construed.

(1) Unless otherwise expressly stated, references to licensed psychologists in the Nebraska Mental Health Commitment Act, in the Psychology Practice Act, in the Sex Offender Commitment Act, and in section 44-513 means only psychologists licensed to practice psychology in this state under section 38-3114 or under similar provisions of the Psychology Interjurisdictional Compact and does not mean persons holding a special license under section 38-3116 or holding a provisional license under the Psychology Practice Act.

(2) Any reference to a person certified to practice clinical psychology under the law in effect immediately prior to September 1, 1994, and any equivalent reference under the law of another jurisdiction, including, but not limited to, certified clinical psychologist, health care practitioner in psychology, or certified health care provider, shall be construed to refer to a psychologist licensed under the Uniform Credentialing Act except for persons licensed under section 38-3116 or holding a provisional license under the Psychology Practice Act.

Source: Laws 1994, LB 1210, § 76; Laws 1999, LB 366, § 12; Laws 2006, LB 1199, § 32; R.S.Supp.,2006, § 71-1,206.14; Laws 2007, LB463, § 1045; Laws 2018, LB1034, § 45.

Cross References

Nebraska Mental Health Commitment Act, see section 71-901.
Psychology Interjurisdictional Compact, see section 38-3901.
Sex Offender Commitment Act, see section 71-1201.

38-3120 Temporary practice pending licensure permitted; when; military spouse; temporary license.

(1) A psychologist licensed under the laws of another jurisdiction may be authorized by the department to practice psychology for a maximum of one year if the psychologist has made application to the department for licensure and has met the educational and experience requirements for licensure in Nebraska, if the requirements for licensure in the former jurisdiction are equal to or exceed the requirements for licensure in Nebraska, and if the psychologist is not the subject of a past or pending disciplinary action in another jurisdiction. Denial of licensure shall terminate this authorization.

(2) An applicant for licensure as a psychologist who is a military spouse may apply for a temporary license as provided in section 38-129.01.

Source: Laws 1994, LB 1210, § 85; R.S.1943, (2003), § 71-1,206.23; Laws 2007, LB463, § 1054; Laws 2017, LB88, § 88.

38-3133 Administrator of Psychology Interjurisdictional Compact; duties.

The chairperson of the board or his or her designee shall serve as the administrator of the Psychology Interjurisdictional Compact for the State of Nebraska. The administrator shall give notice of withdrawal to the executive heads of all other party states within thirty days after the effective date of any statute repealing the compact enacted by the Legislature pursuant to Article XIII of the compact.

Source: Laws 2018, LB1034, § 46.

Cross References

Psychology Interjurisdictional Compact, see section 38-3901.

ARTICLE 32

RESPIRATORY CARE PRACTICE ACT

Section
38-3205. Respiratory care, defined.
38-3208. Practices not requiring licensure.
38-3212. Applicant for licensure; reciprocity; continuing competency requirements; military spouse; temporary license.

38-3205 Respiratory care, defined.

Respiratory care means the health specialty responsible for the treatment, management, diagnostic testing, and care of patients with deficiencies and abnormalities associated with the cardiopulmonary system. Respiratory care is not limited to a hospital setting and includes the therapeutic and diagnostic management and maintenance of medical gases, administering apparatus, humidification and aerosols, ventilatory management, postural drainage, chest physiotherapy and breathing exercises, cardiopulmonary resuscitation and rehabilitation, and maintenance and insertion of lines, drains, and artificial and nonartificial airways without cutting tissues. Respiratory care also includes the administration of all pharmacologic, diagnostic, and therapeutic agents for the treatment and diagnosis of cardiopulmonary disease for which the respiratory care practitioner has been professionally trained or has obtained advance education or certification, including specific testing techniques employed in respiratory care to assist in diagnosis, monitoring, treatment, and research of how specific cardiopulmonary disease affects the patient. Such techniques include management of ventilatory volumes, pressures, and flows, measurement of physiologic partial pressures, pulmonary function testing, hemodynamic insertion of lines, and related physiological monitoring of the cardiopulmonary system.

Source: Laws 2007, LB463, § 1071; Laws 2022, LB752, § 24.
Effective date July 21, 2022.

38-3208 Practices not requiring licensure.

The Respiratory Care Practice Act shall not prohibit:

(1) The practice of respiratory care which is an integral part of the program of study by students enrolled in approved respiratory care education programs;

(2) The gratuitous care, including the practice of respiratory care, of the ill by a friend or member of the family or by a person who is not licensed to practice

respiratory care if such person does not represent himself or herself as a respiratory care practitioner;

(3) The practice of respiratory care by nurses, physicians, physician assistants, physical therapists, or any other professional required to be licensed under the Uniform Credentialing Act when such practice is within the scope of practice for which that person is licensed to practice in this state;

(4) The practice of any respiratory care practitioner of this state or any other state or territory while employed by the federal government or any bureau or division thereof while in the discharge of his or her official duties;

(5) Techniques defined as pulmonary function testing and the administration of aerosol and inhalant medications to the cardiorespiratory system as it relates to pulmonary function technology administered by a registered pulmonary function technologist credentialed by the National Board for Respiratory Care or a certified pulmonary function technologist credentialed by the National Board for Respiratory Care; or

(6) The performance of oxygen therapy or the initiation of noninvasive positive pressure ventilation by a registered polysomnographic technologist relating to the study of sleep disorders if such procedures are performed or initiated under the supervision of a licensed physician at a facility accredited by the American Academy of Sleep Medicine.

Source: Laws 1986, LB 277, § 17; Laws 1997, LB 622, § 83; Laws 2003, LB 242, § 64; Laws 2003, LB 667, § 5; R.S.1943, (2003), § 71-1,235; Laws 2007, LB463, § 1074; Laws 2018, LB731, § 78.

38-3212 Applicant for licensure; reciprocity; continuing competency requirements; military spouse; temporary license.

(1) An applicant for licensure to practice respiratory care who has met the standards set by the board pursuant to section 38-126 for a license based on licensure in another jurisdiction but is not practicing at the time of application for licensure shall present proof satisfactory to the department that he or she has within the three years immediately preceding the application for licensure completed continuing competency requirements approved by the board pursuant to section 38-145.

(2) An applicant who is a military spouse may apply for a temporary license as provided in section 38-129.01.

Source: Laws 2007, LB463, § 1078; Laws 2017, LB88, § 89.

ARTICLE 33

VETERINARY MEDICINE AND SURGERY PRACTICE ACT

Section
38-3301. Act, how cited.
38-3302. Definitions, where found.
38-3307.02. Equine, cat, and dog massage practice, defined.
38-3314. Unlicensed assistant, defined.
38-3321. Veterinarian; veterinary technician; animal therapist; license; required; exceptions.
38-3327. Applicant; reciprocity; requirements; military spouse; temporary license.

38-3301 Act, how cited.

Sections 38-3301 to 38-3335 shall be known and may be cited as the Veterinary Medicine and Surgery Practice Act.

Source: Laws 1967, c. 439, § 1, p. 1353; Laws 1988, LB 1100, § 54; Laws 2000, LB 833, § 3; R.S.1943, (2003), § 71-1,153; Laws 2007, LB463, § 1083; Laws 2009, LB463, § 2; Laws 2011, LB687, § 2; Laws 2018, LB596, § 1.

38-3302 Definitions, where found.

For purposes of the Veterinary Medicine and Surgery Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-3303 to 38-3318 apply.

Source: Laws 2007, LB463, § 1084; Laws 2009, LB463, § 3; Laws 2018, LB596, § 2.

38-3307.02 Equine, cat, and dog massage practice, defined.

Equine, cat, and dog massage practice means the application of hands-on massage techniques for the purpose of increasing circulation, relaxing muscle spasms, relieving tension, enhancing muscle tone, and increasing range of motion in equines, cats, and dogs.

Source: Laws 2018, LB596, § 3.

38-3314 Unlicensed assistant, defined.

Unlicensed assistant means an individual who is not a licensed veterinarian, a licensed veterinary technician, or a licensed animal therapist and who is working in veterinary medicine. Unlicensed assistant does not include a person engaged in equine, cat, and dog massage practice.

Source: Laws 2007, LB463, § 1096; Laws 2009, LB463, § 6; Laws 2018, LB596, § 4.

38-3321 Veterinarian; veterinary technician; animal therapist; license; required; exceptions.

No person may practice veterinary medicine and surgery in the state who is not a licensed veterinarian, no person may perform delegated animal health care tasks in the state who is not a licensed veterinary technician or an unlicensed assistant performing such tasks within the limits established under subdivision (2) of section 38-3326, and no person may perform health care therapy on animals in the state who is not a licensed animal therapist. The Veterinary Medicine and Surgery Practice Act shall not be construed to prohibit:

(1) An employee of the federal, state, or local government from performing his or her official duties;

(2) A person who is a student in a veterinary school from performing duties or actions assigned by his or her instructors or from working under the direct supervision of a licensed veterinarian;

(3) A person who is a student in an approved veterinary technician program from performing duties or actions assigned by his or her instructors or from working under the direct supervision of a licensed veterinarian or a licensed veterinary technician;

(4) Any merchant or manufacturer from selling feed or feeds whether medicated or nonmedicated;

(5) A veterinarian regularly licensed in another state from consulting with a licensed veterinarian in this state;

(6) Any merchant or manufacturer from selling from his or her established place of business medicines, appliances, or other products used in the prevention or treatment of animal diseases or any merchant or manufacturer's representative from conducting educational meetings to explain the use of his or her products or from investigating and advising on problems developing from the use of his or her products;

(7) An owner of livestock or a bona fide farm or ranch employee from performing any act of vaccination, surgery, pregnancy testing, retrievable transplantation of embryos on bovine, including recovering, freezing, and transferring embryos on bovine, or the administration of drugs in the treatment of domestic animals under his or her custody or ownership nor the exchange of services between persons or bona fide employees who are principally farm or ranch operators or employees in the performance of these acts;

(8) A member of the faculty of a veterinary school or veterinary science department from performing his or her regular functions, or a person lecturing or giving instructions or demonstrations at a veterinary school or veterinary science department or in connection with a continuing competency activity;

(9) Any person from selling or applying any pesticide, insecticide, or herbicide;

(10) Any person from engaging in bona fide scientific research which reasonably requires experimentation involving animals;

(11) Any person from treating or in any manner caring for domestic chickens, turkeys, or waterfowl, which are specifically exempted from the Veterinary Medicine and Surgery Practice Act;

(12) Any person from performing dehorning or castrating livestock, not to include equidae.

For purposes of the Veterinary Medicine and Surgery Practice Act, castration shall be limited to the removal or destruction of male testes;

(13) Any person who holds a valid credential in the State of Nebraska in a health care profession or occupation regulated under the Uniform Credentialing Act from consulting with a licensed veterinarian or performing collaborative animal health care tasks on an animal under the care of such veterinarian if all such tasks are performed under the immediate supervision of such veterinarian;

(14) A person from performing a retrievable transplantation of embryos on bovine, including recovering, freezing, and transferring embryos on bovine, if the procedure is being performed by a person who (a) holds a doctorate degree in animal science with an emphasis in reproductive physiology from an accredited college or university and (b) has and can show proof of valid professional liability insurance; or

(15) Any person engaging solely in equine, cat, and dog massage practice.

Source: Laws 1967, c. 439, § 3, p. 1354; Laws 1986, LB 926, § 47; Laws 1988, LB 1100, § 56; Laws 2002, LB 1021, § 23; Laws 2004, LB 1005, § 18; Laws 2005, LB 301, § 11; R.S.Supp.,2006,

§ 71-1,155; Laws 2007, LB463, § 1103; Laws 2008, LB928, § 13; Laws 2009, LB463, § 7; Laws 2012, LB686, § 1; Laws 2018, LB596, § 5.

38-3327 Applicant; reciprocity; requirements; military spouse; temporary license.

(1) An applicant for a license to practice veterinary medicine and surgery based on a license in another state or territory of the United States, the District of Columbia, or a Canadian province shall meet the standards set by the board pursuant to section 38-126 and shall have been actively engaged in the practice of such profession at least one of the three years immediately preceding the application under a license in another state or territory of the United States, the District of Columbia, or a Canadian province.

(2) An applicant for a license to practice as a licensed veterinary technician based on a license in another state or territory of the United States, the District of Columbia, or a Canadian province shall meet the standards set by the board pursuant to section 38-126 and shall have been actively engaged in the practice of such profession at least one of the three years immediately preceding the application under a license in another state or territory of the United States, the District of Columbia, or a Canadian province.

(3) An applicant who is a military spouse may apply for a temporary license to practice veterinary medicine and surgery or to practice as a licensed veterinary technician as provided in section 38-129.01.

Source: Laws 2007, LB463, § 1109; Laws 2017, LB88, § 90.

ARTICLE 34

GENETIC COUNSELING PRACTICE ACT

Section
38-3419. Reciprocity; individual practicing before January 1, 2013; licensure; qualification; military spouse; temporary license.

38-3419 Reciprocity; individual practicing before January 1, 2013; licensure; qualification; military spouse; temporary license.

(1) The department, with the recommendation of the state board, may issue a license under the Genetic Counseling Practice Act based on licensure in another jurisdiction to an individual who meets the requirements of the Genetic Counseling Practice Act or substantially equivalent requirements as determined by the department, with the recommendation of the state board.

(2) An individual practicing genetic counseling in Nebraska before January 1, 2013, may apply for licensure under the act if, on or before July 1, 2013, he or she:

(a) Provides satisfactory evidence to the state board that he or she (i) has practiced genetic counseling for a minimum of ten years preceding January 1, 2013, (ii) has a postbaccalaureate degree at the master's level or higher in genetics or a related field of study, and (iii) has never failed the certification examination;

(b) Submits three letters of recommendation from at least one individual practicing genetic counseling who qualifies for licensure under the Genetic Counseling Practice Act and either a clinical geneticist or medical geneticist

certified by the national medical genetics board. An individual submitting a letter of recommendation shall have worked with the applicant in an employment setting during at least five of the ten years preceding submission of the letter and be able to attest to the applicant's competency in providing genetic counseling; and

(c) Provides documentation of attending approved continuing education programs within the five years preceding application.

(3) An applicant who is a military spouse may apply for a temporary license as provided in section 38-129.01.

Source: Laws 2012, LB831, § 19; Laws 2017, LB88, § 91.

ARTICLE 36

INTERSTATE MEDICAL LICENSURE COMPACT

Section

38-3601 Compact; citation.

Sections 38-3601 to 38-3625 shall be known and may be cited as the Interstate Medical Licensure Compact.

Source: Laws 2017, LB88, § 1.

38-3602 Purposes of Interstate Medical Licensure Compact.

The purposes of the Interstate Medical Licensure Compact are, through means of joint and cooperative action among the member states of the compact (1) to develop a comprehensive process that complements the existing licensing and regulatory authority of state medical boards and that provides a streamlined process that allows physicians to become licensed in multiple states, thereby enhancing the portability of a medical license and ensuring the safety of patients, (2) to create another pathway for licensure that does not otherwise change a state's existing medicine and surgery practice act, (3) to adopt the prevailing standard for licensure, affirm that the practice of medicine occurs where the patient is located at the time of the physician-patient encounter, and require the physician to be under the jurisdiction of the state medical board where the patient is located, (4) to ensure that state medical boards that participate in the compact retain the jurisdiction to impose an adverse action against a license to practice medicine in that state issued to a physician through the procedures in the compact, and (5) to create the Interstate Medical Licensure Compact Commission.

Source: Laws 2017, LB88, § 2.

38-3603 Terms, defined.

For purposes of the Interstate Medical Licensure Compact:

(a) Bylaws means those bylaws established by the interstate commission pursuant to section 38-3612 for its governance or for directing and controlling its actions and conduct;

(b) Commissioner means the voting representative appointed by each member board pursuant to section 38-3612;

(c) Conviction means a finding by a court that an individual is guilty of a criminal offense through adjudication or entry of a plea of guilty or no contest to the charge by the offender. Evidence of an entry of a conviction of a criminal offense by the court shall be considered final for purposes of disciplinary action by a member board;

(d) Expedited license means a full and unrestricted medical license granted by a member state to an eligible physician through the process set forth in the compact;

(e) Interstate commission means the interstate commission created pursuant to section 38-3612;

(f) License means authorization by a state for a physician to engage in the practice of medicine, which would be unlawful without the authorization;

(g) Medicine and surgery practice act means laws and regulations governing the practice of medicine within a member state;

(h) Member board means a state agency in a member state that acts in the sovereign interests of the state by protecting the public through licensure, regulation, and education of physicians as directed by the state government;

(i) Member state means a state that has enacted the compact;

(j) Practice of medicine means the clinical prevention, diagnosis, or treatment of human disease, injury, or condition requiring a physician to obtain and maintain a license in compliance with the medicine and surgery practice act of a member state;

(k) Physician means any person who:

(1) Is a graduate of a medical school accredited by the Liaison Committee on Medical Education, the Commission on Osteopathic College Accreditation, or a medical school listed in the International Medical Education Directory or its equivalent;

(2) Passed each component of the United States Medical Licensing Examination or the Comprehensive Osteopathic Medical Licensing Examination within three attempts, or any of its predecessor examinations accepted by a state medical board as an equivalent examination for licensure purposes;

(3) Successfully completed graduate medical education approved by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association;

(4) Holds specialty certification or a time-unlimited specialty certificate recognized by the American Board of Medical Specialties or the American Osteopathic Association's Bureau of Osteopathic Specialists;

(5) Possesses a full and unrestricted license to engage in the practice of medicine issued by a member board;

(6) Has never been convicted, received adjudication, deferred adjudication, community supervision, or deferred disposition for any offense by a court of appropriate jurisdiction;

(7) Has never had a license authorizing the practice of medicine subjected to discipline by a licensing agency in any state, federal, or foreign jurisdiction, excluding any action related to nonpayment of fees related to a license;

(8) Has never had a controlled substance license or permit suspended or revoked by a state or the United States Drug Enforcement Administration; and

(9) Is not under active investigation by a licensing agency or law enforcement authority in any state, federal, or foreign jurisdiction;

(l) Offense means a felony, gross misdemeanor, or crime of moral turpitude;

(m) Rule means a written statement by the interstate commission promulgated pursuant to section 38-3613 that is of general applicability, implements, interprets, or prescribes a policy or provision of the compact, or an organizational, procedural, or practice requirement of the interstate commission, and has the force and effect of statutory law in a member state, and includes the amendment, repeal, or suspension of an existing rule;

(n) State means any state, commonwealth, district, or territory of the United States; and

(o) State of principal license means a member state where a physician holds a license to practice medicine and which has been designated as such by the physician for purposes of registration and participation in the compact.

Source: Laws 2017, LB88, § 3.

38-3604 Physician; expedited license; eligibility requirements; failure to meet requirements; effect.

(a) A physician must meet the eligibility requirements as defined in subdivision (k) of section 38-3603 to receive an expedited license under the terms and provisions of the Interstate Medical Licensure Compact.

(b) A physician who does not meet the requirements of subdivision (k) of section 38-3603 may obtain a license to practice medicine in a member state if the individual complies with all laws and requirements, other than the compact, relating to the issuance of a license to practice medicine in that state.

Source: Laws 2017, LB88, § 4.

38-3605 Physician; designate state of principal license.

(a) A physician shall designate a member state as the state of principal license for purposes of registration for expedited licensure through the Interstate Medical Licensure Compact if the physician possesses a full and unrestricted license to practice medicine in that state, and the state is:

(1) The state of primary residence for the physician;

(2) The state where at least twenty-five percent of the practice of medicine occurs;

(3) The location of the physician's employer;

(4) If no state qualifies under subdivision (1), (2), or (3) of this subsection, the state designated as state of residence for purpose of federal income tax.

(b) A physician may redesignate a member state as state of principal license at any time, as long as the state meets the requirements in subsection (a) of this section.

(c) The interstate commission is authorized to develop rules to facilitate redesignation of another member state as the state of principal license.

Source: Laws 2017, LB88, § 5.

38-3606 Physician; file application; member board; duties; criminal background check; fees; issuance of license.

(a) A physician seeking licensure through the Interstate Medical Licensure Compact shall file an application for an expedited license with the member board of the state selected by the physician as the state of principal license.

(b) Upon receipt of an application for an expedited license, the member board within the state selected as the state of principal license shall evaluate whether the physician is eligible for expedited licensure and issue a letter of qualification, verifying or denying the physician's eligibility, to the interstate commission.

(i) Static qualifications, which include verification of medical education, graduate medical education, results of any medical or licensing examination, and other qualifications as determined by the interstate commission through rule, shall not be subject to additional primary source verification where already primary source verified by the state of principal license.

(ii) The member board within the state selected as the state of principal license shall, in the course of verifying eligibility, perform a criminal background check of an applicant, including the use of the results of fingerprint or other biometric data checks compliant with the requirements of the Federal Bureau of Investigation, with the exception of federal employees who have suitability determination in accordance with 5 C.F.R. 731.202.

(iii) Appeal on the determination of eligibility shall be made to the member state where the application was filed and shall be subject to the law of that state.

(c) Upon verification in subsection (b) of this section, physicians eligible for an expedited license shall complete the registration process established by the interstate commission to receive a license in a member state selected pursuant to subsection (a) of this section, including the payment of any applicable fees.

(d) After receiving verification of eligibility under subsection (b) of this section and any fees under subsection (c) of this section, a member board shall issue an expedited license to the physician. This license shall authorize the physician to practice medicine in the issuing state consistent with the medicine and surgery practice act and all applicable laws and regulations of the issuing member board and member state.

(e) An expedited license shall be valid for a period consistent with the licensure period in the member state and in the same manner as required for other physicians holding a full and unrestricted license within the member state.

(f) An expedited license obtained through the compact shall be terminated if a physician fails to maintain a license in the state of principal licensure for a nondisciplinary reason, without redesignation of a new state of principal licensure.

(g) The interstate commission is authorized to develop rules regarding the application process, including payment of any applicable fees, and the issuance of an expedited license.

Source: Laws 2017, LB88, § 6.

38-3607 Fee; rules.

(a) A member state issuing an expedited license authorizing the practice of medicine in that state may impose a fee for a license issued or renewed through the Interstate Medical Licensure Compact.

(b) The interstate commission is authorized to develop rules regarding fees for expedited licenses.

Source: Laws 2017, LB88, § 7.

38-3608 Physician; renewal of expedited license; renewal process; fees; rules.

(a) A physician seeking to renew an expedited license granted in a member state shall complete a renewal process with the interstate commission if the physician:

(1) Maintains a full and unrestricted license in a state of principal license;

(2) Has not been convicted, received adjudication, deferred adjudication, community supervision, or deferred disposition for any offense by a court of appropriate jurisdiction;

(3) Has not had a license authorizing the practice of medicine subject to discipline by a licensing agency in any state, federal, or foreign jurisdiction, excluding any action related to nonpayment of fees related to a license; and

(4) Has not had a controlled substance license or permit suspended or revoked by a state or the United States Drug Enforcement Administration.

(b) Physicians shall comply with all continuing professional development or continuing medical education requirements for renewal of a license issued by a member state.

(c) The interstate commission shall collect any renewal fees charged for the renewal of a license and distribute the fees to the applicable member board.

(d) Upon receipt of any renewal fees collected in subsection (c) of this section, a member board shall renew the physician's license.

(e) Physician information collected by the interstate commission during the renewal process will be distributed to all member boards.

(f) The interstate commission is authorized to develop rules to address renewal of licenses obtained through the Interstate Medical Licensure Compact.

Source: Laws 2017, LB88, § 8.

38-3609 Database; contents; public action or complaints; member boards; duties; confidentiality.

(a) The interstate commission shall establish a database of all physicians licensed, or who have applied for licensure, under section 38-3606.

(b) Notwithstanding any other provision of law, member boards shall report to the interstate commission any public action or complaints against a licensed physician who has applied or received an expedited license through the Interstate Medical Licensure Compact.

(c) Member boards shall report disciplinary or investigatory information determined as necessary and proper by rule of the interstate commission.

(d) Member boards may report any nonpublic complaint, disciplinary, or investigatory information not required by subsection (c) of this section to the interstate commission.

(e) Member boards shall share complaint or disciplinary information about a physician upon request of another member board.

(f) All information provided to the interstate commission or distributed by member boards shall be confidential, filed under seal, and used only for investigatory or disciplinary matters.

(g) The interstate commission is authorized to develop rules for mandated or discretionary sharing of information by member boards.

Source: Laws 2017, LB88, § 9.

38-3610 Member board; joint investigations; powers.

(a) Licensure and disciplinary records of physicians are deemed investigative.

(b) In addition to the authority granted to a member board by its respective medicine and surgery practice act or other applicable state law, a member board may participate with other member boards in joint investigations of physicians licensed by the member boards.

(c) A subpoena issued by a member state shall be enforceable in other member states.

(d) Member boards may share any investigative, litigation, or compliance materials in furtherance of any joint or individual investigation initiated under the Interstate Medical Licensure Compact.

(e) Any member state may investigate actual or alleged violations of the statutes authorizing the practice of medicine in any other member state in which a physician holds a license to practice medicine.

Source: Laws 2017, LB88, § 10.

38-3611 Disciplinary action; unprofessional conduct; reinstatement of license; procedure.

(a) Any disciplinary action taken by any member board against a physician licensed through the Interstate Medical Licensure Compact shall be deemed unprofessional conduct which may be subject to discipline by other member boards, in addition to any violation of the medicine and surgery practice act or regulations in that state.

(b) If a license granted to a physician by the member board in the state of principal license is revoked, surrendered or relinquished in lieu of discipline, or suspended, then all licenses issued to the physician by member boards shall automatically be placed, without further action necessary by any member board, on the same status. If the member board in the state of principal license subsequently reinstates the physician's license, a license issued to the physician by any other member board shall remain encumbered until that respective member board takes action to reinstate the license in a manner consistent with the medicine and surgery practice act of that state.

(c) If disciplinary action is taken against a physician by a member board not in the state of principal license, any other member board may deem the action conclusive as to matter of law and fact decided, and:

(i) Impose the same or lesser sanction against the physician so long as such sanctions are consistent with the medicine and surgery practice act of that state; or

(ii) Pursue separate disciplinary action against the physician under its respective medicine and surgery practice act, regardless of the action taken in other member states.

(d) If a license granted to a physician by a member board is revoked, surrendered or relinquished in lieu of discipline, or suspended, then any license issued to the physician by any other member board shall be suspended, automatically and immediately without further action necessary by the other member board, for ninety days upon entry of the order by the disciplining board, to permit the member board to investigate the basis for the action under the medicine and surgery practice act of that state. A member board may terminate the automatic suspension of the license it issued prior to the completion of the ninety-day suspension period in a manner consistent with the medicine and surgery practice act of that state.

Source: Laws 2017, LB88, § 11.

38-3612 Interstate Medical Licensure Compact Commission; created; representatives; qualifications; meetings; notice; minutes; executive committee.

(a) The member states hereby create the Interstate Medical Licensure Compact Commission.

(b) The purpose of the interstate commission is the administration of the Interstate Medical Licensure Compact, which is a discretionary state function.

(c) The interstate commission shall be a body corporate and joint agency of the member states and shall have all the responsibilities, powers, and duties set forth in the compact, and such additional powers as may be conferred upon it by a subsequent concurrent action of the respective legislatures of the member states in accordance with the terms of the compact.

(d) The interstate commission shall consist of two voting representatives appointed by each member state who shall serve as commissioners. In states where allopathic and osteopathic physicians are regulated by separate member boards, or if the licensing and disciplinary authority is split between multiple member boards within a member state, the member state shall appoint one representative from each member board. A commissioner shall be:

(1) A physician appointed to a member board;

(2) An executive director, executive secretary, or similar executive of a member board; or

(3) A member of the public appointed to a member board.

(e) The interstate commission shall meet at least once each calendar year. A portion of this meeting shall be a business meeting to address such matters as may properly come before the commission, including the election of officers. The chairperson may call additional meetings and shall call for a meeting upon the request of a majority of the member states.

(f) The bylaws may provide for meetings of the interstate commission to be conducted by telecommunication or electronic communication.

(g) Each commissioner participating at a meeting of the interstate commission is entitled to one vote. A majority of commissioners shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the interstate commission. A commissioner shall not delegate a vote to another commissioner. In the absence of its commissioner, a member state may delegate voting authority for a specified meeting to another person from that state who shall meet the requirements of subsection (d) of this section.

(h) The interstate commission shall provide public notice of all meetings and all meetings shall be open to the public. The interstate commission may close a meeting, in full or in portion, where it determines by a two-thirds vote of the commissioners present that an open meeting would be likely to:

(1) Relate solely to the internal personnel practices and procedures of the interstate commission;

(2) Discuss matters specifically exempted from disclosure by federal statute;

(3) Discuss trade secrets, commercial, or financial information that is privileged or confidential;

(4) Involve accusing a person of a crime, or formally censuring a person;

(5) Discuss information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(6) Discuss investigative records compiled for law enforcement purposes; or

(7) Specifically relate to the participation in a civil action or other legal proceeding.

(i) The interstate commission shall keep minutes which shall fully describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, including record of any roll call votes.

(j) The interstate commission shall make its information and official records, to the extent not otherwise designated in the compact or by its rules, available to the public for inspection.

(k) The interstate commission shall establish an executive committee, which shall include officers, members, and others as determined by the bylaws. The executive committee shall have the power to act on behalf of the interstate commission, with the exception of rulemaking, during periods when the interstate commission is not in session. When acting on behalf of the interstate commission, the executive committee shall oversee the administration of the compact including enforcement and compliance with the provisions of the compact, its bylaws and rules, and other such duties as necessary.

(l) The interstate commission may establish other committees for governance and administration of the compact.

Source: Laws 2017, LB88, § 12.

38-3613 Interstate commission; duty and power.

The interstate commission shall have the duty and power to:

(a) Oversee and maintain the administration of the Interstate Medical Licensure Compact;

(b) Promulgate rules which shall be binding to the extent and in the manner provided for in the compact;

(c) Issue, upon the request of a member state or member board, advisory opinions concerning the meaning or interpretation of the compact, its bylaws, rules, and actions;

(d) Enforce compliance with compact provisions, the rules promulgated by the interstate commission, and the bylaws, using all necessary and proper means, including, but not limited to, the use of judicial process;

(e) Establish and appoint committees including, but not limited to, an executive committee as required by section 38-3612, which shall have the power to act on behalf of the interstate commission in carrying out its powers and duties;

(f) Pay, or provide for the payment of, the expenses related to the establishment, organization, and ongoing activities of the interstate commission;

(g) Establish and maintain one or more offices;

(h) Borrow, accept, hire, or contract for services of personnel;

(i) Purchase and maintain insurance and bonds;

(j) Employ an executive director who shall have such powers to employ, select or appoint employees, agents, or consultants, and to determine their qualifications, define their duties, and fix their compensation;

(k) Establish personnel policies and programs relating to conflicts of interest, rates of compensation, and qualifications of personnel;

(l) Accept donations and grants of money, equipment, supplies, materials and services, and to receive, utilize, and dispose of it in a manner consistent with the conflict of interest policies established by the interstate commission;

(m) Lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve or use, any property, real, personal, or mixed;

(n) Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed;

(o) Establish a budget and make expenditures;

(p) Adopt a seal and bylaws governing the management and operation of the interstate commission;

(q) Report annually to the legislatures and governors of the member states concerning the activities of the interstate commission during the preceding year. Such reports shall also include reports of financial audits and any recommendations that may have been adopted by the interstate commission;

(r) Coordinate education, training, and public awareness regarding the compact, its implementation, and its operation;

(s) Maintain records in accordance with the bylaws;

(t) Seek and obtain trademarks, copyrights, and patents; and

(u) Perform such functions as may be necessary or appropriate to achieve the purposes of the compact.

Source: Laws 2017, LB88, § 13.

38-3614 Annual assessment; levy; rule; audit.

(a) The interstate commission may levy on and collect an annual assessment from each member state to cover the cost of the operations and activities of the interstate commission and its staff. The total assessment must be sufficient to cover the annual budget approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount shall be allocated upon a formula to be determined by the interstate commission, which shall promulgate a rule binding upon all member states.

(b) The interstate commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same.

(c) The interstate commission shall not pledge the credit of any of the member states, except by, and with the authority of, the member state.

(d) The interstate commission shall be subject to a yearly financial audit conducted by a certified or licensed public accountant and the report of the audit shall be included in the annual report of the interstate commission.

Source: Laws 2017, LB88, § 14.

38-3615 Interstate commission; adopt bylaws; officers; immunity; duty to defend; hold harmless.

(a) The interstate commission shall, by a majority of commissioners present and voting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the Interstate Medical Licensure Compact within twelve months of the first interstate commission meeting.

(b) The interstate commission shall elect or appoint annually from among its commissioners a chairperson, a vice-chairperson, and a treasurer, each of whom shall have such authority and duties as may be specified in the bylaws. The chairperson, or in the chairperson's absence or disability, the vice-chairperson, shall preside at all meetings of the interstate commission.

(c) Officers selected in subsection (b) of this section shall serve without remuneration from the interstate commission.

(d) The officers and employees of the interstate commission shall be immune from suit and liability, either personally or in their official capacity, for a claim for damage to or loss of property or personal injury or other civil liability caused or arising out of, or relating to, an actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for believing occurred, within the scope of interstate commission employment, duties, or responsibilities; provided that such person shall not be protected from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of such person.

(1) The liability of the executive director and employees of the interstate commission or representatives of the interstate commission, acting within the scope of such person's employment or duties for acts, errors, or omissions occurring within such person's state, may not exceed the limits of liability set forth under the constitution and laws of that state for state officials, employees, and agents. The interstate commission is considered to be an instrumentality of the states for the purposes of any such action. Nothing in this subsection shall be construed to protect such person from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of such person.

(2) The interstate commission shall defend the executive director, its employees, and subject to the approval of the attorney general or other appropriate legal counsel of the member state represented by an interstate commission representative, shall defend such interstate commission representative in any civil action seeking to impose liability arising out of an actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such person.

(3) To the extent not covered by the state involved, member state, or the interstate commission, the representatives or employees of the interstate commission shall be held harmless in the amount of a settlement or judgment, including attorney's fees and costs, obtained against such persons arising out of an actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such persons.

Source: Laws 2017, LB88, § 15.

38-3616 Rules; promulgation; judicial review.

(a) The interstate commission shall promulgate reasonable rules in order to effectively and efficiently achieve the purposes of the Interstate Medical Licensure Compact. Notwithstanding the foregoing, in the event the interstate commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of the compact, or the powers granted hereunder, then such an action by the interstate commission shall be invalid and have no force or effect.

(b) Rules deemed appropriate for the operations of the interstate commission shall be made pursuant to a rulemaking process that substantially conforms to the Revised Model State Administrative Procedure Act of 2010 and subsequent amendments thereto.

(c) Not later than thirty days after a rule is promulgated, any person may file a petition for judicial review of the rule in the United States District Court for the District of Columbia or the federal district where the interstate commission has its principal offices. The filing of such a petition shall not stay or otherwise prevent the rule from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the interstate commission consistent with applicable law and shall not find the rule to be unlawful if the rule represents a reasonable exercise of the authority granted to the interstate commission.

Source: Laws 2017, LB88, § 16.

38-3617 Enforcement of Interstate Medical Licensure Compact; interstate commission; receive service of process.

(a) The executive, legislative, and judicial branches of state government in each member state shall enforce the Interstate Medical Licensure Compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of the compact and the rules promulgated under the compact shall have standing as statutory law but shall not override existing state authority to regulate the practice of medicine.

(b) All courts shall take judicial notice of the compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of the compact which may affect the powers, responsibilities or actions of the interstate commission.

(c) The interstate commission shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes. Failure to provide service of process to the interstate commission shall render a judgment or order void as to the interstate commission, the compact, or promulgated rules.

Source: Laws 2017, LB88, § 17.

38-3618 Interstate commission; enforcement powers; initiate legal action; remedies available.

(a) The interstate commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of the Interstate Medical Licensure Compact.

(b) The interstate commission may, by majority vote of the commissioners, initiate legal action in the United States District Court for the District of Columbia, or, at the discretion of the interstate commission, in the federal district where the interstate commission has its principal offices, to enforce compliance with the provisions of the compact, and its promulgated rules and bylaws, against a member state in default. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees.

(c) The remedies in the compact shall not be the exclusive remedies of the interstate commission. The interstate commission may avail itself of any other remedies available under state law or the regulation of a profession.

Source: Laws 2017, LB88, § 18.

38-3619 Grounds for default; notice; failure to cure; termination from compact; costs; appeal.

(a) The grounds for default include, but are not limited to, failure of a member state to perform such obligations or responsibilities imposed upon it by the Interstate Medical Licensure Compact, or the rules and bylaws of the interstate commission promulgated under the compact.

(b) If the interstate commission determines that a member state has defaulted in the performance of its obligations or responsibilities under the compact, or the bylaws or promulgated rules, the interstate commission shall:

(1) Provide written notice to the defaulting state and other member states, of the nature of the default, the means of curing the default, and any action taken by the interstate commission. The interstate commission shall specify the conditions by which the defaulting state must cure its default; and

(2) Provide remedial training and specific technical assistance regarding the default.

(c) If the defaulting state fails to cure the default, the defaulting state shall be terminated from the compact upon an affirmative vote of a majority of the commissioners and all rights, privileges, and benefits conferred by the compact shall terminate on the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of the default.

(d) Termination of membership in the compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to terminate shall be given by the interstate commission to the governor, the majority and minority leaders of the defaulting state's legislature, and each of the member states.

(e) The interstate commission shall establish rules and procedures to address licenses and physicians that are materially impacted by the termination of a member state, or the withdrawal of a member state.

(f) The member state which has been terminated is responsible for all dues, obligations, and liabilities incurred through the effective date of termination including obligations, the performance of which extends beyond the effective date of termination.

(g) The interstate commission shall not bear any costs relating to any state that has been found to be in default or which has been terminated from the compact, unless otherwise mutually agreed upon in writing between the interstate commission and the defaulting state.

(h) The defaulting state may appeal the action of the interstate commission by petitioning the United States District Court for the District of Columbia or the federal district where the interstate commission has its principal offices. The prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees.

Source: Laws 2017, LB88, § 19.

38-3620 Disputes; interstate commission; duties; rules.

(a) The interstate commission shall attempt, upon the request of a member state, to resolve disputes which are subject to the Interstate Medical Licensure Compact and which may arise among member states or member boards.

(b) The interstate commission shall promulgate rules providing for both mediation and binding dispute resolution as appropriate.

Source: Laws 2017, LB88, § 20.

38-3621 Eligibility to become member state; when compact effective; amendments to compact.

(a) Any state is eligible to become a member state of the Interstate Medical Licensure Compact.

(b) The compact shall become effective and binding upon legislative enactment of the compact into law by no less than seven states. Thereafter, it shall become effective and binding on a state upon enactment of the compact into law by that state.

(c) The governors of nonmember states, or their designees, shall be invited to participate in the activities of the interstate commission on a nonvoting basis prior to adoption of the compact by all states.

(d) The interstate commission may propose amendments to the compact for enactment by the member states. No amendment shall become effective and binding upon the interstate commission and the member states unless and until it is enacted into law by unanimous consent of the member states.

Source: Laws 2017, LB88, § 21.

38-3622 Withdrawal from Interstate Medical Licensure Compact; procedure; responsibilities; reinstatement; rules.

(a) Once effective, the Interstate Medical Licensure Compact shall continue in force and remain binding upon each and every member state, except that a member state may withdraw from the compact by specifically repealing the statute which enacted the compact into law.

(b) Withdrawal from the compact shall be by the enactment of a statute repealing the same, but shall not take effect until one year after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the governor of each other member state.

(c) The withdrawing state shall immediately notify the chairperson of the interstate commission in writing upon the introduction of legislation repealing the compact in the withdrawing state.

(d) The interstate commission shall notify the other member states of the withdrawing state's intent to withdraw within sixty days of its receipt of notice provided under subsection (c) of this section.

(e) The withdrawing state is responsible for all dues, obligations, and liabilities incurred through the effective date of withdrawal, including obligations, the performance of which extend beyond the effective date of withdrawal.

(f) Reinstatement following withdrawal of a member state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the interstate commission.

(g) The interstate commission is authorized to develop rules to address the impact of the withdrawal of a member state on licenses granted in other member states to physicians who designated the withdrawing member state as the state of principal license.

Source: Laws 2017, LB88, § 22.

38-3623 Dissolution of Interstate Medical Licensure Compact; effect.

(a) The Interstate Medical Licensure Compact shall dissolve effective upon the date of the withdrawal or default of the member state which reduces the membership in the compact to one member state.

(b) Upon the dissolution of the compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the interstate commission shall be concluded and surplus funds shall be distributed in accordance with the bylaws.

Source: Laws 2017, LB88, § 23.

38-3624 Severability; construction.

(a) The provisions of the Interstate Medical Licensure Compact shall be severable, and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

(b) The provisions of the compact shall be liberally construed to effectuate its purposes.

(c) Nothing in the compact shall be construed to prohibit the applicability of other interstate compacts to which the states are members.

Source: Laws 2017, LB88, § 24.

38-3625 Effect on other laws of member state.

(a) Nothing in the Interstate Medical Licensure Compact prevents the enforcement of any other law of a member state that is not inconsistent with the compact.

(b) All laws in a member state in conflict with the compact are superseded to the extent of the conflict.

(c) All lawful actions of the interstate commission, including all rules and bylaws promulgated by the commission, are binding upon the member states.

(d) All agreements between the interstate commission and the member states are binding in accordance with their terms.

(e) In the event any provision of the compact exceeds the constitutional limits imposed on the legislature of any member state, such provision shall be ineffective to the extent of the conflict with the constitutional provision in question in that member state.

Source: Laws 2017, LB88, § 25.

ARTICLE 37

DIALYSIS PATIENT CARE TECHNICIAN REGISTRATION ACT

Section

Section
38-3704. Dialysis patient care technician; powers.
38-3705. Dialysis patient care technician; qualifications.
38-3706. Dialysis patient care technician; registration; application; fee; duties; licensure as nurse; effect.
38-3707. Dialysis Patient Care Technician Registry; contents.

38-3701 Act, how cited.

Sections 38-3701 to 38-3707 shall be known and may be cited as the Dialysis Patient Care Technician Registration Act.

Source: Laws 2017, LB255, § 1.

38-3702 Purpose of act.

The purpose of the Dialysis Patient Care Technician Registration Act is to ensure the health, safety, and welfare of the public by providing for the accurate, cost-effective, efficient, and safe utilization of dialysis patient care technicians in the administration of hemodialysis. The act applies to dialysis facilities in which hemodialysis is provided.

Source: Laws 2017, LB255, § 2.

38-3703 Terms, defined.

For purposes of the Dialysis Patient Care Technician Registration Act:

(1) Dialysis patient care technician means a person who meets the requirements of section 38-3705; and

(2) Facility means a health care facility as defined in section 71-413 providing hemodialysis services.

Source: Laws 2017, LB255, § 3.

38-3704 Dialysis patient care technician; powers.

A dialysis patient care technician may administer hemodialysis under the authority of a registered nurse licensed pursuant to the Nurse Practice Act who may delegate tasks based on nursing judgment to a dialysis patient care technician based on the technician's education, knowledge, training, and skill.

Source: Laws 2017, LB255, § 4.

Cross References

Nurse Practice Act, see section 38-2201.

38-3705 Dialysis patient care technician; qualifications.

The minimum requirements for a dialysis patient care technician are as follows: (1) Possession of a high school diploma or a general educational development certificate, (2) training which follows national recommendations for dialysis patient care technicians and is conducted primarily in the work setting, (3) obtaining national certification by successful passage of a certification examination within eighteen months after becoming employed as a dialysis patient care technician, and (4) recertification at intervals required by the organization providing the certification examination including no fewer than thirty and no more than forty patient contact hours since the previous certification or recertification.

Source: Laws 2017, LB255, § 5.

38-3706 Dialysis patient care technician; registration; application; fee; duties; licensure as nurse; effect.

(1) To register as a dialysis patient care technician, an individual shall (a) possess a high school diploma or a general educational development certificate, (b) demonstrate that he or she is (i) employed as a dialysis patient care technician or (ii) enrolled in a training course as described in subdivision (2) of section 38-3705, (c) file an application with the department, and (d) pay the applicable fee.

(2) An applicant or a dialysis patient care technician shall report to the department, in writing, any conviction for a felony or misdemeanor. A conviction is not a disqualification for placement on the registry unless it relates to the standards identified in section 38-3705 or it reflects on the moral character of the applicant or dialysis patient care technician.

(3) An applicant or a dialysis patient care technician may report any pardon or setting aside of a conviction to the department. If a pardon or setting aside has been obtained, the conviction for which it was obtained shall not be maintained on the Dialysis Patient Care Technician Registry.

(4) If a person registered as a dialysis patient care technician becomes licensed as a registered nurse or licensed practical nurse, his or her registration as a dialysis patient care technician becomes null and void as of the date of licensure as a registered nurse or a licensed practical nurse.

Source: Laws 2017, LB255, § 6.

38-3707 Dialysis Patient Care Technician Registry; contents.

(1) The department shall list each dialysis patient care technician registration on the Dialysis Patient Care Technician Registry. A listing in the registry shall be valid for the term of the registration and upon renewal unless such listing is refused renewal or is removed.

(2) The registry shall contain the following information on each registrant: (a) The individual's full name; (b) any conviction of a felony or misdemeanor reported to the department; (c) a certificate showing completion of a nationally recognized training program; and (d) a certificate of completion of a nationally commercially available dialysis patient care technician certification examination.

(3) Nothing in the Dialysis Patient Care Technician Registration Act shall be construed to require a dialysis patient care technician to register in the Medication Aide Registry.

Source: Laws 2017, LB255, § 7.

Cross References

Medication Aide Registry, see section 71-6727.

ARTICLE 38
EMS PERSONNEL LICENSURE INTERSTATE COMPACT

Section
38-3801. EMS Personnel Licensure Interstate Compact.

38-3801 EMS Personnel Licensure Interstate Compact.

The State of Nebraska adopts the EMS Personnel Licensure Interstate Compact in the form substantially as follows:

ARTICLE 1. PURPOSE

In order to protect the public through verification of competency and ensure accountability for patient-care-related activities, all states license emergency medical services personnel, such as emergency medical technicians, advanced emergency medical technicians, and paramedics. The EMS Personnel Licensure Interstate Compact is intended to facilitate the day-to-day movement of emergency medical services personnel across state boundaries in the performance of their emergency medical services duties as assigned by an appropriate authority and authorize state emergency medical services offices to afford immediate legal recognition to emergency medical services personnel licensed in a member state. This compact recognizes that states have a vested interest in protecting the public's health and safety through their licensing and regulation of emergency medical services personnel and that such state regulation shared among the member states will best protect public health and safety. This compact is designed to achieve the following purposes and objectives:

1. Increase public access to emergency medical services personnel;

2. Enhance the states' ability to protect the public's health and safety, especially patient safety;

3. Encourage the cooperation of member states in the areas of emergency medical services personnel licensure and regulation;

4. Support licensing of military members who are separating from an active duty tour and their spouses;

5. Facilitate the exchange of information between member states regarding emergency medical services personnel licensure, adverse action, and significant investigatory information;

6. Promote compliance with the laws governing emergency medical services personnel practice in each member state; and

7. Invest all member states with the authority to hold emergency medical services personnel accountable through the mutual recognition of member state licenses.

ARTICLE 2. DEFINITIONS

In the EMS Personnel Licensure Interstate Compact:

A. Advanced emergency medical technician (AEMT) means an individual licensed with cognitive knowledge and a scope of practice that corresponds to that level in the National EMS Education Standards and National EMS Scope of Practice Model.

B. Adverse action means any administrative, civil, equitable, or criminal action permitted by a state's laws which may be imposed against licensed EMS personnel by a state EMS authority or state court, including, but not limited to, actions against an individual's license such as revocation, suspension, probation, consent agreement, monitoring, or other limitation or encumbrance on the individual's practice, letters of reprimand or admonition, fines, criminal convictions, and state court judgments enforcing adverse actions by the state EMS authority.

C. Alternative program means a voluntary, nondisciplinary substance abuse recovery program approved by a state EMS authority.

D. Certification means the successful verification of entry-level cognitive and psychomotor competency using a reliable, validated, and legally defensible examination.

E. Commission means the national administrative body of which all states that have enacted the compact are members.

F. Emergency medical services (EMS) means services provided by emergency medical services personnel.

G. Emergency medical services (EMS) personnel includes emergency medical technicians, advanced emergency medical technicians, and paramedics.

H. Emergency medical technician (EMT) means an individual licensed with cognitive knowledge and a scope of practice that corresponds to that level in the National EMS Education Standards and National EMS Scope of Practice Model.

I. Home state means a member state where an individual is licensed to practice emergency medical services.

J. License means the authorization by a state for an individual to practice as an EMT, an AEMT, or a paramedic.

K. Medical director means a physician licensed in a member state who is accountable for the care delivered by EMS personnel.

L. Member state means a state that has enacted the EMS Personnel Licensure Interstate Compact.

M. Privilege to practice means an individual's authority to deliver emergency medical services in remote states as authorized under this compact.

N. Paramedic means an individual licensed with cognitive knowledge and a scope of practice that corresponds to that level in the National EMS Education Standards and National EMS Scope of Practice Model.

O. Remote state means a member state in which an individual is not licensed.

P. Restricted means the outcome of an adverse action that limits a license or the privilege to practice.

Q. Rule means a written statement by the commission promulgated pursuant to Article 12 of this compact that is of general applicability; implements, interprets, or prescribes a policy or provision of this compact; or is an organizational, procedural, or practice requirement of the commission and has the force and effect of statutory law in a member state and includes the amendment, repeal, or suspension of an existing rule.

R. Scope of practice means defined parameters of various duties or services that may be provided by an individual with specific credentials. Whether regulated by rule, statute, or court decision, it tends to represent the limits of services an individual may perform.

S. Significant investigatory information means:

1. Investigative information that a state EMS authority, after a preliminary inquiry that includes notification and an opportunity to respond if required by state law, has reason to believe, if proved true, would result in the imposition of an adverse action on a license or privilege to practice; or

2. Investigative information that indicates that the individual represents an immediate threat to public health and safety regardless of whether the individual has been notified and had an opportunity to respond.

T. State means any state, commonwealth, district, or territory of the United States.

U. State EMS authority means the board, office, or other agency with the legislative mandate to license EMS personnel.

ARTICLE 3. HOME STATE LICENSURE

A. Any member state in which an individual holds a current license shall be deemed a home state for purposes of the EMS Personnel Licensure Interstate Compact.

B. Any member state may require an individual to obtain and retain a license to be authorized to practice in the member state under circumstances not authorized by the privilege to practice under the terms of this compact.

C. A home state's license authorizes an individual to practice in a remote state under the privilege to practice only if the home state:

1. Currently requires the use of the National Registry of Emergency Medical Technicians examination as a condition of issuing initial licenses at the EMT and paramedic levels;

2. Has a mechanism in place for receiving and investigating complaints about individuals;

3. Notifies the commission, in compliance with the terms of this compact, of any adverse action or significant investigatory information regarding an individual;

4. No later than five years after activation of this compact, requires a criminal background check of all applicants for initial licensure, including the use of the results of fingerprint or other biometric data checks compliant with the requirements of the Federal Bureau of Investigation with the exception of federal employees who have suitability determination in accordance with 5 C.F.R. 731.202 and submit documentation of such as promulgated in the rules of the commission; and

5. Complies with the rules of the commission.

ARTICLE 4. COMPACT PRIVILEGE TO PRACTICE

A. Member states shall recognize the privilege to practice of an individual license in another member state that is in conformance with Article 3 of the EMS Personnel Licensure Interstate Compact.

B. To exercise the privilege to practice under the terms and provisions of this compact, an individual must:

1. Be at least eighteen years of age;

2. Possess a current unrestricted license in a member state as an EMT, AEMT, paramedic, or state recognized and licensed level with a scope of practice and authority between EMT and paramedic; and

3. Practice under the supervision of a medical director.

C. An individual providing patient care in a remote state under the privilege to practice shall function within the scope of practice authorized by the home state unless and until modified by an appropriate authority in the remote state as may be defined in the rules of the commission.

D. Except as provided in section C of this Article, an individual practicing in a remote state will be subject to the remote state's authority and laws. A remote state may, in accordance with due process and that state's laws, restrict,

suspend, or revoke an individual's privilege to practice in the remote state and may take any other necessary actions to protect the health and safety of its citizens. If a remote state takes action, it shall promptly notify the home state and the commission.

E. If an individual's license in any home state is restricted or suspended, the individual shall not be eligible to practice in a remote state under the privilege to practice until the individual's home state license is restored.

F. If an individual's privilege to practice in any remote state is restricted, suspended, or revoked, the individual shall not be eligible to practice in any remote state until the individual's privilege to practice is restored.

ARTICLE 5. CONDITIONS OF PRACTICE IN A REMOTE STATE5tc

An individual may practice in a remote state under a privilege to practice only in the performance of the individual's EMS duties as assigned by an appropriate authority, as defined in the rules of the commission, and under the following circumstances:

1. The individual originates a patient transport in a home state and transports the patient to a remote state;

2. The individual originates in the home state and enters a remote state to pick up a patient and provide care and transport of the patient to the home state;

3. The individual enters a remote state to provide patient care or transport within that remote state;

4. The individual enters a remote state to pick up a patient and provide care and transport to a third member state;

5. Other conditions as determined by rules promulgated by the commission.

ARTICLE 6. RELATIONSHIP TO EMERGENCY MANAGEMENT ASSISTANCE COMPACT

Upon a member state's governor's declaration of a state of emergency or disaster that activates the Emergency Management Assistance Compact, all relevant terms and provisions of the compact shall apply and to the extent any terms or provisions of the EMS Personnel Licensure Interstate Compact conflict with the Emergency Management Assistance Compact, the terms of the Emergency Management Assistance Compact shall prevail with respect to any individual practicing in the remote state in response to such declaration.

ARTICLE 7. VETERANS, SERVICE MEMBERS SEPARATING FROM ACTIVE DUTY MILITARY, AND THEIR SPOUSES

A. Member states shall consider a veteran, an active military service member, and a member of the National Guard and Reserves separating from an active duty tour, and a spouse thereof, who holds a current valid and unrestricted National Registry of Emergency Medical Technicians certification at or above the level of the state license being sought as satisfying the minimum training and examination requirements for such licensure.

B. Member states shall expedite the processing of licensure applications submitted by veterans, active military service members, and members of the National Guard and Reserves separating from an active duty tour and their spouses.

C. All individuals functioning with a privilege to practice under this Article remain subject to the adverse actions provisions of Article 8 of the EMS Personnel Licensure Interstate Compact.

ARTICLE 8. ADVERSE ACTIONS

A. A home state shall have exclusive power to impose adverse action against an individual's license issued by the home state.

B. If an individual's license in any home state is restricted or suspended, the individual shall not be eligible to practice in a remote state under the privilege to practice until the individual's home state license is restored.

1. All home state adverse action orders shall include a statement that the individual's compact privileges are inactive. The order may allow the individual to practice in remote states with prior written authorization from the state EMS authority of both the home state and the remote state.

2. An individual currently subject to adverse action in the home state shall not practice in any remote state without prior written authorization from the state EMS authority of both the home state and the remote state.

C. A member state shall report adverse actions and any occurrences that the individual's compact privileges are restricted, suspended, or revoked to the commission in accordance with the rules of the commission.

D. A remote state may take adverse action on an individual's privilege to practice within that state.

E. Any member state may take adverse action against an individual's privilege to practice in that state based on the factual findings of another member state, so long as each state follows its own procedures for imposing such adverse action.

F. A home state's state EMS authority shall investigate and take appropriate action with respect to reported conduct in a remote state as it would if such conduct had occurred within the home state. In such cases, the home state's law shall control in determining the appropriate adverse action.

G. Nothing in the EMS Personnel Licensure Interstate Compact shall override a member state's decision that participation in an alternative program may be used in lieu of adverse action and that such participation shall remain nonpublic if required by the member state's laws. Member states must require individuals who enter any alternative programs to agree not to practice in any other member state during the term of the alternative program without prior authorization from such other member state.

ARTICLE 9. ADDITIONAL POWERS INVESTED IN A MEMBER STATE'S STATE EMS AUTHORITY

A member state's state EMS authority, in addition to any other powers granted under state law, is authorized under the EMS Personnel Licensure Interstate Compact to:

1. Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses and the production of evidence. Subpoenas issued by a member state's state EMS authority for the attendance and testimony of witnesses, or the production of evidence from another member state, shall be enforced in the remote state by any court of competent jurisdiction, according to that court's practice and procedure in considering subpoenas issued in its own proceedings. The issuing state EMS authority shall pay any

witness fees, travel expenses, mileage, and other fees required by the service statutes of the state where the witnesses or evidence is located; and

2. Issue cease and desist orders to restrict, suspend, or revoke an individual's privilege to practice in the state.

ARTICLE 10. ESTABLISHMENT OF THE INTERSTATE COMMISSION FOR EMS PERSONNEL PRACTICE

A. The member states hereby create and establish a joint public agency known as the Interstate Commission for EMS Personnel Practice.

1. The commission is a body politic and an instrumentality of the member states.

2. Venue is proper and judicial proceedings by or against the commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the commission is located. The commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

3. Nothing in the EMS Personnel Licensure Interstate Compact shall be construed to be a waiver of sovereign immunity.

B. Membership, Voting, and Meetings

1. Each member state shall have and be limited to one delegate. The responsible official of the state EMS authority or his or her designee shall be the delegate to this compact for each member state. Any delegate may be removed or suspended from office as provided by the law of the state from which the delegate is appointed. Any vacancy occurring in the commission shall be filled in accordance with the laws of the member state in which the vacancy exists. In the event that more than one board, office, or other agency with the legislative mandate to license EMS personnel at and above the level of EMT exists, the Governor of the member state will determine which entity will be responsible for assigning the delegate.

2. Each delegate shall be entitled to one vote with regard to the promulgation of rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the commission. A delegate shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for delegates' participation in meetings by telephone or other means of communication.

3. The commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws.

4. All meetings shall be open to the public, and public notice of meetings shall be given in the same manner as required under the rulemaking provisions in Article 12 of this compact.

5. The commission may convene in a closed, nonpublic meeting if the commission must discuss:

a. Noncompliance of a member state with its obligations under this compact;

b. The employment, compensation, discipline, or other personnel matters, practices, or procedures related to specific employees or other matters related to the commission's internal personnel practices and procedures;

c. Current, threatened, or reasonably anticipated litigation;

d. Negotiation of contracts for the purchase or sale of goods, services, or real estate;

e. Accusing any person of a crime or formally censuring any person;

f. Disclosure of trade secrets or commercial or financial information that is privileged or confidential;

g. Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

h. Disclosure of investigatory records compiled for law enforcement purposes;

i. Disclosure of information related to any investigatory reports prepared by or on behalf of or for use of the commission or other committee charged with responsibility of investigation or determination of compliance issues pursuant to the compact; or

j. Matters specifically exempted from disclosure by federal or member state statute.

6. If a meeting, or portion of a meeting, is closed pursuant to this Article, the commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision. The commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons for the actions, including a description of the views expressed. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the commission or order of a court of competent jurisdiction.

C. The commission shall, by a majority vote of the delegates, prescribe bylaws or rules to govern its conduct as may be necessary or appropriate to carry out the purposes and exercise the powers of this compact, including, but not limited to:

1. Establishing the fiscal year of the commission;

2. Providing reasonable standards and procedures:

a. For the establishment and meetings of other committees; and

b. Governing any general or specific delegation of any authority or function of the commission;

3. Providing reasonable procedures for calling and conducting meetings of the commission, ensuring reasonable advance notice of all meetings, and providing an opportunity for attendance of such meetings by interested parties, with enumerated exceptions designed to protect the public's interest, the privacy of individuals, and proprietary information, including trade secrets. The commission may meet in closed session only after a majority of the membership votes to close a meeting in whole or in part. As soon as practicable, the commission must make public a copy of the vote to close the meeting revealing the vote of each member with no proxy votes allowed;

4. Establishing the titles, duties and authority and reasonable procedures for the election of the officers of the commission;

5. Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the commission. Notwithstanding any civil service or other similar laws of any member state, the bylaws shall exclusively govern the personnel policies and programs of the commission;

6. Promulgating a code of ethics to address permissible and prohibited activities of commission members and employees;

7. Providing a mechanism for winding up the operations of the commission and the equitable disposition of any surplus funds that may exist after the termination of this compact after the payment or reserving of all of its debts and obligations;

8. The commission shall publish its bylaws and file a copy thereof, and a copy of any amendment thereto, with the appropriate agency or officer in each of the member states, if any.

9. The commission shall maintain its financial records in accordance with the bylaws.

10. The commission shall meet and take such actions as are consistent with this compact and the bylaws.

D. The commission shall have the following powers:

1. The authority to promulgate uniform rules to facilitate and coordinate implementation and administration of this compact. The rules shall have the force and effect of law and shall be binding in all member states;

2. To bring and prosecute legal proceedings or actions in the name of the commission. The standing of any state EMS authority or other regulatory body responsible for EMS personnel licensure to sue or be sued under applicable law shall not be affected;

3. To purchase and maintain insurance and bonds;

4. To borrow, accept, or contract for services of personnel, including, but not limited to, employees of a member state;

5. To hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of this compact, and establish the commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;

6. To accept any and all appropriate donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of the same. At all times the commission shall strive to avoid any appearance of impropriety or conflict of interest;

7. To lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve, or use, any property, real, personal, or mixed. At all times the commission shall strive to avoid any appearance of impropriety;

8. To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property real, personal, or mixed;

9. To establish a budget and make expenditures;

10. To borrow money;

11. To appoint committees, including advisory committees comprised of members, state regulators, state legislators or their representatives, and consumer representatives, and such other interested persons as may be designated in this compact and the bylaws;

12. To provide and receive information from, and to cooperate with, law enforcement agencies;

13. To adopt and use an official seal; and

14. To perform such other functions as may be necessary or appropriate to achieve the purposes of this compact consistent with the state regulation of EMS personnel licensure and practice.

E. Financing of the Commission

1. The commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.

2. The commission may accept any and all appropriate revenue sources, donations, and grants of money, equipment, supplies, materials, and services.

3. The commission may levy on and collect an annual assessment from each member state or impose fees on other parties to cover the cost of the operations and activities of the commission and its staff, which must be in a total amount sufficient to cover its annual budget as approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the commission, which shall promulgate a rule binding upon all member states.

4. The commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the commission pledge the credit of any of the member states, except by and with the authority of the member state.

5. The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the commission.

F. Qualified Immunity, Defense, and Indemnification

1. The members, officers, executive director, employees, and representatives of the commission shall have no greater liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred, within the scope of commission employment, duties, or responsibilities, than a state employee would have under the same or similar circumstances. Nothing in this paragraph shall be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful or wanton misconduct of that person.

2. The commission shall defend any member, officer, executive director, employee, or representative of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities. Nothing in this paragraph shall be construed to prohibit that person from retaining his or her own counsel. The commission shall provide such defense if the actual or alleged act, error, or omission did not result from that person's intentional or willful or wanton misconduct.

3. The commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, if the actual or alleged act, error, or omission did not result from the intentional or willful or wanton misconduct of that person.

ARTICLE 11. COORDINATED DATABASE

A. The commission shall provide for the development and maintenance of a coordinated database and reporting system containing licensure, adverse action, and significant investigatory information on all licensed individuals in member states.

B. A member state shall submit a uniform data set to the coordinated database on all individuals to whom the EMS Personnel Licensure Interstate Compact is applicable as required by the rules of the commission, including:

1. Identifying information;

2. Licensure data;

3. Significant investigatory information;

4. Adverse actions against an individual's license;

5. An indicator that an individual's privilege to practice is restricted, suspended, or revoked;

6. Nonconfidential information related to alternative program participation;

7. Any denial of application for licensure, and the reason for such denial; and

8. Other information that may facilitate the administration of this compact, as determined by the rules of the commission.

C. The coordinated database administrator shall promptly notify all member states of any adverse action taken against, or significant investigative information on, any individual in a member state.

D. Member states contributing information to the coordinated database may designate information that may not be shared with the public without the express permission of the contributing state.

E. Any information submitted to the coordinated database that is subsequently required to be expunged by the laws of the member state contributing the information shall be removed from the coordinated database.

ARTICLE 12. RULEMAKING

A. The commission shall exercise its rulemaking powers pursuant to the criteria set forth in this Article and the rules adopted thereunder. Rules and amendments shall become binding as of the date specified in each rule or amendment.

B. If a majority of the legislatures of the member states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the EMS Personnel Licensure Interstate Compact, then such rule shall have no further force and effect in any member state.

C. Rules or amendments to the rules shall be adopted at a regular or special meeting of the commission.

D. Prior to promulgation and adoption of a final rule or rules by the commission, and at least sixty days in advance of the meeting at which the rule will be considered and voted upon, the commission shall file a notice of proposed rulemaking:

1. On the website of the commission; and

2. On the website of each member state's state EMS authority or the publication in which each state would otherwise publish proposed rules.

E. The notice of proposed rulemaking shall include:

1. The proposed time, date, and location of the meeting in which the rule will be considered and voted upon;

2. The text of the proposed rule or amendment and the reason for the proposed rule;

3. A request for comments on the proposed rule from any interested person; and

4. The manner in which interested persons may submit notice to the commission of their intention to attend the public hearing and any written comments.

F. Prior to adoption of a proposed rule, the commission shall allow persons to submit written data, facts, opinions, and arguments, which shall be made available to the public.

G. The commission shall grant an opportunity for a public hearing before it adopts a rule or amendment if a hearing is requested by:

1. At least twenty-five persons;

2. A governmental subdivision or agency; or

3. An association having at least twenty-five members.

H. If a hearing is held on the proposed rule or amendment, the commission shall publish the place, time, and date of the scheduled public hearing.

1. All persons wishing to be heard at the hearing shall notify the executive director of the commission or other designated member in writing of their desire to appear and testify at the hearing not less than five business days before the scheduled date of the hearing.

2. Hearings shall be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing.

3. No transcript of the hearing is required, unless a written request for a transcript is made, in which case the person requesting the transcript shall bear the cost of producing the transcript. A recording may be made in lieu of a transcript under the same terms and conditions as a transcript. This subsection shall not preclude the commission from making a transcript or recording of the hearing if it so chooses.

4. Nothing in this Article shall be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the commission at hearings required by this Article.

I. Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the commission shall consider all written and oral comments received.

J. The commission shall, by majority vote of all members, take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.

K. If no written notice of intent to attend the public hearing by interested parties is received, the commission may proceed with promulgation of the proposed rule without a public hearing.

L. Upon determination that an emergency exists, the commission may consider and adopt an emergency rule without prior notice, opportunity for comment, or hearing. The usual rulemaking procedures provided in this compact and in this Article shall be retroactively applied to the rule as soon as reasonably possible, in no event later than ninety days after the effective date of the rule. For purposes of this paragraph, an emergency rule is one that must be adopted immediately in order to:

1. Meet an imminent threat to public health, safety, or welfare;

2. Prevent a loss of commission or member state funds;

3. Meet a deadline for the promulgation of an administrative rule that is established by federal law or rule; or

4. Protect public health and safety.

M. The commission or an authorized committee of the commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions shall be posted on the website of the commission. The revision shall be subject to challenge by any person for a period of thirty days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge shall be made in writing and delivered to the chair of the commission prior to the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the commission.

ARTICLE 13. OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT

A. Oversight

1. The executive, legislative, and judicial branches of state government in each member state shall enforce the EMS Personnel Licensure Interstate Compact and take all actions necessary and appropriate to effectuate this compact's purposes and intent. This compact and the rules promulgated under this compact shall have standing as statutory law.

2. All courts shall take judicial notice of this compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of this compact which may affect the powers, responsibilities, or actions of the commission.

3. The commission shall be entitled to receive service of process in any such proceeding and shall have standing to intervene in such a proceeding for all purposes. Failure to provide service of process to the commission shall render a judgment or order void as to the commission, this compact, or promulgated rules.

B. Default, Technical Assistance, and Termination

1. If the commission determines that a member state has defaulted in the performance of its obligations or responsibilities under this compact or the promulgated rules, the commission shall:

a. Provide written notice to the defaulting state and other member states of the nature of the default, the proposed means of curing the default, or any other action to be taken by the commission; and

b. Provide remedial training and specific technical assistance regarding the default.

2. If a state in default fails to cure the default, the defaulting state may be terminated from this compact upon an affirmative vote of a majority of the member states, and all rights, privileges, and benefits conferred by this compact may be terminated on the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.

3. Termination of membership in this compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the commission to the governor, the majority and minority leaders of the defaulting state's legislature or the speaker if no such leaders exist, and each of the member states.

4. A state that has been terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.

5. The commission shall not bear any costs related to a state that is found to be in default or that has been terminated from this compact, unless agreed upon in writing between the commission and the defaulting state.

6. The defaulting state may appeal the action of the commission by petitioning the United States District Court for the District of Columbia or the federal district where the commission has its principal offices. The prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.

C. Dispute Resolution

1. Upon request by a member state, the commission shall attempt to resolve disputes related to this compact that arise among member states and between member and nonmember states.

2. The commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.

D. Enforcement

1. The commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact.

2. By majority vote, the commission may initiate legal action in the United States District Court for the District of Columbia or the federal district where the commission has its principal offices against a member state in default to enforce compliance with this compact and its promulgated rules and bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.

3. The remedies in this Article shall not be the exclusive remedies of the commission. The commission may pursue any other remedies available under federal or state law.

ARTICLE 14. DATE OF IMPLEMENTATION OF THE INTERSTATE COMMISSION FOR EMS PERSONNEL PRACTICE AND ASSOCIATED RULES, WITHDRAWAL, AND AMENDMENT

A. The EMS Personnel Licensure Interstate Compact shall come into effect on the date on which the compact statute is enacted into law in the tenth member state. The provisions, which become effective at that time, shall be limited to the powers granted to the commission relating to assembly and the promulgation of rules. Thereafter, the commission shall meet and exercise rulemaking powers necessary to the implementation and administration of this compact.

B. Any state that joins the compact subsequent to the commission's initial adoption of the rules shall be subject to the rules as they exist on the date on which the compact becomes law in that state. Any rule that has been previously adopted by the commission shall have the full force and effect of law on the day the compact becomes law in that state.

C. Any member state may withdraw from this compact by enacting a statute repealing the same.

1. A member state's withdrawal shall not take effect until six months after enactment of the repealing statute.

2. Withdrawal shall not affect the continuing requirement of the withdrawing state's state EMS authority to comply with the investigative and adverse action reporting requirements of this compact prior to the effective date of withdrawal.

D. Nothing contained in this compact shall be construed to invalidate or prevent any EMS personnel licensure agreement or other cooperative arrangement between a member state and a nonmember state that does not conflict with this compact.

E. This compact may be amended by the member states. No amendment to this compact shall become effective and binding upon any member state until it is enacted into the laws of all member states.

ARTICLE 15. CONSTRUCTION AND SEVERABILITY

The EMS Personnel Licensure Interstate Compact shall be liberally construed so as to effectuate the purposes thereof. If this compact shall be held contrary to the constitution of any member state, the compact shall remain in full force and effect as to the remaining member states. Nothing in this compact supersedes state law or rules related to licensure of EMS agencies.

Source: Laws 2018, LB1034, § 69.

Cross References

Emergency Management Assistance Compact, see section 1-124, Appendix, Nebraska Revised Statutes, Volume 2A.

ARTICLE 39

PSYCHOLOGY INTERJURISDICTIONAL COMPACT

Section
38-3901. Psychology Interjurisdictional Compact.

38-3901 Psychology Interjurisdictional Compact.

The State of Nebraska adopts the Psychology Interjurisdictional Compact substantially as follows:

ARTICLE I

PURPOSE

States license psychologists in order to protect the public through verification of education, training, and experience and ensure accountability for professional practice.

The Psychology Interjurisdictional Compact is intended to regulate the day-to-day practice of telepsychology, the provision of psychological services using telecommunication technologies, by psychologists across state boundaries in the performance of their psychological practice as assigned by an appropriate authority.

The Compact is intended to regulate the temporary in-person, face-to-face practice of psychology by psychologists across state boundaries for thirty days within a calendar year in the performance of their psychological practice as assigned by an appropriate authority.

The Compact is intended to authorize state psychology regulatory authorities to afford legal recognition, in a manner consistent with the terms of the Compact, to psychologists licensed in another state.

The Compact recognizes that states have a vested interest in protecting the public's health and safety through licensing and regulation of psychologists and that such state regulation will best protect public health and safety.

The Compact does not apply when a psychologist is licensed in both the home and receiving states.

The Compact does not apply to permanent in-person, face-to-face practice; it does allow for authorization of temporary psychological practice.

Consistent with these principles, the Compact is designed to achieve the following purposes and objectives:

1. Increase public access to professional psychological services by allowing for telepsychological practice across state lines as well as temporary in-person, face-to-face services into a state which the psychologist is not licensed to practice psychology;

2. Enhance the states' ability to protect the public's health and safety, especially client or patient safety;

3. Encourage the cooperation of compact states in the areas of psychology licensure and regulation;

4. Facilitate the exchange of information between compact states regarding psychologist licensure, adverse actions, and disciplinary history;

5. Promote compliance with the laws governing psychological practice in each compact state; and

6. Invest all compact states with the authority to hold licensed psychologists accountable through the mutual recognition of compact state licenses.

ARTICLE II

DEFINITIONS

A. Adverse action means any action taken by a state psychology regulatory authority which finds a violation of a statute or regulation that is identified by the state psychology regulatory authority as discipline and is a matter of public record.

B. Association of State and Provincial Psychology Boards means the recognized membership organization composed of State and Provincial Psychology Regulatory Authorities responsible for the licensure and registration of psychologists throughout the United States and Canada.

C. Authority to practice interjurisdictional telepsychology means a licensed psychologist's authority to practice telepsychology, within the limits authorized under the Psychology Interjurisdictional Compact, in another compact state.

D. Bylaws means those bylaws established by the Commission pursuant to Article X for its governance, or for directing and controlling its actions and conduct.

E. Client or patient means the recipient of psychological services, whether psychological services are delivered in the context of health care, corporate, supervision, and/or consulting services.

F. Commission means the Psychology Interjurisdictional Compact Commission which is the national administration of which all compact states are members.

G. Commissioner means the voting representative appointed by each state psychology regulatory authority pursuant to Article X.

H. Compact state means a state, the District of Columbia, or a United States territory that has enacted the Compact and which has not withdrawn pursuant to Article XIII, subsection C or been terminated pursuant to Article XII, subsection B.

I. Coordinated Licensure Information System means an integrated process for collecting, storing, and sharing information on psychologists' licensure and enforcement activities related to psychology licensure laws, which is administered by the recognized membership organization composed of state and provincial psychology regulatory authorities.

J. Confidentiality means the principle that data or information is not made available or disclosed to unauthorized persons or processes.

K. Day means any part of a day in which psychological work is performed.

L. Distant state means the compact state where a psychologist is physically present, not through using telecommunications technologies, to provide temporary in-person, face-to-face psychological services.

M. E.Passport means a certificate issued by the Association of State and Provincial Psychology Boards that promotes the standardization in the criteria of interjurisdictional telepsychology practice and facilitates the process for licensed psychologists to provide telepsychological services across state lines.

N. Executive board means a group of directors elected or appointed to act on behalf of, and within the powers granted to them by, the commission.

O. Home state means a compact state where a psychologist is licensed to practice psychology. If the psychologist is licensed in more than one compact state and is practicing under the authorization to practice interjurisdictional telepsychology, the home state is the compact state where the psychologist is physically present when the telepsychology services are delivered. If the psy-

chologist is licensed in more than one compact state and is practicing under the temporary authorization to practice, the home state is any compact state where the psychologist is licensed.

P. Identity history summary means a summary of information retained by the Federal Bureau of Investigation, or other designee with similar authority, in connection with arrests and, in some instances, federal employment, naturalization, or military service.

Q. In-person, face-to-face means interactions in which the psychologist and the client or patient are in the same physical space and which does not include interactions that may occur through the use of telecommunication technologies.

R. Interjurisdictional Practice Certificate means a certificate issued by the Association of State and Provincial Psychology Boards that grants temporary authority to practice based on notification to the state psychology regulatory authority of intention to practice temporarily and verification of one's qualifications for such practice.

S. License means authorization by a state psychology regulatory authority to engage in the independent practice of psychology, which would be unlawful without the authorization.

T. Noncompact state means any state which is not at the time a compact state.

U. Psychologist means an individual licensed for the independent practice of psychology.

V. Receiving state means a compact state where the client or patient is physically located when the telepsychology services are delivered.

W. Rule means a written statement by the Commission promulgated pursuant to Article XI that is of general applicability, implements, interprets, or prescribes a policy or provision of the Compact, or an organizational, procedural, or practice requirement of the Commission and has the force and effect of statutory law in a compact state, and includes the amendment, repeal, or suspension of an existing rule.

X. Significant investigatory information means:

1. Investigative information that a state psychology regulatory authority, after a preliminary inquiry that includes notification and an opportunity to respond if required by state law, has reason to believe, if proven true, would indicate more than a violation of state statute or ethics code that would be considered more substantial than minor infraction; or

2. Investigative information that indicates that the psychologist represents an immediate threat to public health and safety regardless of whether the psychologist has been notified or had an opportunity to respond.

Y. State means a state, commonwealth, territory, or possession of the United States or the District of Columbia.

Z. State psychology regulatory authority means the board, office, or other agency with the legislative mandate to license and regulate the practice of psychology.

AA. Telepsychology means the provision of psychological services using telecommunication technologies.

BB. Temporary authorization to practice means a licensed psychologist's authority to conduct temporary in-person, face-to-face practice, within the limits authorized under the Compact, in another compact state.

CC. Temporary in-person, face-to-face practice means the practice of psychology in which a psychologist is physically present, not through using telecommunications technologies, in the distant state to provide for the practice of psychology for thirty days within a calendar year and based on notification to the distant state.

ARTICLE III

HOME STATE LICENSURE

A. The home state shall be a compact state where a psychologist is licensed to practice psychology.

B. A psychologist may hold one or more compact state licenses at a time. If the psychologist is licensed in more than one compact state, the home state is the compact state where the psychologist is physically present when the services are delivered as authorized by the authority to practice interjurisdictional telepsychology under the terms of the Psychology Interjurisdictional Compact.

C. Any compact state may require a psychologist not previously licensed in a compact state to obtain and retain a license to be authorized to practice in the compact state under circumstances not authorized by the authority to practice interjurisdictional telepsychology under the terms of the Psychology Interjurisdictional Compact.

D. Any compact state may require a psychologist to obtain and retain a license to be authorized to practice in a compact state under circumstances not authorized by temporary authorization to practice under the terms of the Compact.

E. A home state's license authorizes a psychologist to practice in a receiving state under the authority to practice interjurisdictional telepsychology only if the compact state:

1. Currently requires the psychologist to hold an active E.Passport;

2. Has a mechanism in place for receiving and investigating complaints about licensed individuals;

3. Notifies the Commission, in compliance with the terms of the Compact, of any adverse action or significant investigatory information regarding a licensed individual;

4. Requires an identity history summary of all applicants at initial licensure, including the use of the results of fingerprints or other biometric data checks compliant with the requirements of the Federal Bureau of Investigation, or other designee with similar authority, no later than ten years after activation of the Compact; and

5. Complies with the bylaws and rules of the Commission.

F. A home state's license grants temporary authorization to practice to a psychologist in a distant state only if the compact state:

1. Currently requires the psychologist to hold an active Interjurisdictional Practice Certificate;

2. Has a mechanism in place for receiving and investigating complaints about licensed individuals;

3. Notifies the Commission, in compliance with the terms of the Compact, of any adverse action or significant investigatory information regarding a licensed individual;

4. Requires an identity history summary of all applicants at initial licensure, including the use of the results of fingerprints or other biometric data checks compliant with the requirements of the Federal Bureau of Investigation, or other designee with similar authority, no later than ten years after activation of the Compact; and

5. Complies with the bylaws and rules of the Commission.

ARTICLE IV

COMPACT PRIVILEGE TO PRACTICE TELEPSYCHOLOGY

A. Compact states shall recognize the right of a psychologist, licensed in a compact state in conformance with Article III, to practice telepsychology in other compact states (receiving states) in which the psychologist is not licensed, under the authority to practice interjurisdictional telepsychology as provided in the Psychology Interjurisdictional Compact.

B. To exercise the authority to practice interjurisdictional telepsychology under the terms and provisions of the Compact, a psychologist licensed to practice in a compact state must:

1. Hold a graduate degree in psychology from an institute of higher education that was, at the time the degree was awarded:

a. Regionally accredited by an accrediting body recognized by the United States Department of Education to grant graduate degrees, or authorized by provincial statute or Royal Charter to grant doctoral degrees; or

b. A foreign college or university deemed to be equivalent to subdivision 1a of this subsection by a foreign credential evaluation service that is a member of the National Association of Credential Evaluation Services or by a recognized foreign credential evaluation service; and

2. Hold a graduate degree in psychology that meets the following criteria:

a. The program, wherever it may be administratively housed, must be clearly identified and labeled as a psychology program. Such a program must specify in pertinent institutional catalogues and brochures its intent to educate and train professional psychologists;

b. The psychology program must stand as a recognizable, coherent, organizational entity within the institution;

c. There must be a clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines;

d. The program must consist of an integrated, organized sequence of study;

e. There must be an identifiable psychology faculty sufficient in size and breadth to carry out its responsibilities;

f. The designated director of the program must be a psychologist and a member of the core faculty;

g. The program must have an identifiable body of students who are matriculated in that program for a degree;

h. The program must include supervised practicum, internship, or field training appropriate to the practice of psychology;

i. The curriculum shall encompass a minimum of three academic years of full-time graduate study for doctoral degrees and a minimum of one academic year of full-time graduate study for master's degrees;

j. The program includes an acceptable residency as defined by the rules of the Commission.

3. Possess a current, full, and unrestricted license to practice psychology in a home state which is a compact state;

4. Have no history of adverse action that violates the rules of the Commission;

5. Have no criminal record history reported on an identity history summary that violates the rules of the Commission;

6. Possess a current, active E.Passport;

7. Provide attestations in regard to areas of intended practice, conformity with standards of practice, competence in telepsychology technology; criminal background; and knowledge and adherence to legal requirements in the home and receiving states, and provide a release of information to allow for primary source verification in a manner specified by the Commission; and

8. Meet other criteria as defined by the rules of the Commission.

C. The home state maintains authority over the license of any psychologist practicing into a receiving state under the authority to practice interjurisdictional telepsychology.

D. A psychologist practicing into a receiving state under the authority to practice interjurisdictional telepsychology will be subject to the receiving state's authority and laws. A receiving state may, in accordance with that state's due process law, limit or revoke a psychologist's authority to practice interjurisdictional telepsychology in the receiving state and may take any other necessary actions under the receiving state's applicable law to protect the health and safety of the receiving state's citizens. If a receiving state takes action, the state shall promptly notify the home state and the Commission.

E. If a psychologist's license in any home state, another compact state, or any authority to practice interjurisdictional telepsychology in any receiving state, is restricted, suspended, or otherwise limited, the E.Passport shall be revoked and therefor the psychologist shall not be eligible to practice telepsychology in a compact state under the authority to practice interjurisdictional telepsychology.

ARTICLE V

COMPACT TEMPORARY AUTHORIZATION TO PRACTICE

A. Compact states shall also recognize the right of a psychologist, licensed in a compact state in conformance with Article III, to practice temporarily in other compact states (distant states) in which the psychologist is not licensed, as provided in the Psychology Interjurisdictional Compact.

B. To exercise the temporary authorization to practice under the terms and provisions of the Compact, a psychologist licensed to practice in a compact state must:

1. Hold a graduate degree in psychology from an institute of higher education that was, at the time the degree was awarded:

a. Regionally accredited by an accrediting body recognized by the United States Department of Education to grant graduate degrees, or authorized by provincial statute or Royal Charter to grant doctoral degrees; or

b. A foreign college or university deemed to be equivalent to subdivision 1a of this subsection by a foreign credential evaluation service that is a member of the National Association of Credential Evaluation Services or by a recognized foreign credential evaluation service; and

2. Hold a graduate degree in psychology that meets the following criteria:

a. The program, wherever it may be administratively housed, must be clearly identified and labeled as a psychology program. Such a program must specify in pertinent institutional catalogues and brochures its intent to educate and train professional psychologists;

b. The psychology program must stand as a recognizable, coherent, organizational entity within the institution;

c. There must be a clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines;

d. The program must consist of an integrated, organized sequence of study;

e. There must be an identifiable psychology faculty sufficient in size and breadth to carry out its responsibilities;

f. The designated director of the program must be a psychologist and a member of the core faculty;

g. The program must have an identifiable body of students who are matriculated in that program for a degree;

h. The program must include supervised practicum, internship, or field training appropriate to the practice of psychology;

i. The curriculum shall encompass a minimum of three academic years of full-time graduate study for doctoral degrees and a minimum of one academic year of full-time graduate study for master's degrees;

j. The program includes an acceptable residency as defined by the rules of the Commission.

3. Possess a current, full, and unrestricted license to practice psychology in a home state which is a compact state;

4. No history of adverse action that violates the rules of the Commission;

5. No criminal record history that violates the rules of the Commission;

6. Possess a current, active Interjurisdictional Practice Certificate;

7. Provide attestations in regard to areas of intended practice and work experience and provide a release of information to allow for primary source verification in a manner specified by the Commission; and

8. Meet other criteria as defined by the rules of the Commission.

C. A psychologist practicing into a distant state under the temporary authorization to practice shall practice within the scope of practice authorized by the distant state.

D. A psychologist practicing into a distant state under the temporary authorization to practice will be subject to the distant state's authority and law. A distant state may, in accordance with that state's due process law, limit or revoke a psychologist's temporary authorization to practice in the distant state and may take any other necessary actions under the distant state's applicable law to protect the health and safety of the distant state's citizens. If a distant state takes action, the state shall promptly notify the home state and the Commission.

E. If a psychologist's license in any home state, another compact state, or any temporary authorization to practice in any distant state, is restricted, suspended, or otherwise limited, the Interjurisdictional Practice Certificate shall be revoked and therefor the psychologist shall not be eligible to practice in a compact state under the temporary authorization to practice.

ARTICLE VI

CONDITIONS OF TELEPSYCHOLOGY PRACTICE IN A RECEIVING STATE

A psychologist may practice in a receiving state under the authority to practice interjurisdictional telepsychology only in the performance of the scope of practice for psychology as assigned by an appropriate state psychology regulatory authority, as defined in the rules of the Commission, and under the following circumstances:

1. The psychologist initiates a client or patient contact in a home state via telecommunications technologies with a client or patient in a receiving state;

2. Other conditions regarding telepsychology as determined by rules promulgated by the Commission.

ARTICLE VII

ADVERSE ACTIONS

A. A home state shall have the power to impose adverse action against a psychologist's license issued by the home state. A distant state shall have the power to take adverse action on a psychologist's temporary authorization to practice within that distant state.

B. A receiving state may take adverse action on a psychologist's authority to practice interjurisdictional telepsychology within that receiving state. A home state may take adverse action against a psychologist based on an adverse action taken by a distant state regarding temporary in-person, face-to-face practice.

C. If a home state takes adverse action against a psychologist's license, that psychologist's authority to practice interjurisdictional telepsychology is terminated and the E.Passport is revoked. Furthermore, that psychologist's temporary authorization to practice is terminated and the Interjurisdictional Practice Certificate is revoked.

1. All home state disciplinary orders which impose adverse action shall be reported to the Commission in accordance with the rules promulgated by the Commission. A compact state shall report adverse actions in accordance with the rules of the Commission.

2. In the event discipline is reported on a psychologist, the psychologist will not be eligible for telepsychology or temporary in-person, face-to-face practice in accordance with the rules of the Commission.

3. Other actions may be imposed as determined by the rules promulgated by the Commission.

D. A home state's state psychology regulatory authority shall investigate and take appropriate action with respect to reported inappropriate conduct engaged in by a licensee which occurred in a receiving state as it would if such conduct had occurred by a licensee within the home state. In such cases, the home state's law shall control in determining any adverse action against a psychologist's license.

E. A distant state's state psychology regulatory authority shall investigate and take appropriate action with respect to reported inappropriate conduct engaged

in by a psychologist practicing under temporary authorization practice which occurred in that distant state as it would if such conduct had occurred by a licensee within the home state. In such cases, distant state's law shall control in determining any adverse action against a psychologist's temporary authorization to practice.

F. Nothing in the Psychology Interjurisdictional Compact shall override a compact state's decision that a psychologist's participation in an alternative program may be used in lieu of adverse action and that such participation shall remain nonpublic if required by the compact state's law. Compact states must require psychologists who enter any alternative programs to not provide telepsychology services under the authority to practice interjurisdictional telepsychology or provide temporary psychological services under the temporary authorization to practice in any other compact state during the term of the alternative program.

G. No other judicial or administrative remedies shall be available to a psychologist in the event a compact state imposes an adverse action pursuant to subsection C of this Article.

ARTICLE VIII

ADDITIONAL AUTHORITIES INVESTED IN A COMPACT STATE'S STATE PSYCHOLOGY REGULATORY AUTHORITY

In addition to any other powers granted under state law, a compact state's state psychology regulatory authority shall have the authority under the Psychology Interjurisdictional Compact to:

1. Issue subpoenas, for both hearings and investigations, which require the attendance and testimony of witnesses and the production of evidence. Subpoenas issued by a compact state's state psychology regulatory authority for the attendance and testimony of witnesses, or the production of evidence from another compact state shall be enforced in the latter state by any court of competent jurisdiction, according to that court's practice and procedure in considering subpoenas issued in its own proceedings. The issuing state psychology regulatory authority shall pay any witness fees, travel expenses, mileage fees, and other fees required by the service statutes of the state where the witnesses or evidence are located; and

2. Issue cease and desist orders, injunctive relief orders, or both to revoke a psychologist's authority to practice interjurisdictional telepsychology, temporary authorization to practice, or both.

3. During the course of any investigation, a psychologist may not change his or her home state licensure. A home state's state psychology regulatory authority is authorized to complete any pending investigations of a psychologist and to take any actions appropriate under its law. The home state's state psychology regulatory authority shall promptly report the conclusions of such investigations to the Commission. Once an investigation has been completed, and pending the outcome of the investigation, the psychologist may change his or her home state licensure. The Commission shall promptly notify the new home state of any such decisions as provided in the rules of the Commission. All information provided to the Commission or distributed by compact states pursuant to the psychologist shall be confidential, filed under seal, and used for investigatory or disciplinary matters. The Commission may create additional rules for mandated or discretionary sharing of information by compact states.

ARTICLE IX

COORDINATED LICENSURE INFORMATION SYSTEM

A. The Commission shall provide for the development and maintenance of a Coordinated Licensure Information System (Coordinated Database) and reporting system containing licensure and disciplinary action information on all psychologists or individuals to whom the Psychology Interjurisdictional Compact is applicable in all compact states as defined by the rules of the Commission.

B. Notwithstanding any other provision of state law to the contrary, a compact state shall submit a uniform data set to the Coordinated Database on all licensees as required by the rules of the Commission, including:

1. Identifying information;

2. Licensure data;

3. Significant investigatory information;

4. Adverse actions against a psychologist's license;

5. An indicator that a psychologist's authority to practice interjurisdictional telepsychology or temporary authorization to practice is revoked;

6. Nonconfidential information related to alternative program participation information;

7. Any denial of application for licensure, and the reasons for such denial; and

8. Other information which may facilitate the administration of the Compact, as determined by the rules of the Commission.

C. The Coordinated Database administrator shall promptly notify all compact states of any adverse action taken against, or significant investigative information on, any licensee in a compact state.

D. Compact states reporting information to the Coordinated Database may designate information that may not be shared with the public without the express permission of the compact state reporting the information.

E. Any information submitted to the Coordinated Database that is subsequently required to be expunged by the law of the compact state reporting the information shall be removed from the Coordinated Database.

ARTICLE X

ESTABLISHMENT OF THE PSYCHOLOGY INTERJURISDICTIONAL COMPACT COMMISSION

A. The compact states hereby create and establish a joint public agency known as the Psychology Interjurisdictional Compact Commission.

1. The Commission is a body politic and an instrumentality of the compact states.

2. Venue is proper and judicial proceedings by or against the Commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the Commission is located. The Commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

3. Nothing in the Psychology Interjurisdictional Compact shall be construed to be a waiver of sovereign immunity.

B. Membership, Voting, and Meetings

1. The Commission shall consist of one voting representative appointed by each compact state who shall serve as that state's Commissioner. The state psychology regulatory authority shall appoint the state's delegate. This delegate shall be empowered to act on behalf of the compact state. This delegate shall be limited to:

a. Executive director, executive secretary, or similar executive;

b. Current member of the state psychology regulatory authority of a compact state; or

c. Designee empowered with the appropriate delegate authority to act on behalf of the compact state.

2. Any Commissioner may be removed or suspended from office as provided by the law of the state from which the Commissioner is appointed. Any vacancy occurring in the Commission shall be filled in accordance with the laws of the compact state in which the vacancy exists.

3. Each Commissioner shall be entitled to one vote with regard to the promulgation of rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the Commission. A Commissioner shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for Commissioners' participation in meetings by telephone or other means of communication.

4. The Commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws.

5. All meetings shall be open to the public, and public notice of meetings shall be given in the same manner as required under the rulemaking provisions in Article XI.

6. The Commission may convene in a closed, nonpublic meeting if the Commission must discuss:

a. Noncompliance of a compact state with its obligations under the Compact;

b. The employment, compensation, discipline, or other personnel matters, practices, or procedures related to specific employees or other matters related to the Commission's internal personnel practices and procedures;

c. Current, threatened, or reasonably anticipated litigation against the Commission;

d. Negotiation of contracts for the purchase or sale of goods, services, or real estate;

e. Accusation against any person of a crime or formally censuring any person;

f. Disclosure of trade secrets or commercial or financial information which is privileged or confidential;

g. Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

h. Disclosure of investigatory records compiled for law enforcement purposes;

i. Disclosure of information related to any investigatory reports prepared by or on behalf of or for use of the Commission or other committee charged with

responsibility for investigation or determination of compliance issues pursuant to the Compact; or

j. Matters specifically exempted from disclosure by federal and state statute.

7. If a meeting, or portion of a meeting, is closed pursuant to this Article, the Commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision. The Commission shall keep minutes which fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, of any person participating in the meeting, and the reasons therefore, including a description of the views expressed. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release only by a majority vote of the Commission or order of a court of competent jurisdiction.

C. The Commission shall, by a majority vote of the Commissioners, prescribe bylaws or rules to govern its conduct as may be necessary or appropriate to carry out the purposes and exercise the powers of the Compact, including, but not limited to:

1. Establishing the fiscal year of the Commission;

2. Providing reasonable standards and procedures:

a. For the establishment and meetings of other committees; and

b. Governing any general or specific delegation of any authority or function of the Commission;

3. Providing reasonable procedures for calling and conducting meetings of the Commission, ensuring reasonable advance notice of all meetings and providing an opportunity for attendance of such meetings by interested parties, with enumerated exceptions designed to protect the public's interest, the privacy of individuals of such proceedings, and proprietary information, including trade secrets. The Commission may meet in closed session only after a majority of the Commissioners vote to close a meeting to the public in whole or in part. As soon as practicable, the Commission must make public a copy of the vote to close the meeting revealing the vote of each Commissioner with no proxy votes allowed;

4. Establishing the titles, duties, and authority and reasonable procedures for the election of the officers of the Commission;

5. Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the Commission. Notwithstanding any civil service or other similar law of any compact state, the bylaws shall exclusively govern the personnel policies and programs of the Commission;

6. Promulgating a code of ethics to address permissible and prohibited activities of Commission members and employees;

7. Providing a mechanism for concluding the operations of the Commission and the equitable disposition of any surplus funds that may exist after the termination of the Compact after the payment, reserving, or both of all of its debts and obligations;

8. The Commission shall publish its bylaws in a convenient form and file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the compact states;

9. The Commission shall maintain its financial records in accordance with the bylaws; and

10. The Commission shall meet and take such actions as are consistent with the provisions of the Compact and the bylaws.

D. The Commission shall have the following powers:

1. The authority to promulgate uniform rules to facilitate and coordinate implementation and administration of the Compact. The rules shall have the force and effect of law and shall be binding in all compact states;

2. To bring and prosecute legal proceedings or actions in the name of the Commission, provided that the standing of any state psychology regulatory authority or other regulatory body responsible for psychology licensure to sue or be sued under applicable law shall not be affected;

3. To purchase and maintain insurance and bonds;

4. To borrow, accept, or contract for services of personnel, including, but not limited to, employees of a compact state;

5. To hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of the Compact, and to establish the Commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;

6. To accept any and all appropriate donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of the same; provided that at all times the Commission shall strive to avoid any appearance of impropriety or conflict of interest;

7. To lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve or use, any property, real, personal, or mixed; provided that at all times the Commission shall strive to avoid any appearance of impropriety;

8. To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property real, personal, or mixed;

9. To establish a budget and make expenditures;

10. To borrow money;

11. To appoint committees, including advisory committees comprised of members, state regulators, state legislators or their representatives, and consumer representatives, and such other interested persons as may be designated in the Compact and the bylaws;

12. To provide and receive information from, and to cooperate with, law enforcement agencies;

13. To adopt and use an official seal; and

14. To perform such other functions as may be necessary or appropriate to achieve the purposes of the Compact consistent with the state regulation of psychology licensure, temporary in-person, face-to-face practice, and telepsychology practice.

E. The Executive Board

The elected officers shall serve as the Executive Board, which shall have the power to act on behalf of the Commission according to the terms of the Compact.

1. The Executive Board shall be comprised of six members:

a. Five voting members who are elected from the current membership of the Commission by the Commission; and

b. One ex officio, nonvoting member from the recognized membership organization composed of State and Provincial Psychology Regulatory Authorities.

2. The ex officio member must have served as staff or member on a state psychology regulatory authority and will be selected by its respective organization.

3. The Commission may remove any member of the Executive Board as provided in bylaws.

4. The Executive Board shall meet at least annually.

5. The Executive Board shall have the following duties and responsibilities:

a. Recommend to the entire Commission changes to the rules or bylaws, changes to the Compact, fees paid by compact states such as annual dues, and any other applicable fees;

b. Ensure Compact administration services are appropriately provided, contractual or otherwise;

c. Prepare and recommend the budget;

d. Maintain financial records on behalf of the Commission;

e. Monitor Compact compliance of member states and provide compliance reports to the Commission;

f. Establish additional committees as necessary; and

g. Other duties as provided in rules or bylaws.

F. Financing of the Commission

1. The Commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.

2. The Commission may accept any and all appropriate revenue sources, donations, and grants of money, equipment, supplies, materials, and services.

3. The Commission may levy on and collect an annual assessment from each compact state or impose fees on other parties to cover the cost of the operations and activities of the Commission and its staff which must be in a total amount sufficient to cover its annual budget as approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Commission which shall promulgate a rule binding upon all compact states.

4. The Commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Commission pledge the credit of any of the compact states, except by and with the authority of the compact state.

5. The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the Commission.

G. Qualified Immunity, Defense, and Indemnification

1. The members, officers, executive director, employees, and representatives of the Commission shall have no greater liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred, within the scope of Commission employment, duties, or responsibilities, than a state employee would have under the same or similar circumstances; provided that nothing in this paragraph shall be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful or wanton misconduct of that person.

2. The Commission shall defend any member, officer, executive director, employee, or representative of the Commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities; provided that nothing in this paragraph shall be construed to prohibit that person from retaining his or her own counsel; and provided further, that the actual or alleged act, error, or omission did not result from that person's intentional or willful or wanton misconduct.

3. The Commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the Commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from the intentional or willful or wanton misconduct of that person.

ARTICLE XI

RULEMAKING

A. The Commission shall exercise its rulemaking powers pursuant to the criteria set forth in this Article and the rules adopted thereunder. Rules and amendments shall become binding as of the date specified in each rule or amendment.

B. If a majority of the legislatures of the compact states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the Psychology Interjurisdictional Compact, then such rule shall have no further force and effect in any compact state.

C. Rules or amendments to the rules shall be adopted at a regular or special meeting of the Commission.

D. Prior to promulgation and adoption of a final rule or rules by the Commission, and at least sixty days in advance of the meeting at which the rule will be considered and voted upon, the Commission shall file a notice of proposed rulemaking:

1. On the website of the Commission; and

2. On the website of each compact state's state psychology regulatory authority or the publication in which each state would otherwise publish proposed rules.

E. The notice of proposed rulemaking shall include:

1. The proposed time, date, and location of the meeting in which the rule will be considered and voted upon;

2. The text of the proposed rule or amendment and the reason for the proposed rule;

3. A request for comments on the proposed rule from any interested person; and

4. The manner in which interested persons may submit notice to the Commission of their intention to attend the public hearing and any written comments.

F. Prior to adoption of a proposed rule, the Commission shall allow persons to submit written data, facts, opinions, and arguments, which shall be made available to the public.

G. The Commission shall grant an opportunity for a public hearing before it adopts a rule or amendment if a hearing is requested by:

1. At least twenty-five persons who submit comments independently of each other;

2. A governmental subdivision or agency; or

3. A duly appointed person in an association that has at least twenty-five members.

H. If a hearing is held on the proposed rule or amendment, the Commission shall publish the place, time, and date of the scheduled public hearing.

1. All persons wishing to be heard at the hearing shall notify the executive director of the Commission or other designated member in writing of their desire to appear and testify at the hearing not less than five business days before the scheduled date of the hearing.

2. Hearings shall be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing.

3. No transcript of the hearing is required, unless a written request for a transcript is made, in which case the person requesting the transcript shall bear the cost of producing the transcript. A recording may be made in lieu of a transcript under the same terms and conditions as a transcript. This subsection shall not preclude the Commission from making a transcript or recording of the hearing if it so chooses.

4. Nothing in this Article shall be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the Commission at hearings required by this Article.

I. Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the Commission shall consider all written and oral comments received.

J. The Commission shall, by majority vote of all members, take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.

K. If no written notice of intent to attend the public hearing by interested parties is received, the Commission may proceed with promulgation of the proposed rule without a public hearing.

L. Upon determination that an emergency exists, the Commission may consider and adopt an emergency rule without prior notice, opportunity for comment, or hearing, provided that the usual rulemaking procedures provided in the Compact and in this section shall be retroactively applied to the rule as soon as reasonably possible, in no event later than ninety days after the effective date of the rule. For the purposes of this paragraph, an emergency rule is one that must be adopted immediately in order to:

1. Meet an imminent threat to public health, safety, or welfare;

2. Prevent a loss of Commission or compact state funds;

3. Meet a deadline for the promulgation of an administrative rule that is established by federal law or rule; or

4. Protect public health and safety.

M. The Commission or an authorized committee of the Commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions shall be posted on the website of the Commission. The revision shall be subject to challenge by any person for a period of thirty days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge shall be made in writing, and delivered to the chair of the Commission prior to the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the Commission.

ARTICLE XII

OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT

A. Oversight

1. The executive, legislative, and judicial branches of state government in each compact state shall enforce the Psychology Interjurisdictional Compact and take all actions necessary and appropriate to effectuate the Compact's purposes and intent. The Compact and the rules promulgated under the Compact shall have standing as statutory law.

2. All courts shall take judicial notice of the Compact and the rules in any judicial or administrative proceeding in a compact state pertaining to the subject matter of the Compact which may affect the powers, responsibilities, or actions of the Commission.

3. The Commission shall be entitled to receive service of process in any such proceeding and shall have standing to intervene in such a proceeding for all purposes. Failure to provide service of process to the Commission shall render a judgment or order void as to the Commission, the Compact, or promulgated rules.

B. Default, Technical Assistance, and Termination

1. If the Commission determines that a compact state has defaulted in the performance of its obligations or responsibilities under the Compact or the promulgated rules, the Commission shall:

a. Provide written notice to the defaulting state and other compact states of the nature of the default, the proposed means of remedying the default, or any other action to be taken by the Commission; and

b. Provide remedial training and specific technical assistance regarding the default.

2. If a state in default fails to remedy the default, the defaulting state may be terminated from the Compact upon an affirmative vote of a majority of the compact states, and all rights, privileges, and benefits conferred by the Compact shall be terminated on the effective date of termination. A remedy of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.

3. Termination of membership in the Compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be submitted by the Commission to the Governor, the majority and minority leaders of the defaulting state's legislature or the Speaker if no such leaders exist, and each of the compact states.

4. A compact state which has been terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations which extend beyond the effective date of termination.

5. The Commission shall not bear any costs incurred by the state which is found to be in default or which has been terminated from the Compact, unless agreed upon in writing between the Commission and the defaulting state.

6. The defaulting state may appeal the action of the Commission by petitioning the United States District Court for the State of Georgia or the federal district where the Compact has its principal offices. The prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.

C. Dispute Resolution

1. Upon request by a compact state, the Commission shall attempt to resolve disputes related to the Compact which arise among compact states and between compact and noncompact states.

2. The Commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes that arise before the Commission.

D. Enforcement

1. The Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of the Compact.

2. By majority vote, the Commission may initiate legal action in the United States District Court for the State of Georgia or the federal district where the Compact has its principal offices against a compact state in default to enforce compliance with the provisions of the Compact and its promulgated rules and bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.

3. The remedies in this Article shall not be the exclusive remedies of the Commission. The Commission may pursue any other remedies available under federal or state law.

ARTICLE XIII

DATE OF IMPLEMENTATION OF THE PSYCHOLOGY INTERJURISDICTIONAL COMPACT COMMISSION AND ASSOCIATED RULES, WITHDRAWAL, AND AMENDMENTS

A. The Psychology Interjurisdictional Compact shall come into effect on the date on which the Compact is enacted into law in the seventh compact state. The provisions which become effective at that time shall be limited to the powers granted to the Commission relating to assembly and the promulgation of rules. Thereafter, the Commission shall meet and exercise rulemaking powers necessary to the implementation and administration of the Compact.

B. Any state which joins the Compact subsequent to the Commission's initial adoption of the rules shall be subject to the rules as they exist on the date on which the Compact becomes law in that state. Any rule which has been previously adopted by the Commission shall have the full force and effect of law on the day the Compact becomes law in that state.

C. Any compact state may withdraw from this Compact by enacting a statute repealing the same.

1. A compact state's withdrawal shall not take effect until six months after enactment of the repealing statute.

2. Withdrawal shall not affect the continuing requirement of the withdrawing state's state psychology regulatory authority to comply with the investigative and adverse action reporting requirements of the Compact prior to the effective date of withdrawal.

D. Nothing contained in the Compact shall be construed to invalidate or prevent any psychology licensure agreement or other cooperative arrangement between a compact state and a noncompact state which does not conflict with the Compact.

E. The Compact may be amended by the compact states. No amendment to the Compact shall become effective and binding upon any compact state until it is enacted into the law of all compact states.

ARTICLE XIV

CONSTRUCTION AND SEVERABILITY

The Psychology Interjurisdictional Compact shall be liberally construed so as to effectuate the purposes of the Compact. If the Compact shall be held contrary to the constitution of any state which is a member of the Compact, the Compact shall remain in full force and effect as to the remaining compact states.

Source: Laws 2018, LB1034, § 70.

ARTICLE 40

PHYSICAL THERAPY LICENSURE COMPACT

Section
38-4001. Physical Therapy Licensure Compact.

38-4001 Physical Therapy Licensure Compact.

The State of Nebraska adopts the Physical Therapy Licensure Compact in the form substantially as follows:

ARTICLE I

PURPOSE

a. The purpose of the Physical Therapy Licensure Compact is to facilitate interstate practice of physical therapy with the goal of improving public access to physical therapy services. The practice of physical therapy occurs in the state where the patient or client is located at the time of the patient or client encounter. The Compact preserves the regulatory authority of states to protect public health and safety through the current system of state licensure.

b. This Compact is designed to achieve the following objectives:

1. Increase public access to physical therapy services by providing for the mutual recognition of other member state licenses;

2. Enhance the states' ability to protect the public's health and safety;

3. Encourage the cooperation of member states in regulating multistate physical therapy practice;

4. Support spouses of relocating military members;

5. Enhance the exchange of licensure, investigative, and disciplinary information between member states; and

6. Allow a remote state to hold a provider of services with a compact privilege in that state accountable to that state's practice standards.

ARTICLE II

DEFINITIONS

As used in the Physical Therapy Licensure Compact, and except as otherwise provided, the following definitions shall apply:

1. Active duty military means full-time duty status in the active uniformed service of the United States, including members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C. 1209 and 1211.

2. Adverse action means disciplinary action taken by a physical therapy licensing board based upon misconduct, unacceptable performance, or a combination of both.

3. Alternative program means a nondisciplinary monitoring or practice remediation process approved by a physical therapy licensing board. This includes, but is not limited to, substance abuse issues.

4. Commission means the Physical Therapy Compact Commission which is the national administrative body whose membership consists of all states that have enacted the Compact.

5. Compact privilege means the authorization granted by a remote state to allow a licensee from another member state to practice as a physical therapist or work as a physical therapist assistant in the remote state under its laws and rules. The practice of physical therapy occurs in the member state where the patient or client is located at the time of the patient or client encounter.

6. Continuing competence means a requirement, as a condition of license renewal, to provide evidence of participation in, or completion of, educational and professional activities relevant to practice or area of work.

7. Data system means a repository of information about licensees, including examination, licensure, investigative, compact privilege, and adverse action.

8. Encumbered license means a license that a physical therapy licensing board has limited in any way.

9. Executive board means a group of directors elected or appointed to act on behalf of, and within the powers granted to them by, the Commission.

10. Home state means the member state that is the licensee's primary state of residence.

11. Investigative information means information, records, and documents received or generated by a physical therapy licensing board pursuant to an investigation.

12. Jurisprudence requirement means the assessment of an individual's knowledge of the laws and rules governing the practice of physical therapy in a state.

13. Licensee means an individual who currently holds an authorization from the state to practice as a physical therapist or to work as a physical therapist assistant.

14. Member state means a state that has enacted the Compact.

15. Party state means any member state in which a licensee holds a current license or compact privilege or is applying for a license or compact privilege.

16. Physical therapist means an individual who is licensed by a state to practice physical therapy.

17. Physical therapist assistant means an individual who is licensed or certified by a state and who assists the physical therapist in selected components of physical therapy.

18. Physical therapy, physical therapy practice, and the practice of physical therapy mean the care and services provided by or under the direction and supervision of a licensed physical therapist.

19. Physical therapy licensing board means the agency of a state that is responsible for the licensing and regulation of physical therapists and physical therapist assistants.

20. Remote state means a member state, other than the home state, where a licensee is exercising or seeking to exercise the compact privilege.

21. Rule means a regulation, principle, or directive promulgated by the Commission that has the force of law.

22. State means any state, commonwealth, district, or territory of the United States that regulates the practice of physical therapy.

ARTICLE III

STATE PARTICIPATION IN THE COMPACT

a. To participate in the Physical Therapy Licensure Compact, a state must:

1. Participate fully in the Commission's data system, including using the Commission's unique identifier as defined in rules;

2. Have a mechanism in place for receiving and investigating complaints about licensees;

3. Notify the Commission, in compliance with the terms of the Compact and rules, of any adverse action or the availability of investigative information regarding a licensee;

4. Fully implement a criminal background check requirement, within a timeframe established by rule, by receiving the results of the Federal Bureau of Investigation record search on criminal background checks and use the results in making licensure decisions in accordance with this Article;

5. Comply with the rules of the Commission;

6. Utilize a recognized national examination as a requirement for licensure pursuant to the rules of the Commission; and

7. Have continuing competence requirements as a condition for license renewal.

b. Upon adoption of this statute, the member state shall have the authority to obtain biometric-based information from each physical therapy licensure applicant and submit this information to the Federal Bureau of Investigation for a criminal background check in accordance with 28 U.S.C. 534 and 34 U.S.C. 40316.

c. A member state shall grant the compact privilege to a licensee holding a valid unencumbered license in another member state in accordance with the terms of the Compact and rules.

d. Member states may charge a fee for granting a compact privilege.

ARTICLE IV

COMPACT PRIVILEGE

a. To exercise the compact privilege under the terms and provisions of the Physical Therapy Licensure Compact, the licensee shall:

1. Hold a license in the home state;

2. Have no encumbrance on any state license;

3. Be eligible for a compact privilege in any member state in accordance with paragraphs d, g, and h of this Article;

4. Have not had any adverse action against any license or compact privilege within the previous two years;

5. Notify the Commission that the licensee is seeking the compact privilege within a remote state;

6. Pay any applicable fees, including any state fee, for the compact privilege;

7. Meet any jurisprudence requirements established by the remote state in which the licensee is seeking a compact privilege; and

8. Report to the Commission adverse action taken by any nonmember state within thirty days from the date the adverse action is taken.

b. The compact privilege is valid until the expiration date of the home license. The licensee must comply with the requirements of paragraph a of this Article to maintain the compact privilege in the remote state.

c. A licensee providing physical therapy in a remote state under the compact privilege shall function within the laws and regulations of the remote state.

d. A licensee providing physical therapy in a remote state is subject to that state's regulatory authority. A remote state may, in accordance with due process and that state's laws, remove a licensee's compact privilege in the remote state for a specific period of time, impose fines, or take any other necessary actions to protect the health and safety of its citizens. The licensee is not eligible for a compact privilege in any state until the specific time for removal has passed and all fines are paid.

e. If a home state license is encumbered, the licensee shall lose the compact privilege in any remote state until the following occur:

1. The home state license is no longer encumbered; and

2. Two years have elapsed from the date of the adverse action.

f. Once an encumbered license in the home state is restored to good standing, the licensee must meet the requirements of paragraph a of this Article to obtain a compact privilege in any remote state.

g. If a licensee's compact privilege in any remote state is removed, the individual shall lose the compact privilege in any remote state until the following occur:

1. The specific period of time for which the compact privilege was removed has ended;

2. All fines have been paid; and

3. Two years have elapsed from the date of the adverse action.

h. Once the requirements of paragraph g of this Article have been met, the licensee must meet the requirements in paragraph a of this Article to obtain a compact privilege in a remote state.

ARTICLE V

ACTIVE DUTY MILITARY PERSONNEL OR THEIR SPOUSES

A licensee who is active duty military or is the spouse of an individual who is active duty military may designate one of the following as the home state:

a. Home of record;

b. Permanent change of station (PCS); or

c. State of current residence if it is different than the PCS state or home of record.

ARTICLE VI

ADVERSE ACTIONS

a. A home state shall have exclusive power to impose adverse action against a license issued by the home state.

b. A home state may take adverse action based on the investigative information of a remote state, so long as the home state follows its own procedures for imposing adverse action.

c. Nothing in the Physical Therapy Licensure Compact shall override a member state's decision that participation in an alternative program may be used in lieu of adverse action and that such participation shall remain nonpublic if required by the member state's laws. Member states must require licensees who enter any alternative programs in lieu of discipline to agree not to practice in any other member state during the term of the alternative program without prior authorization from such other member state.

d. Any member state may investigate actual or alleged violations of the statutes and rules authorizing the practice of physical therapy in any other member state in which a physical therapist or physical therapist assistant holds a license or compact privilege.

e. A remote state shall have the authority to:

1. Take adverse actions as set forth in paragraph d of Article IV against a licensee's compact privilege in the state;

2. Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses, and the production of evidence. Subpoenas issued by a physical therapy licensing board in a party state for the

attendance and testimony of witnesses, or the production of evidence from another party state, shall be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the state where the witnesses or evidence are located; and

3. If otherwise permitted by state law, recover from the licensee the costs of investigations and disposition of cases resulting from any adverse action taken against that licensee.

f. Joint Investigations

1. In addition to the authority granted to a member state by its respective physical therapy practice act or other applicable state law, a member state may participate with other member states in joint investigations of licensees.

2. Member states shall share any investigative, litigation, or compliance materials in furtherance of any joint or individual investigation initiated under the Compact.

ARTICLE VII

ESTABLISHMENT OF THE PHYSICAL THERAPY COMPACT COMMISSION

a. The member states hereby create and establish a joint public agency known as the Physical Therapy Compact Commission:

1. The Commission is an instrumentality of the Compact states.

2. Venue is proper and judicial proceedings by or against the Commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the Commission is located. The Commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

3. Nothing in the Physical Therapy Licensure Compact shall be construed to be a waiver of sovereign immunity.

b. Membership, Voting, and Meetings

1. Each member state shall have and be limited to one delegate selected by that member state's physical therapy licensing board.

2. The delegate shall be a current member of the physical therapy licensing board, who is a physical therapist, a physical therapist assistant, a public member, or the administrator of the physical therapy licensing board.

3. Any delegate may be removed or suspended from office as provided by the law of the state from which the delegate is appointed.

4. The member state physical therapy licensing board shall fill any vacancy occurring in the Commission.

5. Each delegate shall be entitled to one vote with regard to the promulgation of rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the Commission.

6. A delegate shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for delegates' participation in meetings by telephone or other means of communication.

7. The Commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws.

c. The Commission shall have the following powers and duties:

1. Establish the fiscal year of the Commission;

2. Establish bylaws;

3. Maintain its financial records in accordance with the bylaws;

4. Meet and take such actions as are consistent with the Compact and the bylaws;

5. Promulgate uniform rules to facilitate and coordinate implementation and administration of the Compact. The rules shall have the force and effect of law and shall be binding in all member states;

6. Bring and prosecute legal proceedings or actions in the name of the Commission, provided that the standing of any state physical therapy licensing board to sue or be sued under applicable law shall not be affected;

7. Purchase and maintain insurance and bonds;

8. Borrow, accept, or contract for services of personnel, including, but not limited to, employees of a member state;

9. Hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of the Compact, and to establish the Commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;

10. Accept any and all appropriate donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of the same; provided that at all times the Commission shall avoid any appearance of impropriety or conflict of interest;

11. Lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve, or use, any property, real, personal, or mixed; provided that at all times the Commission shall avoid any appearance of impropriety;

12. Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property real, personal, or mixed;

13. Establish a budget and make expenditures;

14. Borrow money;

15. Appoint committees, including standing committees composed of members, state regulators, state legislators or their representatives, and consumer representatives, and such other interested persons as may be designated in the Compact and the bylaws;

16. Provide and receive information from, and cooperate with, law enforcement agencies;

17. Establish and elect an executive board; and

18. Perform such other functions as may be necessary or appropriate to achieve the purposes of the Compact consistent with the state regulation of physical therapy licensure and practice.

d. The Executive Board

The executive board shall have the power to act on behalf of the Commission according to the terms of the Compact.

1. The executive board shall be composed of nine members:

A. Seven voting members who are elected by the Commission from the current membership of the Commission;

B. One ex officio, nonvoting member from the recognized national physical therapy professional association; and

C. One ex officio, nonvoting member from the recognized membership organization of the physical therapy licensing boards.

2. The ex officio members will be selected by their respective organizations.

3. The Commission may remove any member of the executive board as provided in bylaws.

4. The executive board shall meet at least annually.

5. The executive board shall have the following duties and responsibilities:

A. Recommend to the entire Commission changes to the rules or bylaws, changes to the Compact, fees paid by Compact member states such as annual dues, and any commission Compact fee charged to licensees for the compact privilege;

B. Ensure Compact administration services are appropriately provided, contractual or otherwise;

C. Prepare and recommend the budget;

D. Maintain financial records on behalf of the Commission;

E. Monitor Compact compliance of member states and provide compliance reports to the Commission;

F. Establish additional committees as necessary; and

G. Other duties as provided in rules or bylaws.

e. Meetings of the Commission

1. All meetings shall be open to the public, and public notice of meetings shall be given in the same manner as required under the rulemaking provisions in Article IX.

2. The Commission or the executive board or other committees of the Commission may convene in a closed, nonpublic meeting if the Commission or executive board or other committees of the Commission must discuss:

A. Noncompliance of a member state with its obligations under the Compact;

B. The employment, compensation, discipline, or other matters, practices or procedures related to specific employees or other matters related to the Commission's internal personnel practices and procedures;

C. Current, threatened, or reasonably anticipated litigation;

D. Negotiation of contracts for the purchase, lease, or sale of goods, services, or real estate;

E. Accusing any person of a crime or formally censuring any person;

F. Disclosure of trade secrets or commercial or financial information that is privileged or confidential;

G. Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

H. Disclosure of investigative records compiled for law enforcement purposes;

I. Disclosure of information related to any investigative reports prepared by or on behalf of or for use of the Commission or other committee charged with responsibility of investigation or determination of compliance issues pursuant to the Compact; or

J. Matters specifically exempted from disclosure by federal or member state statute.

3. If a meeting, or portion of a meeting, is closed pursuant to this Article, the Commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision.

4. The Commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefore, including a description of the views expressed. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the Commission or order of a court of competent jurisdiction.

f. Financing of the Commission

1. The Commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.

2. The Commission may accept any and all appropriate revenue sources, donations, and grants of money, equipment, supplies, materials, and services.

3. The Commission may levy on and collect an annual assessment from each member state or impose fees on other parties to cover the cost of the operations and activities of the Commission and its staff, which must be in a total amount sufficient to cover its annual budget as approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Commission, which shall promulgate a rule binding upon all member states.

4. The Commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Commission pledge the credit of any of the member states, except by and with the authority of the member state.

5. The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the Commission.

g. Qualified Immunity, Defense, and Indemnification

1. The members, officers, executive director, employees, and representatives of the Commission shall have no greater liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred, within the scope of Commission employment, duties, or responsibilities, than a state employee would have under the same or similar circumstances; provided that nothing in this paragraph shall be construed to protect any such person from suit or

liability for any damage, loss, injury, or liability caused by the intentional or willful or wanton misconduct of that person.

2. The Commission shall defend any member, officer, executive director, employee, or representative of the Commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities; provided that nothing in this paragraph shall be construed to prohibit that person from retaining his or her own counsel; and provided further, that the actual or alleged act, error, or omission did not result from that person's intentional or willful or wanton misconduct.

3. The Commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the Commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from the intentional or willful or wanton misconduct of that person.

ARTICLE VIII

DATA SYSTEM

a. The Commission shall provide for the development, maintenance, and utilization of a coordinated database and reporting system containing licensure, adverse action, and investigative information on all licensed individuals in member states.

b. Notwithstanding any other provision of state law to the contrary, a member state shall submit a uniform data set to the data system on all individuals to whom the Physical Therapy Licensure Compact is applicable as required by the rules of the Commission, including:

1. Identifying information;

2. Licensure data;

3. Adverse actions against a license or compact privilege;

4. Nonconfidential information related to alternative program participation;

5. Any denial of application for licensure, and the reason for such denial; and

6. Other information that may facilitate the administration of the Compact, as determined by the rules of the Commission.

c. Investigative information pertaining to a licensee in any member state will only be available to other party states.

d. The Commission shall promptly notify all member states of any adverse action taken against a licensee or an individual applying for a license. Adverse action information pertaining to a licensee in any member state will be available to any other member state.

e. Member states contributing information to the data system may designate information that may not be shared with the public without the express permission of the contributing state.

f. Any information submitted to the data system that is subsequently required to be expunged by the laws of the member state contributing the information shall be removed from the data system.

ARTICLE IX

RULEMAKING

a. The Commission shall exercise its rulemaking powers pursuant to the criteria set forth in this Article and the rules adopted thereunder. Rules and amendments shall become binding as of the date specified in each rule or amendment.

b. If a majority of the legislatures of the member states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the Physical Therapy Licensure Compact within four years of the date of adoption of the rule, then such rule shall have no further force and effect in any member state.

c. Rules or amendments to the rules shall be adopted at a regular or special meeting of the Commission.

d. Prior to promulgation and adoption of a final rule or rules by the Commission, and at least thirty days in advance of the meeting at which the rule will be considered and voted upon, the Commission shall file a notice of proposed rulemaking:

1. On the website of the Commission or other publicly accessible platform; and

2. On the website of each member state physical therapy licensing board or other publicly accessible platform or the publication in which each state would otherwise publish proposed rules.

e. The notice of proposed rulemaking shall include:

1. The proposed time, date, and location of the meeting in which the rule will be considered and voted upon;

2. The text of the proposed rule or amendment and the reason for the proposed rule;

3. A request for comments on the proposed rule from any interested person; and

4. The manner in which interested persons may submit notice to the Commission of their intention to attend the public hearing and any written comments.

f. Prior to adoption of a proposed rule, the Commission shall allow persons to submit written data, facts, opinions, and arguments, which shall be made available to the public.

g. The Commission shall grant an opportunity for a public hearing before it adopts a rule or amendment if a hearing is requested by:

1. At least twenty-five persons;

2. A state or federal governmental subdivision or agency; or

3. An association having at least twenty-five members.

h. If a hearing is held on the proposed rule or amendment, the Commission shall publish the place, time, and date of the scheduled public hearing. If the hearing is held via electronic means, the Commission shall publish the mechanism for access to the electronic hearing.

1. All persons wishing to be heard at the hearing shall notify the executive director of the Commission or other designated member in writing of their desire to appear and testify at the hearing not less than five business days before the scheduled date of the hearing.

2. Hearings shall be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing.

3. All hearings will be recorded. A copy of the recording will be made available on request.

4. Nothing in this section shall be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the Commission at hearings required by this Article.

i. Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the Commission shall consider all written and oral comments received.

j. If no written notice of intent to attend the public hearing by interested parties is received, the Commission may proceed with promulgation of the proposed rule without a public hearing.

k. The Commission shall, by majority vote of all members, take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.

l. Upon determination that an emergency exists, the Commission may consider and adopt an emergency rule without prior notice, opportunity for comment, or hearing, provided that the usual rulemaking procedures provided in the Compact and in this section shall be retroactively applied to the rule as soon as reasonably possible, in no event later than ninety days after the effective date of the rule. For the purposes of this paragraph, an emergency rule is one that must be adopted immediately in order to:

1. Meet an imminent threat to public health, safety, or welfare;

2. Prevent a loss of Commission or member state funds;

3. Meet a deadline for the promulgation of an administrative rule that is established by federal law or rule; or

4. Protect public health and safety.

m. The Commission or an authorized committee of the Commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions shall be posted on the website of the Commission. The revision shall be subject to challenge by any person for a period of thirty days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge shall be made in writing, and delivered to the chair of the Commission prior to the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the Commission.

ARTICLE X

OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT

a. Oversight

1. The executive, legislative, and judicial branches of state government in each member state shall enforce the Physical Therapy Licensure Compact and take all actions necessary and appropriate to effectuate the Compact's purposes and intent. The provisions of the Compact and the rules promulgated under the Compact shall have standing as statutory law.

2. All courts shall take judicial notice of the Compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of the Compact which may affect the powers, responsibilities, or actions of the Commission.

3. The Commission shall be entitled to receive service of process in any such proceeding and shall have standing to intervene in such a proceeding for all purposes. Failure to provide service of process to the Commission shall render a judgment or order void as to the Commission, the Compact, or promulgated rules.

b. Default, Technical Assistance, and Termination

1. If the Commission determines that a member state has defaulted in the performance of its obligations or responsibilities under the Compact or the promulgated rules, the Commission shall:

A. Provide written notice to the defaulting state and other member states of the nature of the default, the proposed means of curing the default, or any other action to be taken by the Commission; and

B. Provide remedial training and specific technical assistance regarding the default.

2. If a state in default fails to cure the default, the defaulting state may be terminated from the Compact upon an affirmative vote of a majority of the member states, and all rights, privileges, and benefits conferred by the Compact may be terminated on the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.

3. Termination of membership in the Compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the Commission to the governor, the majority and minority leaders of the defaulting state's legislature or the Speaker if no such leaders exist, and each of the member states.

4. A state that has been terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.

5. The Commission shall not bear any costs related to a state that is found to be in default or that has been terminated from the Compact, unless agreed upon in writing between the Commission and the defaulting state.

6. The defaulting state may appeal the action of the Commission by petitioning the United States District Court for the District of Columbia or the federal district where the Commission has its principal offices. The prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.

c. Dispute Resolution

1. Upon request by a member state, the Commission shall attempt to resolve disputes related to the Compact that arise among member states and between member and nonmember states.

2. The Commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.

d. Enforcement

1. The Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of the Compact.

2. By majority vote, the Commission may initiate legal action in the United States District Court for the District of Columbia or the federal district where the Commission has its principal offices against a member state in default to enforce compliance with the Compact and its promulgated rules and bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.

3. The remedies in this Article shall not be the exclusive remedies of the Commission. The Commission may pursue any other remedies available under federal or state law.

ARTICLE XI

DATE OF IMPLEMENTATION OF THE INTERSTATE COMMISSION FOR PHYSICAL THERAPY PRACTICE AND ASSOCIATED RULES, WITHDRAWAL, AND AMENDMENT

a. The Physical Therapy Licensure Compact shall come into effect on the date on which the Compact is enacted into law in the tenth member state. The provisions, which become effective at that time, shall be limited to the powers granted to the Commission relating to assembly and the promulgation of rules. Thereafter, the Commission shall meet and exercise rulemaking powers necessary to the implementation and administration of the Compact.

b. Any state that joins the Compact subsequent to the Commission's initial adoption of the rules shall be subject to the rules as they exist on the date on which the Compact becomes law in that state. Any rule that has been previously adopted by the Commission shall have the full force and effect of law on the day the Compact becomes law in that state.

c. Any member state may withdraw from the Compact by enacting a statute repealing the same.

1. A member state's withdrawal shall not take effect until six months after enactment of the repealing statute.

2. Withdrawal shall not affect the continuing requirement of the withdrawing state's physical therapy licensing board to comply with the investigative and adverse action reporting requirements of the Compact prior to the effective date of withdrawal.

d. Nothing contained in the Compact shall be construed to invalidate or prevent any physical therapy licensure agreement or other cooperative arrangement between a member state and a nonmember state that does not conflict with the Compact.

e. The Compact may be amended by the member states. No amendment to the Compact shall become effective and binding upon any member state until it is enacted into the laws of all member states.

ARTICLE XII

CONSTRUCTION AND SEVERABILITY

The Physical Therapy Licensure Compact shall be liberally construed so as to effectuate the purposes of the Compact. The provisions of the Compact shall be severable and if any phrase, clause, sentence, or provision of the Compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of the Compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If the Compact shall be held contrary to the constitution of any party state, the Compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the party state affected as to all severable matters.

Source: Laws 2018, LB731, § 101.

ARTICLE 41

AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY INTERSTATE COMPACT

Section
38-4101. Audiology and Speech-Language Pathology Interstate Compact.

38-4101 Audiology and Speech-Language Pathology Interstate Compact.

The State of Nebraska adopts the Audiology and Speech-Language Pathology Interstate Compact in the form substantially as follows:

Article 1 PURPOSE

The purpose of this Compact is to facilitate interstate practice of audiology and speech-language pathology with the goal of improving public access to audiology and speech-language pathology services. The practice of audiology and speech-language pathology occurs in the state where the patient, client, or student is located at the time of the patient, client, or student encounter. The Compact preserves the regulatory authority of states to protect public health and safety through the current system of state licensure.

This Compact is designed to achieve the following objectives:

(1) Increase public access to audiology and speech-language pathology services by providing for the mutual recognition of other member state licenses;

(2) Enhance the states' ability to protect the public's health and safety;

(3) Encourage the cooperation of member states in regulating multistate audiology and speech-language pathology practice;

(4) Support spouses of relocating active duty military personnel;

(5) Enhance the exchange of licensure, investigative, and disciplinary information between member states;

(6) Allow a remote state to hold a provider of services with a compact privilege in that state accountable to that state's practice standards; and

(7) Allow for the use of telehealth technology to facilitate increased access to audiology and speech-language pathology services.

Article 2 DEFINITIONS

As used in this Compact, and except as otherwise provided, the following definitions shall apply:

A. Active duty military means full-time duty status in the active uniformed service of the United States, including members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C. Chapters 1209 and 1211.

B. Adverse action means any administrative, civil, equitable, or criminal action permitted by a state's laws which is imposed by a licensing board or other authority against an audiologist or speech-language pathologist, including actions against an individual's license or privilege to practice such as revocation, suspension, probation, monitoring of the licensee, or restriction on the licensee's practice.

C. Alternative program means a nondisciplinary monitoring process approved by an audiology or speech-language pathology licensing board to address impaired practitioners.

D. Audiologist means an individual who is licensed by a state to practice audiology.

E. Audiology means the care and services provided by a licensed audiologist as set forth in the member state's statutes and rules.

F. Audiology and Speech-Language Pathology Compact Commission or Commission means the national administrative body whose membership consists of all states that have enacted the Compact.

G. Audiology and speech-language pathology licensing board, audiology licensing board, speech-language pathology licensing board, or licensing board each means the agency of a state that is responsible for the licensing and regulation of audiologists or speech-language pathologists.

H. Compact privilege means the authorization granted by a remote state to allow a licensee from another member state to practice as an audiologist or speech-language pathologist in the remote state under its laws and rules. The practice of audiology or speech-language pathology occurs in the member state where the patient, client, or student is located at the time of the patient, client, or student encounter.

I. Current significant investigative information means investigative information that a licensing board, after an inquiry or investigation that includes notification and an opportunity for the audiologist or speech-language pathologist to respond, if required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction.

J. Data system means a repository of information about licensees, including, but not limited to, continuing education, examination, licensure, investigative, compact privilege, and adverse action.

K. Encumbered license means a license in which an adverse action restricts the practice of audiology or speech-language pathology by the licensee and such adverse action has been reported to the National Practitioner Data Bank.

L. Executive Committee means a group of directors elected or appointed to act on behalf of, and within the powers granted to them by, the Commission.

M. Home state means the member state that is the licensee's primary state of residence.

N. Impaired practitioner means an individual whose professional practice is adversely affected by substance abuse, addiction, or other health-related conditions.

O. Licensee means an individual who currently holds an authorization from the state licensing board to practice as an audiologist or speech-language pathologist.

P. Member state means a state that has enacted the Compact.

Q. Privilege to practice means a legal authorization permitting the practice of audiology or speech-language pathology in a remote state.

R. Remote state means a member state other than the home state where a licensee is exercising or seeking to exercise the compact privilege.

S. Rule means a regulation, principle, or directive promulgated by the Commission that has the force of law.

T. Single-state license means an audiology or speech-language pathology license issued by a member state that authorizes practice only within the issuing state and does not include a privilege to practice in any other member state.

U. Speech-language pathologist means an individual who is licensed by a state to practice speech-language pathology.

V. Speech-language pathology means the care and services provided by a licensed speech-language pathologist as set forth in the member state's statutes and rules.

W. State means any state, commonwealth, district, or territory of the United States that regulates the practice of audiology and speech-language pathology.

X. State practice laws means a member state's laws, rules, and regulations that govern the practice of audiology or speech-language pathology, define the scope of audiology or speech-language pathology practice, and create the methods and grounds for imposing discipline.

Y. Telehealth means the application of telecommunication technology to deliver audiology or speech-language pathology services at a distance for assessment, intervention, or consultation.

Article 3 STATE PARTICIPATION IN THE COMPACT

A. A license issued to an audiologist or speech-language pathologist by a home state to a resident in that state shall be recognized by each member state as authorizing an audiologist or speech-language pathologist to practice audiology or speech-language pathology, under a privilege to practice, in each member state.

B. A state must implement or utilize procedures for considering the criminal history records of applicants for initial privilege to practice. These procedures shall include the submission of fingerprints or other biometric-based information by applicants for the purpose of obtaining an applicant's criminal history record information from the Federal Bureau of Investigation and the agency responsible for retaining that state's criminal records.

1. A member state must fully implement a criminal background check requirement, within a timeframe established by rule, by receiving the results of the Federal Bureau of Investigation record search on criminal background checks and use the results in making licensure decisions.

2. Communication between a member state, the Commission, and among member states regarding the verification of eligibility for licensure through the Compact shall not include any information received from the Federal Bureau of Investigation relating to a federal criminal records check performed by a member state under Public Law 92-544.

C. Upon application for a privilege to practice, the licensing board in the issuing remote state shall ascertain, through the data system, whether the applicant has ever held, or is the holder of, a license issued by any other state, whether there are any encumbrances on any license or privilege to practice held by the applicant, or whether any adverse action has been taken against any license or privilege to practice held by the applicant.

D. Each member state shall require an applicant to obtain or retain a license in the home state and meet the home state's qualifications for licensure or renewal of licensure, as well as all other applicable state laws.

E. For an audiologist:

1. Must meet one of the following educational requirements:

a. On or before December 31, 2007, has graduated with a master's degree or doctorate in audiology, or equivalent degree regardless of degree name, from a program that is accredited by an accrediting agency recognized by the Council for Higher Education Accreditation, or its successor, or by the United States Department of Education and operated by a college or university accredited by a regional or national accrediting organization recognized by the licensing board;

b. On or after January 1, 2008, has graduated with a doctoral degree in audiology, or equivalent degree, regardless of degree name, from a program that is accredited by an accrediting agency recognized by the Council for Higher Education Accreditation, or its successor, or by the United States Department of Education and operated by a college or university accredited by a regional or national accrediting organization recognized by the licensing board; or

c. Has graduated from an audiology program that is housed in an institution of higher education outside of the United States (a) for which the program and institution have been approved by the authorized accrediting body in the applicable country and (b) the degree program has been verified by an independent credentials review agency to be comparable to a state licensing board-approved program;

2. Has completed a supervised clinical practicum experience from an accredited educational institution or its cooperating programs as required by the Commission;

3. Has successfully passed a national examination approved by the Commission;

4. Holds an active, unencumbered license;

5. Has not been convicted or found guilty, and has not entered into an agreed disposition, of a felony related to the practice of audiology, under applicable state or federal criminal law; and

6. Has a valid United States social security number or National Practitioner Identification number.

F. For a speech-language pathologist:

1. Must meet one of the following educational requirements:

a. Has graduated with a master's degree from a speech-language pathology program that is accredited by an organization recognized by the United States Department of Education and operated by a college or university accredited by a regional or national accrediting organization recognized by the licensing board; or

b. Has graduated from a speech-language pathology program that is housed in an institution of higher education outside of the United States (a) for which the program and institution have been approved by the authorized accrediting body in the applicable country and (b) the degree program has been verified by an independent credentials review agency to be comparable to a state licensing board-approved program;

2. Has completed a supervised clinical practicum experience from an educational institution or its cooperating programs as required by the Commission;

3. Has completed a supervised postgraduate professional experience as required by the Commission;

4. Has successfully passed a national examination approved by the Commission;

5. Holds an active, unencumbered license;

6. Has not been convicted or found guilty, and has not entered into an agreed disposition, of a felony related to the practice of speech-language pathology, under applicable state or federal criminal law; and

7. Has a valid United States social security number or National Practitioner Identification number.

G. The privilege to practice is derived from the home state license.

H. An audiologist or speech-language pathologist practicing in a member state must comply with the state practice laws of the state in which the client is located at the time service is provided. The practice of audiology and speech-language pathology shall include all audiology and speech-language pathology practice as defined by the state practice laws of the member state in which the client is located. The practice of audiology and speech-language pathology in a member state under a privilege to practice shall subject an audiologist or speech-language pathologist to the jurisdiction of the licensing board, the courts, and the laws of the member state in which the client is located at the time service is provided.

I. Individuals not residing in a member state shall continue to be able to apply for a member state's single-state license as provided under the laws of each member state. However, the single-state license granted to these individuals shall not be recognized as granting the privilege to practice audiology or speech-language pathology in any other member state. Nothing in this Compact shall affect the requirements established by a member state for the issuance of a single-state license.

J. Member states may charge a fee for granting a compact privilege.

K. Member states must comply with the bylaws and rules and regulations of the Commission.

Article 4 COMPACT PRIVILEGE

A. To exercise the compact privilege under the terms and provisions of the Compact, the audiologist or speech-language pathologist shall:

1. Hold an active license in the home state;

2. Have no encumbrance on any state license;

3. Be eligible for a compact privilege in any member state in accordance with Article 3;

4. Have not had any adverse action against any license or compact privilege within the previous two years from date of application;

5. Notify the Commission that the licensee is seeking the compact privilege within one or more remote states;

6. Pay any applicable fees, including any state fee, for the compact privilege;

7. Report to the Commission adverse action taken by any nonmember state within thirty days from the date the adverse action is taken.

B. For the purposes of the compact privilege, an audiologist or speech-language pathologist shall only hold one home state license at a time.

C. Except as provided in Article 6, if an audiologist or speech-language pathologist changes primary state of residence by moving between two member states, the audiologist or speech-language pathologist must apply for licensure in the new home state, and the license issued by the prior home state shall be deactivated in accordance with applicable rules adopted by the Commission.

D. The audiologist or speech-language pathologist may apply for licensure in advance of a change in primary state of residence.

E. A license shall not be issued by the new home state until the audiologist or speech-language pathologist provides satisfactory evidence of a change in primary state of residence to the new home state and satisfies all applicable requirements to obtain a license from the new home state.

F. If an audiologist or speech-language pathologist changes primary state of residence by moving from a member state to a nonmember state, the license issued by the prior home state shall convert to a single-state license, valid only in the former home state.

G. The compact privilege is valid until the expiration date of the home state license. The licensee must comply with the requirements of section A of this Article to maintain the compact privilege in the remote state.

H. A licensee providing audiology or speech-language pathology services in a remote state under the compact privilege shall function within the laws and regulations of the remote state.

I. A licensee providing audiology or speech-language pathology services in a remote state is subject to that state's regulatory authority. A remote state may, in accordance with due process and that state's laws, remove a licensee's compact privilege in the remote state for a specific period of time, impose fines, or take any other necessary actions to protect the health and safety of its citizens.

J. If a home state license is encumbered, the licensee shall lose the compact privilege in any remote state until the following occur:

1. The home state license is no longer encumbered; and

2. Two years have elapsed from the date of the adverse action.

K. Once an encumbered license in the home state is restored to good standing, the licensee must meet the requirements of section A of this Article to obtain a compact privilege in any remote state.

L. Once the requirements of section J of this Article have been met, the licensee must meet the requirements in section A of this Article to obtain a compact privilege in a remote state.

Article 5 COMPACT PRIVILEGE TO PRACTICE TELEHEALTH

Member states shall recognize the right of an audiologist or speech-language pathologist, licensed by a home state in accordance with Article 3 and under rules promulgated by the Commission, to practice audiology or speech-language pathology in any member state via telehealth under a privilege to practice as provided in the Compact and rules promulgated by the Commission.

Article 6 ACTIVE DUTY MILITARY PERSONNEL OR THEIR SPOUSES

Active duty military personnel, or their spouse, shall designate a home state where the individual has a current license in good standing. The individual may retain the home state designation during the period the service member is on active duty. Subsequent to designating a home state, the individual shall only change the home state through application for licensure in the new state.

Article 7 ADVERSE ACTIONS

A. In addition to the other powers conferred by state law, a remote state shall have the authority, in accordance with existing state due process law, to:

1. Take adverse action against an audiologist's or speech-language pathologist's privilege to practice within that member state.

2. Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses as well as the production of evidence. Subpoenas issued by a licensing board in a member state for the attendance and testimony of witnesses or the production of evidence from another member state shall be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the state in which the witnesses or evidence are located.

3. Only the home state shall have the power to take adverse action against an audiologist's or speech-language pathologist's license issued by the home state.

B. For purposes of taking adverse action, the home state shall give the same priority and effect to reported conduct received from a member state as it would if the conduct had occurred within the home state. In so doing, the home state shall apply its own state laws to determine appropriate action.

C. The home state shall complete any pending investigations of an audiologist or speech-language pathologist who changes primary state of residence during the course of the investigations. The home state shall also have the authority to take appropriate action and shall promptly report the conclusions of the investigations to the administrator of the data system. The administrator of the coordinated licensure information system shall promptly notify the new home state of any adverse action.

D. If otherwise permitted by state law, the member state may recover from the affected audiologist or speech-language pathologist the costs of investigations and disposition of cases resulting from any adverse action taken against that audiologist or speech-language pathologist.

E. The member state may take adverse action based on the factual findings of the remote state, provided that the member state follows the member state's own procedures for taking the adverse action.

F. Joint Investigations

1. In addition to the authority granted to a member state by its respective audiology or speech-language pathology practice act or other applicable state law, any member state may participate with other member states in joint investigations of licensees.

2. Member states shall share any investigative, litigation, or compliance materials in furtherance of any joint or individual investigation initiated under the Compact.

G. If adverse action is taken by the home state against an audiologist's or speech-language pathologist's license, the audiologist's or speech-language pathologist's privilege to practice in all other member states shall be deactivated until all encumbrances have been removed from the state license. All home state disciplinary orders that impose adverse action against an audiologist's or speech-language pathologist's license shall include a statement that the audiologist's or speech-language pathologist's privilege to practice is deactivated in all member states during the pendency of the order.

H. If a member state takes adverse action, it shall promptly notify the administrator of the data system. The administrator of the data system shall promptly notify the home state of any adverse actions by remote states.

I. Nothing in this Compact shall override a member state's decision that participation in an alternative program may be used in lieu of adverse action.

Article 8 ESTABLISHMENT OF THE AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY COMPACT COMMISSION

A. The Compact member states hereby create and establish a joint public agency known as the Audiology and Speech-Language Pathology Compact Commission:

1. The Commission is an instrumentality of the Compact states.

2. Venue is proper and judicial proceedings by or against the Commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the Commission is located. The Commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

3. Nothing in this Compact shall be construed to be a waiver of sovereign immunity.

B. Membership, Voting, and Meetings

1. Each member state shall have two delegates selected by that member state's licensing board. The delegates shall be current members of the licensing board. One shall be an audiologist and one shall be a speech-language pathologist.

2. An additional five delegates, who are either a public member or board administrator from a state licensing board, shall be chosen by the Executive Committee from a pool of nominees provided by the Commission at large.

3. Any delegate may be removed or suspended from office as provided by the law of the state from which the delegate is appointed.

4. The member state board shall fill any vacancy occurring on the Commission, within ninety days.

5. Each delegate shall be entitled to one vote with regard to the promulgation of rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the Commission.

6. A delegate shall vote in person or by other means as provided in the bylaws. The bylaws may provide for delegates' participation in meetings by telephone or other means of communication.

7. The Commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws.

C. The Commission shall have the following powers and duties:

1. Establish the fiscal year of the Commission;

2. Establish bylaws;

3. Establish a Code of Ethics;

4. Maintain its financial records in accordance with the bylaws;

5. Meet and take actions as are consistent with the provisions of this Compact and the bylaws;

6. Promulgate uniform rules to facilitate and coordinate implementation and administration of this Compact. The rules shall have the force and effect of law and shall be binding in all member states;

7. Bring and prosecute legal proceedings or actions in the name of the Commission, provided that the standing of any state audiology or speech-language pathology licensing board to sue or be sued under applicable law shall not be affected;

8. Purchase and maintain insurance and bonds;

9. Borrow, accept, or contract for services of personnel, including, but not limited to, employees of a member state;

10. Hire employees, elect or appoint officers, fix compensation, define duties, grant individuals appropriate authority to carry out the purposes of the Compact, and to establish the Commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;

11. Accept any and all appropriate donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize and dispose of the same; provided that at all times the Commission shall avoid any appearance of impropriety or conflict of interest;

12. Lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve or use, any property, real, personal or mixed; provided that at all times the Commission shall avoid any appearance of impropriety;

13. Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property real, personal, or mixed;

14. Establish a budget and make expenditures;

15. Borrow money;

16. Appoint committees, including standing committees composed of members and other interested persons as may be designated in this Compact and the bylaws;

17. Provide and receive information from, and cooperate with, law enforcement agencies;

18. Establish and elect an Executive Committee; and

19. Perform other functions as may be necessary or appropriate to achieve the purposes of this Compact consistent with the state regulation of audiology and speech-language pathology licensure and practice.

D. The Executive Committee

The Executive Committee shall have the power to act on behalf of the Commission according to the terms of this Compact:

1. The Executive Committee shall be composed of ten members:

a. Seven voting members who are elected by the Commission from the current membership of the Commission;

b. Two ex officios, consisting of one nonvoting member from a recognized national audiology professional association and one nonvoting member from a recognized national speech-language pathology association; and

c. One ex officio, nonvoting member from the recognized membership organization of the audiology and speech-language pathology licensing boards.

E. The ex officio members shall be selected by their respective organizations.

1. The Commission may remove any member of the Executive Committee as provided in the bylaws.

2. The Executive Committee shall meet at least annually.

3. The Executive Committee shall have the following duties and responsibilities:

a. Recommend to the entire Commission changes to the rules or bylaws, changes to this Compact legislation, fees paid by Compact member states such as annual dues, and any commission Compact fee charged to licensees for the compact privilege;

b. Ensure Compact administration services are appropriately provided, contractual or otherwise;

c. Prepare and recommend the budget;

d. Maintain financial records on behalf of the Commission;

e. Monitor Compact compliance of member states and provide compliance reports to the Commission;

f. Establish additional committees as necessary; and

g. Other duties as provided in rules or bylaws.

4. Meetings of the Commission

All meetings shall be open to the public, and public notice of meetings shall be given in the same manner as required under the rulemaking provisions in Article 10.

5. The Commission or the Executive Committee or other committees of the Commission may convene in a closed, nonpublic meeting if the Commission or Executive Committee or other committees of the Commission must discuss:

a. Noncompliance of a member state with its obligations under the Compact;

b. The employment, compensation, discipline or other matters, practices or procedures related to specific employees or other matters related to the Commission's internal personnel practices and procedures;

c. Current, threatened, or reasonably anticipated litigation;

d. Negotiation of contracts for the purchase, lease, or sale of goods, services, or real estate;

e. Accusing any person of a crime or formally censuring any person;

f. Disclosure of trade secrets or commercial or financial information that is privileged or confidential;

g. Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

h. Disclosure of investigative records compiled for law enforcement purposes;

i. Disclosure of information related to any investigative reports prepared by or on behalf of or for use of the Commission or other committee charged with responsibility of investigation or determination of compliance issues pursuant to the Compact; or

j. Matters specifically exempted from disclosure by federal or member state statute.

6. If a meeting, or portion of a meeting, is closed pursuant to this provision, the Commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision.

7. The Commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefor, including a description of the views expressed. All documents considered in connection with an action shall be identified in minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the Commission or order of a court of competent jurisdiction.

8. Financing of the Commission

a. The Commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.

b. The Commission may accept any and all appropriate revenue sources, donations, and grants of money, equipment, supplies, materials, and services.

c. The Commission may levy on and collect an annual assessment from each member state or impose fees on other parties to cover the cost of the operations and activities of the Commission and its staff, which must be in a total amount sufficient to cover its annual budget as approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Commission, which shall promulgate a rule binding upon all member states.

9. The Commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Commission pledge the credit of any of the member states, except by and with the authority of the member state.

10. The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the Commission.

F. Qualified Immunity, Defense, and Indemnification

1. The members, officers, executive director, employees and representatives of the Commission shall have no greater liability than a state employee would have under the same or similar circumstances, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred, within the scope of Commission employment, duties, or responsibilities; provided that nothing in this paragraph shall be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful or wanton misconduct of that person.

2. The Commission shall defend any member, officer, executive director, employee or representative of the Commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities; provided that nothing herein shall be construed to prohibit that person from retaining his or her own counsel; and provided further, that the actual or alleged act, error, or omission did not result from that person's intentional or willful or wanton misconduct.

3. The Commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the Commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that person had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from the intentional or willful or wanton misconduct of that person.

Article 9 DATA SYSTEM

A. The Commission shall provide for the development, maintenance, and utilization of a coordinated database and reporting system containing licensure, adverse action, and investigative information on all licensed individuals in member states.

B. Notwithstanding any other provision of state law to the contrary, a member state shall submit a uniform data set to the data system on all individuals to whom this Compact is applicable as required by the rules of the Commission, including:

1. Identifying information;

2. Licensure data;

3. Adverse actions against a license or compact privilege;

4. Nonconfidential information related to alternative program participation;

5. Any denial of application for licensure, and any reason for denial; and

6. Other information that may facilitate the administration of this Compact, as determined by the rules of the Commission.

C. Investigative information pertaining to a licensee in any member state shall only be available to other member states.

D. The Commission shall promptly notify all member states of any adverse action taken against a licensee or an individual applying for a license. Adverse action information pertaining to a licensee in any member state shall be available to any other member state.

E. Member states contributing information to the data system may designate information that may not be shared with the public without the express permission of the contributing state.

F. Any information submitted to the data system that is subsequently required to be expunged by the laws of the member state contributing the information shall be removed from the data system.

Article 10 RULEMAKING

A. The Commission shall exercise its rulemaking powers pursuant to the criteria set forth in this Article and the rules adopted thereunder. Rules and amendments shall become binding as of the date specified in each rule or amendment.

B. If a majority of the legislatures of the member states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the Compact within four years of the date of adoption of the rule, the rule shall have no further force and effect in any member state.

C. Rules or amendments to the rules shall be adopted at a regular or special meeting of the Commission.

D. Prior to promulgation and adoption of a final rule or rules by the Commission, and at least thirty days in advance of the meeting at which the rule shall be considered and voted upon, the Commission shall file a Notice of Proposed Rulemaking:

1. On the website of the Commission or other publicly accessible platform; and

2. On the website of each member state audiology or speech-language pathology licensing board or other publicly accessible platform or the publication in which each state would otherwise publish proposed rules.

E. The Notice of Proposed Rulemaking shall include:

1. The proposed time, date, and location of the meeting in which the rule shall be considered and voted upon;

2. The text of the proposed rule or amendment and the reason for the proposed rule;

3. A request for comments on the proposed rule from any interested person; and

4. The manner in which interested persons may submit notice to the Commission of their intention to attend the public hearing and any written comments.

F. Prior to the adoption of a proposed rule, the Commission shall allow persons to submit written data, facts, opinions and arguments, which shall be made available to the public.

G. The Commission shall grant an opportunity for a public hearing before it adopts a rule or amendment if a hearing is requested by:

1. At least twenty-five persons;

2. A state or federal governmental subdivision or agency; or

3. An association having at least twenty-five members.

H. If a hearing is held on the proposed rule or amendment, the Commission shall publish the place, time, and date of the scheduled public hearing. If the hearing is held via electronic means, the Commission shall publish the mechanism for access to the electronic hearing.

1. All persons wishing to be heard at the hearing shall notify the executive director of the Commission or other designated member in writing of their desire to appear and testify at the hearing not less than five business days before the scheduled date of the hearing.

2. Hearings shall be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing.

3. All hearings shall be recorded. A copy of the recording shall be made available on request.

4. Nothing in this Article shall be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the Commission at hearings required by this Article.

I. Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the Commission shall consider all written and oral comments received.

J. If no written notice of intent to attend the public hearing by interested parties is received, the Commission may proceed with promulgation of the proposed rule without a public hearing.

K. The Commission shall, by majority vote of all members, take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.

L. Upon determination that an emergency exists, the Commission may consider and adopt an emergency rule without prior notice, opportunity for comment, or hearing, provided that the usual rulemaking procedures provided in the Compact and in this Article shall be retroactively applied to the rule as soon as reasonably possible, in no event later than ninety days after the effective date of the rule. For the purposes of this provision, an emergency rule is one that must be adopted immediately in order to:

1. Meet an imminent threat to public health, safety, or welfare;

2. Prevent a loss of Commission or member state funds; or

3. Meet a deadline for the promulgation of an administrative rule that is established by federal law or rule.

M. The Commission or an authorized committee of the Commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions shall be posted on the website of the Commission. The revision shall be subject to challenge by any person for a period of thirty days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge shall be made in writing and delivered to the chairperson of the Commission prior to the end of the notice period. If no challenge is made, the

revision shall take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the Commission.

Article 11 OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT

A. Dispute Resolution

1. Upon request by a member state, the Commission shall attempt to resolve disputes related to the Compact that arise among member states and between member and nonmember states.

2. The Commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.

B. Enforcement

1. The Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this Compact.

2. By majority vote, the Commission may initiate legal action in the United States District Court for the District of Columbia or the federal district where the Commission has its principal offices against a member state in default to enforce compliance with the provisions of the Compact and its promulgated rules and bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing member shall be awarded all costs of litigation, including reasonable attorney's fees.

3. The remedies herein shall not be the exclusive remedies of the Commission. The Commission may pursue any other remedies available under federal or state law.

Article 12 DATE OF IMPLEMENTATION OF THE INTERSTATE COMMISSION FOR AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY PRACTICE AND ASSOCIATED RULES, WITHDRAWAL, AND AMENDMENT

A. The Compact shall come into effect on the date on which the Compact statute is enacted into law in the tenth member state. The provisions, which become effective at that time, shall be limited to the powers granted to the Commission relating to assembly and the promulgation of rules. Thereafter, the Commission shall meet and exercise rulemaking powers necessary to the implementation and administration of the Compact.

B. Any state that joins the Compact subsequent to the Commission's initial adoption of the rules shall be subject to the rules as they exist on the date on which the Compact becomes law in that state. Any rule that has been previously adopted by the Commission shall have the full force and effect of law on the day the Compact becomes law in that state.

C. Any member state may withdraw from this Compact by enacting a statute repealing the same.

1. A member state's withdrawal shall not take effect until six months after enactment of the repealing statute.

2. Withdrawal shall not affect the continuing requirement of the withdrawing state's audiology or speech-language pathology licensing board to comply with the investigative and adverse action reporting requirements of this Compact prior to the effective date of withdrawal.

D. Nothing contained in this Compact shall be construed to invalidate or prevent any audiology or speech-language pathology licensure agreement or

other cooperative arrangement between a member state and a nonmember state that does not conflict with the provisions of this Compact.

E. This Compact may be amended by the member states. No amendment to this Compact shall become effective and binding upon any member state until it is enacted into the laws of all member states.

Article 13 CONSTRUCTION AND SEVERABILITY

This Compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Compact shall be severable and if any phrase, clause, sentence, or provision of this Compact is declared to be contrary to the constitution of any member state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this Compact shall be held contrary to the constitution of any member state, the Compact shall remain in full force and effect as to the remaining member states and in full force and effect as to the member state affected as to all severable matters.

Article 14 BINDING EFFECT OF COMPACT AND OTHER LAWS

A. Nothing herein prevents the enforcement of any other law of a member state that is not inconsistent with the Compact.

B. All laws in a member state in conflict with the Compact are superseded to the extent of the conflict.

C. All lawful actions of the Commission, including all rules and bylaws promulgated by the Commission, are binding upon the member states.

D. All agreements between the Commission and the member states are binding in accordance with their terms.

E. In the event any provision of the Compact exceeds the constitutional limits imposed on the legislature of any member state, the provision shall be ineffective to the extent of the conflict with the constitutional provision in question in that member state.

Source: Laws 2021, LB14, § 6.

ARTICLE 42

LICENSED PROFESSIONAL COUNSELORS INTERSTATE COMPACT

Section
38-4201. Licensed Professional Counselors Interstate Compact.

38-4201 Licensed Professional Counselors Interstate Compact.

The State of Nebraska adopts the Licensed Professional Counselors Interstate Compact in the form substantially as follows:

Licensed Professional Counselors Interstate Compact

SECTION 1: PURPOSE

The purpose of this Compact is to facilitate interstate practice of Licensed Professional Counselors with the goal of improving public access to Professional Counseling services. The practice of Professional Counseling occurs in the State where the client is located at the time of the counseling services. The Compact preserves the regulatory authority of States to protect public health and safety through the current system of State licensure.

This Compact is designed to achieve the following objectives:

A. Increase public access to Professional Counseling services by providing for the mutual recognition of other Member State licenses;

B. Enhance the States' ability to protect the public's health and safety;

C. Encourage the cooperation of Member States in regulating multistate practice for Licensed Professional Counselors;

D. Support spouses of relocating Active Duty Military personnel;

E. Enhance the exchange of licensure, investigative, and disciplinary information among Member States;

F. Allow for the use of Telehealth technology to facilitate increased access to Professional Counseling services;

G. Support the uniformity of Professional Counseling licensure requirements throughout the States to promote public safety and public health benefits;

H. Invest all Member States with the authority to hold a Licensed Professional Counselor accountable for meeting all State practice laws in the State in which the client is located at the time care is rendered through the mutual recognition of Member State licenses;

I. Eliminate the necessity for licenses in multiple States; and

J. Provide opportunities for interstate practice by Licensed Professional Counselors who meet uniform licensure requirements.

SECTION 2. DEFINITIONS

As used in this Compact, and except as otherwise provided, the following definitions shall apply:

A. ''Active Duty Military'' means full-time duty status in the active uniformed service of the United States, including members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C. Chapters 1209 and 1211.

B. ''Adverse Action'' means any administrative, civil, equitable or criminal action permitted by a State's laws which is imposed by a licensing board or other authority against a Licensed Professional Counselor, including actions against an individual's license or Privilege to Practice such as revocation, suspension, probation, monitoring of the licensee, limitation on the licensee's practice, or any other Encumbrance on licensure affecting a Licensed Professional Counselor's authorization to practice, including issuance of a cease and desist action.

C. ''Alternative Program'' means a nondisciplinary monitoring or practice remediation process approved by a Professional Counseling Licensing Board to address Impaired Practitioners.

D. ''Continuing Competence/Education'' means a requirement, as a condition of license renewal, to provide evidence of participation in, and/or completion of, educational and professional activities relevant to practice or area of work.

E. ''Counseling Compact Commission'' or ''Commission'' means the national administrative body whose membership consists of all States that have enacted the Compact.

F. ''Current Significant Investigative Information'' means:

1. Investigative Information that a Licensing Board, after a preliminary inquiry that includes notification and an opportunity for the Licensed Professional Counselor to respond, if required by State law, has reason to believe is

not groundless and, if proved true, would indicate more than a minor infraction; or

2. Investigative Information that indicates that the Licensed Professional Counselor represents an immediate threat to public health and safety regardless of whether the Licensed Professional Counselor has been notified and had an opportunity to respond.

G. ''Data System'' means a repository of information about Licensees, including, but not limited to, continuing education, examination, licensure, investigative, Privilege to Practice and Adverse Action information.

H. ''Encumbered License'' means a license in which an Adverse Action restricts the practice of licensed Professional Counseling by the Licensee and said Adverse Action has been reported to the National Practitioners Data Bank (NPDB).

I. ''Encumbrance'' means a revocation or suspension of, or any limitation on, the full and unrestricted practice of Licensed Professional Counseling by a Licensing Board.

J. ''Executive Committee'' means a group of directors elected or appointed to act on behalf of, and within the powers granted to them by, the Commission.

K. ''Home State'' means the Member State that is the Licensee's primary State of residence.

L. ''Impaired Practitioner'' means an individual who has a condition(s) that may impair their ability to practice as a Licensed Professional Counselor without some type of intervention and may include, but are not limited to, alcohol and drug dependence, mental health impairment, and neurological or physical impairments.

M. ''Investigative Information'' means information, records, and documents received or generated by a Professional Counseling Licensing Board pursuant to an investigation.

N. ''Jurisprudence Requirement'' if required by a Member State, means the assessment of an individual's knowledge of the laws and Rules governing the practice of Professional Counseling in a State.

O. ''Licensed Professional Counselor'' means a counselor licensed by a Member State, regardless of the title used by that State, to independently assess, diagnose, and treat behavioral health conditions.

P. ''Licensee'' means an individual who currently holds an authorization from the State to practice as a Licensed Professional Counselor.

Q. ''Licensing Board'' means the agency of a State, or equivalent, that is responsible for the licensing and regulation of Licensed Professional Counselors.

R. ''Member State'' means a State that has enacted the Compact.

S. ''Privilege to Practice'' means a legal authorization, which is equivalent to a license, permitting the practice of Professional Counseling in a Remote State.

T. ''Professional Counseling'' means the assessment, diagnosis, and treatment of behavioral health conditions by a Licensed Professional Counselor.

U. ''Remote State'' means a Member State other than the Home State, where a Licensee is exercising or seeking to exercise the Privilege to Practice.

V. ''Rule'' means a regulation promulgated by the Commission that has the force of law.

W. ''Single State License'' means a Licensed Professional Counselor license issued by a Member State that authorizes practice only within the issuing State and does not include a Privilege to Practice in any other Member State.

X. ''State'' means any state, commonwealth, district, or territory of the United States of America that regulates the practice of Professional Counseling.

Y. ''Telehealth'' means the application of telecommunication technology to deliver Professional Counseling services remotely to assess, diagnose, and treat behavioral health conditions.

Z. ''Unencumbered License'' means a license that authorizes a Licensed Professional Counselor to engage in the full and unrestricted practice of Professional Counseling.

SECTION 3. STATE PARTICIPATION IN THE COMPACT

A. To Participate in the Compact, a State must currently:

1. License and regulate Licensed Professional Counselors;

2. Require Licensees to pass a nationally recognized examination approved by the Commission;

3. Require Licensees to have a sixty-semester-hour (or ninety-quarter-hour) master's degree in counseling or sixty semester-hours (or ninety quarter-hours) of graduate course work including the following topic areas:

a. Professional Counseling Orientation and Ethical Practice;

b. Social and Cultural Diversity;

c. Human Growth and Development;

d. Career Development;

e. Counseling and Helping Relationships;

f. Group Counseling and Group Work;

g. Diagnosis and Treatment; Assessment and Testing;

h. Research and Program Evaluation; and

i. Other areas as determined by the Commission.

4. Require Licensees to complete a supervised postgraduate professional experience as defined by the Commission;

5. Have a mechanism in place for receiving and investigating complaints about Licensees.

B. A Member State shall:

1. Participate fully in the Commission's Data System, including using the Commission's unique identifier as defined in Rules;

2. Notify the Commission, in compliance with the terms of the Compact and Rules, of any Adverse Action or the availability of Investigative Information regarding a Licensee;

3. Implement or utilize procedures for considering the criminal history records of applicants for an initial Privilege to Practice. These procedures shall include the submission of fingerprints or other biometric-based information by applicants for the purpose of obtaining an applicant's criminal history record information from the Federal Bureau of Investigation and the agency responsible for retaining that State's criminal records;

a. A Member State must fully implement a criminal background check requirement, within a timeframe established by rule, by receiving the results of the Federal Bureau of Investigation record search and shall use the results in making licensure decisions.

b. Communication between a Member State, the Commission and among Member States regarding the verification of eligibility for licensure through the Compact shall not include any information received from the Federal Bureau of Investigation relating to a federal criminal records check performed by a Member State under Public Law 92-544.

4. Comply with the Rules of the Commission;

5. Require an applicant to obtain or retain a license in the Home State and meet the Home State's qualifications for licensure or renewal of licensure, as well as all other applicable State laws;

6. Grant the Privilege to Practice to a Licensee holding a valid Unencumbered License in another Member State in accordance with the terms of the Compact and Rules; and

7. Provide for the attendance of the State's commissioner to the Counseling Compact Commission meetings.

C. Member States may charge a fee for granting the Privilege to Practice.

D. Individuals not residing in a Member State shall continue to be able to apply for a Member State's Single State License as provided under the laws of each Member State. However, the Single State License granted to these individuals shall not be recognized as granting a Privilege to Practice Professional Counseling in any other Member State.

E. Nothing in this Compact shall affect the requirements established by a Member State for the issuance of a Single State License.

F. A license issued to a Licensed Professional Counselor by a Home State to a resident in that State shall be recognized by each Member State as authorizing a Licensed Professional Counselor to practice Professional Counseling, under a Privilege to Practice, in each Member State.

SECTION 4. PRIVILEGE TO PRACTICE

A. To exercise the Privilege to Practice under the terms and provisions of the Compact, the Licensee shall:

1. Hold a license in the Home State;

2. Have a valid United States social security number or national practitioner identifier;

3. Be eligible for a Privilege to Practice in any Member State in accordance with Section 4(D), (G) and (H);

4. Have not had any Encumbrance or restriction against any license or Privilege to Practice within the previous two years;

5. Notify the Commission that the Licensee is seeking the Privilege to Practice within a Remote State(s);

6. Pay any applicable fees, including any State fee, for the Privilege to Practice;

7. Meet any Continuing Competence/Education requirements established by the Home State;

8. Meet any Jurisprudence Requirements established by the Remote State(s) in which the Licensee is seeking a Privilege to Practice; and

9. Report to the Commission any Adverse Action, Encumbrance, or restriction on license taken by any non-Member State within thirty days from the date the action is taken.

B. The Privilege to Practice is valid until the expiration date of the Home State license. The Licensee must comply with the requirements of Section 4(A) to maintain the Privilege to Practice in the Remote State.

C. A Licensee providing Professional Counseling in a Remote State under the Privilege to Practice shall adhere to the laws and regulations of the Remote State.

D. A Licensee providing Professional Counseling services in a Remote State is subject to that State's regulatory authority. A Remote State may, in accordance with due process and that State's laws, remove a Licensee's Privilege to Practice in the Remote State for a specific period of time, impose fines, and/or take any other necessary actions to protect the health and safety of its citizens. The Licensee may be ineligible for a Privilege to Practice in any Member State until the specific time for removal has passed and all fines are paid.

E. If a Home State license is encumbered, the Licensee shall lose the Privilege to Practice in any Remote State until the following occur:

1. The Home State license is no longer encumbered; and

2. Have not had any Encumbrance or restriction against any license or Privilege to Practice within the previous two years.

F. Once an Encumbered License in the Home State is restored to good standing, the Licensee must meet the requirements of Section 4(A) to obtain a Privilege to Practice in any Remote State.

G. If a Licensee's Privilege to Practice in any Remote State is removed, the individual may lose the Privilege to Practice in all other Remote States until the following occur:

1. The specific period of time for which the Privilege to Practice was removed has ended;

2. All fines have been paid; and

3. Have not had any Encumbrance or restriction against any license or Privilege to Practice within the previous two years.

H. Once the requirements of Section 4(G) have been met, the Licensee must meet the requirements in Section 4(A) to obtain a Privilege to Practice in a Remote State.

SECTION 5: OBTAINING A NEW HOME STATE LICENSE BASED ON A PRIVILEGE TO PRACTICE

A. A Licensed Professional Counselor may hold a Home State license, which allows for a Privilege to Practice in other Member States, in only one Member State at a time.

B. If a Licensed Professional Counselor changes primary State of residence by moving between two Member States:

1. The Licensed Professional Counselor shall file an application for obtaining a new Home State license based on a Privilege to Practice, pay all applicable

fees, and notify the current and new Home State in accordance with applicable Rules adopted by the Commission.

2. Upon receipt of an application for obtaining a new Home State license by virtue of a Privilege to Practice, the new Home State shall verify that the Licensed Professional Counselor meets the pertinent criteria outlined in Section 4 via the Data System, without need for primary source verification except for:

a. a Federal Bureau of Investigation fingerprint-based criminal background check if not previously performed or updated pursuant to applicable rules adopted by the Commission in accordance with Public Law 92-544;

b. other criminal background check as required by the new Home State; and

c. completion of any requisite Jurisprudence Requirements of the new Home State.

3. The former Home State shall convert the former Home State license into a Privilege to Practice once the new Home State has activated the new Home State license in accordance with applicable Rules adopted by the Commission.

4. Notwithstanding any other provision of this Compact, if the Licensed Professional Counselor cannot meet the criteria in Section 4, the new Home State may apply its requirements for issuing a new Single State License.

5. The Licensed Professional Counselor shall pay all applicable fees to the new Home State in order to be issued a new Home State license.

C. If a Licensed Professional Counselor changes Primary State of Residence by moving from a Member State to a non-Member State, or from a non-Member State to a Member State, the State criteria shall apply for issuance of a Single State License in the new State.

D. Nothing in this Compact shall interfere with a Licensee's ability to hold a Single State License in multiple States, however for the purposes of this Compact, a Licensee shall have only one Home State license.

E. Nothing in this Compact shall affect the requirements established by a Member State for the issuance of a Single State License.

SECTION 6. ACTIVE DUTY MILITARY PERSONNEL OR THEIR SPOUSES

Active Duty Military personnel, or their spouse, shall designate a Home State where the individual has a current license in good standing. The individual may retain the Home State designation during the period the service member is on active duty. Subsequent to designating a Home State, the individual shall only change their Home State through application for licensure in the new State, or through the process outlined in Section 5.

SECTION 7. COMPACT PRIVILEGE TO PRACTICE TELEHEALTH

A. Member States shall recognize the right of a Licensed Professional Counselor, licensed by a Home State in accordance with Section 3 and under Rules promulgated by the Commission, to practice Professional Counseling in any Member State via Telehealth under a Privilege to Practice as provided in the Compact and Rules promulgated by the Commission.

B. A Licensee providing Professional Counseling services in a Remote State under the Privilege to Practice shall adhere to the laws and regulations of the Remote State.

SECTION 8. ADVERSE ACTIONS

A. In addition to the other powers conferred by State law, a Remote State shall have the authority, in accordance with existing State due process law, to:

1. Take Adverse Action against a Licensed Professional Counselor's Privilege to Practice within that Member State, and

2. Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses as well as the production of evidence. Subpoenas issued by a Licensing Board in a Member State for the attendance and testimony of witnesses or the production of evidence from another Member State shall be enforced in the latter State by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the State in which the witnesses or evidence are located.

3. Only the Home State shall have the power to take Adverse Action against a Licensed Professional Counselor's license issued by the Home State.

B. For purposes of taking Adverse Action, the Home State shall give the same priority and effect to reported conduct received from a Member State as it would if the conduct had occurred within the Home State. In so doing, the Home State shall apply its own State laws to determine appropriate action.

C. The Home State shall complete any pending investigations of a Licensed Professional Counselor who changes primary State of residence during the course of the investigations. The Home State shall also have the authority to take appropriate action(s) and shall promptly report the conclusions of the investigations to the administrator of the Data System. The administrator of the coordinated licensure information system shall promptly notify the new Home State of any Adverse Actions.

D. A Member State, if otherwise permitted by State law, may recover from the affected Licensed Professional Counselor the costs of investigations and dispositions of cases resulting from any Adverse Action taken against that Licensed Professional Counselor.

E. A Member State may take Adverse Action based on the factual findings of the Remote State, provided that the Member State follows its own procedures for taking the Adverse Action.

F. Joint Investigations:

1. In addition to the authority granted to a Member State by its respective Professional Counseling practice act or other applicable State law, any Member State may participate with other Member States in joint investigations of Licensees.

2. Member States shall share any investigative, litigation, or compliance materials in furtherance of any joint or individual investigation initiated under the Compact.

G. If Adverse Action is taken by the Home State against the license of a Licensed Professional Counselor, the Licensed Professional Counselor's Privilege to Practice in all other Member States shall be deactivated until all Encumbrances have been removed from the State license. All Home State disciplinary orders that impose Adverse Action against the license of a Licensed Professional Counselor shall include a Statement that the Licensed Professional Counselor's Privilege to Practice is deactivated in all Member States during the pendency of the order.

H. If a Member State takes Adverse Action, it shall promptly notify the administrator of the Data System. The administrator of the Data System shall promptly notify the Home State of any Adverse Actions by Remote States.

I. Nothing in this Compact shall override a Member State's decision that participation in an Alternative Program may be used in lieu of Adverse Action.

SECTION 9. ESTABLISHMENT OF COUNSELING COMPACT COMMISSION

A. The Compact Member States hereby create and establish a joint public agency known as the Counseling Compact Commission:

1. The Commission is an instrumentality of the Compact States.

2. Venue is proper and judicial proceedings by or against the Commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the Commission is located. The Commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

3. Nothing in this Compact shall be construed to be a waiver of sovereign immunity.

B. Membership, Voting, and Meetings

1. Each Member State shall have and be limited to one delegate selected by that Member State's Licensing Board.

2. The delegate shall be either:

a. A current member of the Licensing Board at the time of appointment, who is a Licensed Professional Counselor or public member; or

b. An administrator of the Licensing Board.

3. Any delegate may be removed or suspended from office as provided by the law of the State from which the delegate is appointed.

4. The Member State Licensing Board shall fill any vacancy occurring on the Commission within sixty days.

5. Each delegate shall be entitled to one vote with regard to the promulgation of Rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the Commission.

6. A delegate shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for delegates' participation in meetings by telephone or other means of communication.

7. The Commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws.

8. The Commission shall by Rule establish a term of office for delegates and may by Rule establish term limits.

C. The Commission shall have the following powers and duties:

1. Establish the fiscal year of the Commission;

2. Establish bylaws;

3. Maintain its financial records in accordance with the bylaws;

4. Meet and take such actions as are consistent with the provisions of this Compact and the bylaws;

5. Promulgate Rules which shall be binding to the extent and in the manner provided for in the Compact;

6. Bring and prosecute legal proceedings or actions in the name of the Commission, provided that the standing of any State Licensing Board to sue or be sued under applicable law shall not be affected;

7. Purchase and maintain insurance and bonds;

8. Borrow, accept, or contract for services of personnel, including, but not limited to, employees of a Member State;

9. Hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of the Compact, and establish the Commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;

10. Accept any and all appropriate donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of the same; provided that at all times the Commission shall avoid any appearance of impropriety and/or conflict of interest;

11. Lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve or use, any property, real, personal or mixed; provided that at all times the Commission shall avoid any appearance of impropriety;

12. Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property real, personal, or mixed;

13. Establish a budget and make expenditures;

14. Borrow money;

15. Appoint committees, including standing committees composed of members, State regulators, State legislators or their representatives, and consumer representatives, and such other interested persons as may be designated in this Compact and the bylaws;

16. Provide and receive information from, and cooperate with, law enforcement agencies;

17. Establish and elect an Executive Committee; and

18. Perform such other functions as may be necessary or appropriate to achieve the purposes of this Compact consistent with the State regulation of Professional Counseling licensure and practice.

D. The Executive Committee

1. The Executive Committee shall have the power to act on behalf of the Commission according to the terms of this Compact.

2. The Executive Committee shall be composed of up to eleven members:

a. Seven voting members who are elected by the Commission from the current membership of the Commission; and

b. Up to four ex officio, nonvoting members from four recognized national professional counselor organizations.

c. The ex officio members will be selected by their respective organizations.

3. The Commission may remove any member of the Executive Committee as provided in bylaws.

4. The Executive Committee shall meet at least annually.

5. The Executive Committee shall have the following duties and responsibilities:

a. Recommend to the entire Commission changes to the Rules or bylaws, changes to this Compact legislation, fees paid by Compact Member States such as annual dues, and any Commission Compact fee charged to Licensees for the Privilege to Practice;

b. Ensure Compact administration services are appropriately provided, contractual or otherwise;

c. Prepare and recommend the budget;

d. Maintain financial records on behalf of the Commission;

e. Monitor Compact compliance of Member States and provide compliance reports to the Commission;

f. Establish additional committees as necessary; and

g. Other duties as provided in Rules or bylaws.

E. Meetings of the Commission

1. All meetings shall be open to the public, and public notice of meetings shall be given in the same manner as required under the Rulemaking provisions in Section 11.

2. The Commission or the Executive Committee or other committees of the Commission may convene in a closed, nonpublic meeting if the Commission or Executive Committee or other committees of the Commission must discuss:

a. Noncompliance of a Member State with its obligations under the Compact;

b. The employment, compensation, discipline or other matters, practices or procedures related to specific employees or other matters related to the Commission's internal personnel practices and procedures;

c. Current, threatened, or reasonably anticipated litigation;

d. Negotiation of contracts for the purchase, lease, or sale of goods, services, or real estate;

e. Accusing any person of a crime or formally censuring any person;

f. Disclosure of trade secrets or commercial or financial information that is privileged or confidential;

g. Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

h. Disclosure of investigative records compiled for law enforcement purposes;

i. Disclosure of information related to any investigative reports prepared by or on behalf of or for use of the Commission or other committee charged with responsibility of investigation or determination of compliance issues pursuant to the Compact; or

j. Matters specifically exempted from disclosure by federal or Member State statute.

3. If a meeting, or portion of a meeting, is closed pursuant to this provision, the Commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision.

4. The Commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefor, including a description of the views expressed. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall

remain under seal, subject to release by a majority vote of the Commission or order of a court of competent jurisdiction.

F. Financing of the Commission

1. The Commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.

2. The Commission may accept any and all appropriate revenue sources, donations, and grants of money, equipment, supplies, materials, and services.

3. The Commission may levy on and collect an annual assessment from each Member State or impose fees on other parties to cover the cost of the operations and activities of the Commission and its staff, which must be in a total amount sufficient to cover its annual budget as approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Commission, which shall promulgate a Rule binding upon all Member States.

4. The Commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Commission pledge the credit of any of the Member States, except by and with the authority of the Member State.

5. The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the Commission.

G. Qualified Immunity, Defense, and Indemnification

1. The members, officers, executive director, employees, and representatives of the Commission shall have no greater liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred, within the scope of Commission employment, duties, or responsibilities, than a state employee would have under the same or similar circumstances; provided that nothing in this paragraph shall be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful or wanton misconduct of that person.

2. The Commission shall defend any member, officer, executive director, employee or representative of the Commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities; provided that nothing herein shall be construed to prohibit that person from retaining his or her own counsel; and provided further, that the actual or alleged act, error, or omission did not result from that person's intentional or willful or wanton misconduct.

3. The Commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the Commission for the

amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from the intentional or willful or wanton misconduct of that person.

SECTION 10. DATA SYSTEM

A. The Commission shall provide for the development, maintenance, operation, and utilization of a coordinated database and reporting system containing licensure, Adverse Action, and Investigative Information on all licensed individuals in Member States.

B. Notwithstanding any other provision of State law to the contrary, a Member State shall submit a uniform data set to the Data System on all individuals to whom this Compact is applicable as required by the Rules of the Commission, including:

1. Identifying information;

2. Licensure data;

3. Adverse Actions against a license or Privilege to Practice;

4. Nonconfidential information related to Alternative Program participation;

5. Any denial of application for licensure, and the reason(s) for such denial;

6. Current Significant Investigative Information; and

7. Other information that may facilitate the administration of this Compact, as determined by the Rules of the Commission.

C. Investigative Information pertaining to a Licensee in any Member State will only be available to other Member States.

D. The Commission shall promptly notify all Member States of any Adverse Action taken against a Licensee or an individual applying for a license. Adverse Action information pertaining to a Licensee in any Member State will be available to any other Member State.

E. Member States contributing information to the Data System may designate information that may not be shared with the public without the express permission of the contributing State.

F. Any information submitted to the Data System that is subsequently required to be expunged by the laws of the Member State contributing the information shall be removed from the Data System.

SECTION 11. RULEMAKING

A. The Commission shall promulgate reasonable Rules in order to effectively and efficiently achieve the purpose of the Compact. Notwithstanding the foregoing, in the event the Commission exercises its Rulemaking authority in a manner that is beyond the scope of the purposes of the Compact, or the powers granted hereunder, then such an action by the Commission shall be invalid and have no force or effect.

B. The Commission shall exercise its Rulemaking powers pursuant to the criteria set forth in this Section and the Rules adopted thereunder. Rules and amendments shall become binding as of the date specified in each Rule or amendment.

C. If a majority of the legislatures of the Member States rejects a Rule, by enactment of a statute or resolution in the same manner used to adopt the Compact within four years of the date of adoption of the Rule, then such Rule shall have no further force and effect in any Member State.

D. Rules or amendments to the Rules shall be adopted at a regular or special meeting of the Commission.

E. Prior to promulgation and adoption of a final Rule or Rules by the Commission, and at least thirty days in advance of the meeting at which the Rule will be considered and voted upon, the Commission shall file a Notice of Proposed Rulemaking:

1. On the website of the Commission or other publicly accessible platform; and

2. On the website of each Member State Professional Counseling Licensing Board or other publicly accessible platform or the publication in which each State would otherwise publish proposed Rules.

F. The Notice of Proposed Rulemaking shall include:

1. The proposed time, date, and location of the meeting in which the Rule will be considered and voted upon;

2. The text of the proposed Rule or amendment and the reason for the proposed Rule;

3. A request for comments on the proposed Rule from any interested person; and

4. The manner in which interested persons may submit notice to the Commission of their intention to attend the public hearing and any written comments.

G. Prior to adoption of a proposed Rule, the Commission shall allow persons to submit written data, facts, opinions, and arguments, which shall be made available to the public.

H. The Commission shall grant an opportunity for a public hearing before it adopts a Rule or amendment if a hearing is requested by:

1. At least twenty-five persons;

2. A State or federal governmental subdivision or agency; or

3. An association having at least twenty-five members.

I. If a hearing is held on the proposed Rule or amendment, the Commission shall publish the place, time, and date of the scheduled public hearing. If the hearing is held via electronic means, the Commission shall publish the mechanism for access to the electronic hearing.

1. All persons wishing to be heard at the hearing shall notify the executive director of the Commission or other designated member in writing of their desire to appear and testify at the hearing not less than five business days before the scheduled date of the hearing.

2. Hearings shall be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing.

3. All hearings will be recorded. A copy of the recording will be made available on request.

4. Nothing in this section shall be construed as requiring a separate hearing on each Rule. Rules may be grouped for the convenience of the Commission at hearings required by this section.

J. Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the Commission shall consider all written and oral comments received.

K. If no written notice of intent to attend the public hearing by interested parties is received, the Commission may proceed with promulgation of the proposed Rule without a public hearing.

L. The Commission shall, by majority vote of all members, take final action on the proposed Rule and shall determine the effective date of the Rule, if any, based on the Rulemaking record and the full text of the Rule.

M. Upon determination that an emergency exists, the Commission may consider and adopt an emergency Rule without prior notice, opportunity for comment, or hearing, provided that the usual Rulemaking procedures provided in the Compact and in this section shall be retroactively applied to the Rule as soon as reasonably possible, in no event later than ninety days after the effective date of the Rule. For the purposes of this provision, an emergency Rule is one that must be adopted immediately in order to:

1. Meet an imminent threat to public health, safety, or welfare;

2. Prevent a loss of Commission or Member State funds;

3. Meet a deadline for the promulgation of an administrative Rule that is established by federal law or Rule; or

4. Protect public health and safety.

N. The Commission or an authorized committee of the Commission may direct revisions to a previously adopted Rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions shall be posted on the website of the Commission. The revision shall be subject to challenge by any person for a period of thirty days after posting. The revision may be challenged only on grounds that the revision results in a material change to a Rule. A challenge shall be made in writing and delivered to the chair of the Commission prior to the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the Commission.

SECTION 12. OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT

A. Oversight

1. The executive, legislative, and judicial branches of State government in each Member State shall enforce this Compact and take all actions necessary and appropriate to effectuate the Compact's purposes and intent. The provisions of this Compact and the Rules promulgated hereunder shall have standing as statutory law.

2. All courts shall take judicial notice of the Compact and the Rules in any judicial or administrative proceeding in a Member State pertaining to the subject matter of this Compact which may affect the powers, responsibilities, or actions of the Commission.

3. The Commission shall be entitled to receive service of process in any such proceeding and shall have standing to intervene in such a proceeding for all purposes. Failure to provide service of process to the Commission shall render a judgment or order void as to the Commission, this Compact, or promulgated Rules.

B. Default, Technical Assistance, and Termination

1. If the Commission determines that a Member State has defaulted in the performance of its obligations or responsibilities under this Compact or the promulgated Rules, the Commission shall:

a. Provide written notice to the defaulting State and other Member States of the nature of the default, the proposed means of curing the default and/or any other action to be taken by the Commission; and

b. Provide remedial training and specific technical assistance regarding the default.

C. If a State in default fails to cure the default, the defaulting State may be terminated from the Compact upon an affirmative vote of a majority of the Member States, and all rights, privileges and benefits conferred by this Compact may be terminated on the effective date of termination. A cure of the default does not relieve the offending State of obligations or liabilities incurred during the period of default.

D. Termination of membership in the Compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the Commission to the governor, the majority and minority leaders of the defaulting State's legislature, and each of the Member States.

E. A State that has been terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.

F. The Commission shall not bear any costs related to a State that is found to be in default or that has been terminated from the Compact, unless agreed upon in writing between the Commission and the defaulting State.

G. The defaulting State may appeal the action of the Commission by petitioning the United States District Court for the District of Columbia or the federal district where the Commission has its principal offices. The prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.

H. Dispute Resolution

1. Upon request by a Member State, the Commission shall attempt to resolve disputes related to the Compact that arise among Member States and between Member and non-Member States.

2. The Commission shall promulgate a Rule providing for both mediation and binding dispute resolution for disputes as appropriate.

I. Enforcement

1. The Commission, in the reasonable exercise of its discretion, shall enforce the provisions and Rules of this Compact.

2. By majority vote, the Commission may initiate legal action in the United States District Court for the District of Columbia or the federal district where the Commission has its principal offices against a Member State in default to

enforce compliance with the provisions of the Compact and its promulgated Rules and bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.

3. The remedies herein shall not be the exclusive remedies of the Commission. The Commission may pursue any other remedies available under federal or State law.

SECTION 13. DATE OF IMPLEMENTATION OF THE COUNSELING COMPACT COMMISSION AND ASSOCIATED RULES, WITHDRAWAL, AND AMENDMENT

A. The Compact shall come into effect on the date on which the Compact statute is enacted into law in the tenth Member State. The provisions, which become effective at that time, shall be limited to the powers granted to the Commission relating to assembly and the promulgation of Rules. Thereafter, the Commission shall meet and exercise Rulemaking powers necessary to the implementation and administration of the Compact.

B. Any State that joins the Compact subsequent to the Commission's initial adoption of the Rules shall be subject to the Rules as they exist on the date on which the Compact becomes law in that State. Any Rule that has been previously adopted by the Commission shall have the full force and effect of law on the day the Compact becomes law in that State.

C. Any Member State may withdraw from this Compact by enacting a statute repealing the same.

1. A Member State's withdrawal shall not take effect until six months after enactment of the repealing statute.

2. Withdrawal shall not affect the continuing requirement of the withdrawing State's Professional Counseling Licensing Board to comply with the investigative and Adverse Action reporting requirements of the Compact prior to the effective date of withdrawal.

D. Nothing contained in this Compact shall be construed to invalidate or prevent any Professional Counseling licensure agreement or other cooperative arrangement between a Member State and a non-Member State that does not conflict with the provisions of this Compact.

E. This Compact may be amended by the Member States. No amendment to this Compact shall become effective and binding upon any Member State until it is enacted into the laws of all Member States.

SECTION 14. CONSTRUCTION AND SEVERABILITY

This Compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Compact shall be severable and if any phrase, clause, sentence or provision of this Compact is declared to be contrary to the constitution of any Member State or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this Compact shall be held contrary to the constitution of any Member State, the Compact shall remain in full force and effect as to the remaining Member States and in full force and effect as to the Member State affected as to all severable matters.

SECTION 15. BINDING EFFECT OF COMPACT AND OTHER LAWS

A. A Licensee providing Professional Counseling services in a Remote State under the Privilege to Practice shall adhere to the laws and regulations, including scope of practice, of the Remote State.

B. Nothing herein prevents the enforcement of any other law of a Member State that is not inconsistent with the Compact.

C. Any laws in a Member State in conflict with the Compact are superseded to the extent of the conflict.

D. Any lawful actions of the Commission, including all Rules and bylaws properly promulgated by the Commission, are binding upon the Member States.

E. All permissible agreements between the Commission and the Member States are binding in accordance with their terms.

F. In the event any provision of the Compact exceeds the constitutional limits imposed on the legislature of any Member State, the provision shall be ineffective to the extent of the conflict with the constitutional provision in question in that Member State.

Source: Laws 2022, LB752, § 1.
Effective date July 21, 2022.

ARTICLE 43

OCCUPATIONAL THERAPY PRACTICE INTERSTATE COMPACT

Section
38-4301. Occupational Therapy Practice Interstate Compact.

38-4301 Occupational Therapy Practice Interstate Compact.

The State of Nebraska adopts the Occupational Therapy Practice Interstate Compact in the form substantially as follows:

ARTICLE 1. PURPOSE.

The purpose of the Occupational Therapy Practice Interstate Compact is to facilitate interstate practice of occupational therapy with the goal of improving public access to occupational therapy services. The practice of occupational therapy occurs in the state where the patient or client is located at the time of the patient or client encounter. This Compact preserves the regulatory authority of states to protect public health and safety through the current system of state licensure.

This Compact is designed to achieve the following objectives:

A. Increase public access to occupational therapy services by providing for the mutual recognition of other Member State licenses;

B. Enhance the states' ability to protect the public health and safety;

C. Encourage the cooperation of Member States in regulating multistate occupational therapy practice;

D. Support spouses of relocating military members;

E. Enhance the exchange of licensure, investigative, and disciplinary information between Member States;

F. Allow a Remote State to hold a provider of services with a Compact Privilege in that state accountable to that state's practice standards; and

G. Facilitate the use of telehealth technology in order to increase access to occupational therapy services.

ARTICLE 2. DEFINITIONS.

As used in the Occupational Therapy Practice Interstate Compact, and except as otherwise provided, the following definitions apply:

A. Active duty military means full-time duty status in the active uniformed service of the United States, including members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C. Chapters 1209 and 1211.

B. Adverse action means any administrative, civil, equitable, or criminal action permitted by a state's laws which is imposed by a licensing board or other authority against an occupational therapist or occupational therapy assistant, including actions against an individual's license or Compact Privilege such as revocation, suspension, probation, monitoring of the Licensee, or restriction on the Licensee's practice.

C. Alternative program means a nondisciplinary monitoring process approved by an occupational therapy licensing board to address Impaired Practitioners.

D. Compact Privilege means the authorization, which is equivalent to a license, granted by a Remote State to allow a Licensee from another Member State to practice as an occupational therapist or practice as an occupational therapy assistant in the Remote State under its laws and rules. The practice of occupational therapy occurs in the Member State where the patient or client is located at the time of the patient or client encounter.

E. Continuing Competence/Education means a requirement, as a condition of license renewal, to provide evidence of participation in, and completion of, educational and professional activities relevant to practice or area of work.

F. Current significant investigative information means investigative information that a licensing board, after an inquiry or investigation that includes notification and an opportunity for the occupational therapist or occupational therapy assistant to respond, if required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction.

G. Data system means a repository of information about Licensees, including, but not limited to, licensure, investigative information, Compact Privilege, and adverse action.

H. Encumbered License means a license in which an adverse action restricts the practice of occupational therapy by the Licensee and the adverse action has been reported to the National Practitioner Data Bank.

I. Executive Committee means a group of directors elected or appointed to act on behalf of, and within the powers granted to them by, the Commission.

J. Home State means the Member State that is the Licensee's primary state of residence.

K. Impaired Practitioner means an individual whose professional practice is adversely affected by substance abuse, addiction, or other health-related conditions.

L. Investigative information means information, records, or documents received or generated by an occupational therapy licensing board pursuant to an investigation.

M. Jurisprudence requirement means the assessment of an individual's knowledge of the laws and rules governing the practice of occupational therapy in a state.

N. Licensee means an individual who currently holds an authorization from the state to practice as an occupational therapist or as an occupational therapy assistant.

O. Member State means a state that has enacted this Compact.

P. Occupational therapist means an individual who is licensed by a state to practice occupational therapy.

Q. Occupational therapy assistant means an individual who is licensed by a state to assist in the practice of occupational therapy.

R. Occupational therapy, occupational therapy practice, and the practice of occupational therapy mean the care and services provided by an occupational therapist or an occupational therapy assistant as set forth in the Member State's statutes and regulations.

S. Occupational Therapy Interstate Compact Commission or Commission means the national administrative body whose membership consists of all states that have enacted this Compact.

T. Occupational therapy licensing board or licensing board means the agency of a state that is responsible for the licensing and regulation of occupational therapists and occupational therapy assistants.

U. Primary state of residence means the state, also known as the Home State, in which an occupational therapist or occupational therapy assistant who is not active duty military declares a primary residence for legal purposes as verified by: Driver's license, federal income tax return, lease, deed, mortgage or voter registration or other verifying documentation as further defined by Commission Rules.

V. Remote State means a Member State other than the Home State, where a Licensee is exercising or seeking to exercise the Compact Privilege.

W. Rule means a regulation promulgated by the Commission that has the force of law.

X. State means any state, commonwealth, district, or territory of the United States of America that regulates the practice of occupational therapy.

Y. Single-State License means an occupational therapist or occupational therapy assistant license issued by a Member State that authorizes practice only within the issuing state and does not include a Compact Privilege in any other Member State.

Z. Telehealth means the application of telecommunication technology to deliver occupational therapy services for assessment, intervention, or consultation.

ARTICLE 3. STATE PARTICIPATION IN THIS COMPACT.

A. To participate in this Compact, a Member State shall:

1. License occupational therapists and occupational therapy assistants;

2. Participate fully in the data system, including, but not limited to, using the Commission's unique identifier as defined in Rules of the Commission;

3. Have a mechanism in place for receiving and investigating complaints about Licensees;

4. Notify the Commission, in compliance with the terms of this Compact and Rules, of any adverse action or the availability of investigative information regarding a Licensee;

5. Implement or utilize procedures for considering the criminal history records of applicants for an initial Compact Privilege. These procedures shall include the submission of fingerprints or other biometric-based information by applicants for the purpose of obtaining an applicant's criminal history record information from the Federal Bureau of Investigation and the agency responsible for retaining that state's criminal records.

a. A Member State shall, within a timeframe established by the Commission, require a criminal background check for a Licensee seeking or applying for a Compact Privilege whose primary state of residence is that Member State, by receiving the results of the Federal Bureau of Investigation criminal record search, and shall use the results in making licensure decisions.

b. Communication between a Member State, the Commission, and among Member States regarding the verification of eligibility for licensure through this Compact shall not include any information received from the Federal Bureau of Investigation relating to a federal criminal records check performed by a Member State under Public Law 92-544.

6. Comply with the Rules of the Commission;

7. Utilize only a recognized national examination as a requirement for licensure pursuant to the Rules of the Commission; and

8. Have Continuing Competence/Education requirements as a condition for license renewal.

B. A Member State shall grant the Compact Privilege to a Licensee holding a valid unencumbered license in another Member State in accordance with the terms of this Compact and Rules.

C. Member States may charge a fee for granting a Compact Privilege.

D. A Member State shall provide for the state's delegate to attend all Commission meetings.

E. Individuals not residing in a Member State shall continue to be able to apply for a Member State's Single-State License as provided under the laws of each Member State. However, the Single-State License granted to these individuals shall not be recognized as granting the Compact Privilege in any other Member State.

F. Nothing in this Compact shall affect the requirements established by a Member State for the issuance of a Single-State License.

ARTICLE 4. COMPACT PRIVILEGE.

A. To exercise the Compact Privilege under the terms and provisions of this Compact, the Licensee shall:

1. Hold a license in the Home State;

2. Have a valid United States social security number or national practitioner identification number;

3. Have no encumbrance on any state license;

4. Be eligible for a Compact Privilege in any Member State in accordance with sections D, F, G, and H of this Article 4;

5. Have paid all fines and completed all requirements resulting from any adverse action against any license or Compact Privilege, and two years have elapsed from the date of such completion;

6. Notify the Commission that the Licensee is seeking the Compact Privilege within a Remote State(s);

7. Pay any applicable fees, including any state fee, for the Compact Privilege;

8. Complete a criminal background check in accordance with subsection A5 of Article 3. The Licensee shall be responsible for the payment of any fee associated with the completion of such criminal background check;

9. Meet any jurisprudence requirements established by the Remote State(s) in which the Licensee is seeking a Compact Privilege; and

10. Report to the Commission adverse action taken by any non-Member State within thirty days from the date the adverse action is taken.

B. The Compact Privilege is valid until the expiration date of the Home State license. The Licensee must comply with the requirements of section A of this Article 4 to maintain this Compact Privilege in the Remote State.

C. A Licensee providing occupational therapy in a Remote State under the Compact Privilege shall function within the laws and regulations of the Remote State.

D. Occupational therapy assistants practicing in a Remote State shall be supervised by an occupational therapist licensed or holding a Compact Privilege in that Remote State.

E. A Licensee providing occupational therapy in a Remote State is subject to that state's regulatory authority. A Remote State may, in accordance with due process and that state's laws, remove a Licensee's Compact Privilege in the Remote State for a specific period of time, impose fines, or take any other necessary actions to protect the health and safety of its citizens. The Licensee may be ineligible for a Compact Privilege in any state until the specific time for removal has passed and all fines are paid.

F. If a Home State license is encumbered, the Licensee shall lose the Compact Privilege in any Remote State until the following occur:

1. The Home State license is no longer encumbered; and

2. Two years have elapsed from the date on which the Home State license is no longer encumbered in accordance with subsection F1 of this Article 4.

G. Once an Encumbered License in the Home State is restored to good standing, the Licensee must meet the requirements of section A of this Article 4 to obtain a Compact Privilege in any Remote State.

H. If a Licensee's Compact Privilege in any Remote State is removed, the individual may lose the Compact Privilege in any other Remote State until the following occur:

1. The specific period of time for which the Compact Privilege was removed has ended;

2. All fines have been paid and all conditions have been met;

3. Two years have elapsed from the date of completing requirements for subsections H1 and 2 of this Article 4; and

4. The Compact Privileges are reinstated by the Commission, and the compact data system is updated to reflect reinstatement.

I. If a Licensee's Compact Privilege in any Remote State is removed due to an erroneous charge, privileges shall be restored through the compact data system.

J. Once the requirements of section H of this Article 4 have been met, the Licensee must meet the requirements in section A of this Article 4 to obtain a Compact Privilege in a Remote State.

ARTICLE 5. OBTAINING A NEW HOME STATE LICENSE BY VIRTUE OF COMPACT PRIVILEGE.

A. An occupational therapist and an occupational therapy assistant may hold a Home State license, issued by the Home State which allows for Compact Privileges, in only one Member State at a time.

B. If an occupational therapist or occupational therapy assistant changes primary state of residence by moving between two Member States:

1. The occupational therapist or occupational therapy assistant shall file an application for obtaining a new Home State license by virtue of a Compact Privilege, pay all applicable fees, and notify the current and new Home State in accordance with applicable Rules adopted by the Commission.

2. Upon receipt of an application for obtaining a new Home State license by virtue of compact privilege, the new Home State shall verify that the occupational therapist or occupational therapy assistant meets the pertinent criteria outlined in Article 4 via the data system, without need for primary source verification except for:

a. A Federal Bureau of Investigation fingerprint-based criminal background check if not previously performed or updated pursuant to applicable Rules adopted by the Commission in accordance with Public Law 92-544;

b. Other criminal background check as required by the new Home State; and

c. Submission of any requisite jurisprudence requirements of the new Home State.

3. The former Home State shall convert the former Home State license into a Compact Privilege once the new Home State has activated the new Home State license in accordance with applicable Rules adopted by the Commission.

4. Notwithstanding any other provision of this Compact, if the occupational therapist or occupational therapy assistant cannot meet the criteria in Article 4, the new Home State shall apply its requirements for issuing a new Single-State License.

5. The occupational therapist or the occupational therapy assistant shall pay all applicable fees to the new Home State in order to be issued a new Home State license.

C. If an occupational therapist or occupational therapy assistant changes primary state of residence by moving from a Member State to a non-Member State, or from a non-Member State to a Member State, the state criteria shall apply for issuance of a Single-State License in the new state.

D. Nothing in this Compact shall interfere with a Licensee's ability to hold a Single-State License in multiple states, however, for the purposes of this Compact, a Licensee shall have only one Home State license.

E. Nothing in this Compact shall affect the requirements established by a Member State for the issuance of a Single-State License.

ARTICLE 6. ACTIVE DUTY MILITARY PERSONNEL OR THEIR SPOUSES.

Active duty military personnel, or their spouse, shall designate a Home State where the individual has a current license in good standing. The individual may retain the Home State designation during the period the service member is on active duty. Subsequent to designating a Home State, the individual shall only change their Home State through application for licensure in the new state or through the process described in Article 5.

ARTICLE 7. ADVERSE ACTIONS.

A. A Home State shall have exclusive power to impose adverse action against a license issued by the Home State.

B. In addition to the other powers conferred by state law, a Remote State shall have the authority, in accordance with existing state due process law, to:

1. Take adverse action against an occupational therapist's or occupational therapy assistant's Compact Privilege within that Member State.

2. Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses as well as the production of evidence. Subpoenas issued by a licensing board in a Member State for the attendance and testimony of witnesses or the production of evidence from another Member State shall be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the state in which the witnesses or evidence are located.

C. For purposes of taking adverse action, the Home State shall give the same priority and effect to reported conduct received from a Member State as it would if the conduct had occurred within the Home State. In so doing, the Home State shall apply its own state laws to determine appropriate action.

D. The Home State shall complete any pending investigations of an occupational therapist or occupational therapy assistant who changes primary state of residence during the course of the investigations. The Home State, where the investigations were initiated, shall also have the authority to take appropriate action and shall promptly report the conclusions of the investigations to the Commission data system. The Commission data system administrator shall promptly notify the new Home State of any adverse actions.

E. A Member State, if otherwise permitted by state law, may recover from the affected occupational therapist or occupational therapy assistant the costs of investigations and disposition of cases resulting from any adverse action taken against that occupational therapist or occupational therapy assistant.

F. A Member State may take adverse action based on the factual findings of the Remote State, provided that the Member State follows its own procedures for taking the adverse action.

G. Joint Investigations.

1. In addition to the authority granted to a Member State by its respective state occupational therapy laws and regulations or other applicable State law, any Member State may participate with other Member States in joint investigations of Licensees.

2. Member States shall share any investigative, litigation, or compliance materials in furtherance of any joint or individual investigation initiated under this Compact.

H. If an adverse action is taken by the Home State against an occupational therapist's or occupational therapy assistant's license, the occupational therapist's or occupational therapy assistant's Compact Privilege in all other Member States shall be deactivated until all encumbrances have been removed from the state license. All Home State disciplinary orders that impose adverse action against an occupational therapist's or occupational therapy assistant's license shall include a statement that the occupational therapist's or occupational therapy assistant's Compact Privilege is deactivated in all Member States during the pendency of the order.

I. If a Member State takes adverse action, it shall promptly notify the administrator of the data system. The administrator of the data system shall promptly notify the Home State of any adverse actions by Remote States.

J. Nothing in this Compact shall override a Member State's decision that participation in an alternative program may be used in lieu of adverse action.

ARTICLE 8. ESTABLISHMENT OF THE OCCUPATIONAL THERAPY COMPACT COMMISSION.

A. The Member States hereby create and establish a joint public agency known as the Occupational Therapy Interstate Compact Commission:

1. The Commission is an instrumentality of the Compact States.

2. Venue is proper and judicial proceedings by or against the Commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the Commission is located. The Commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

3. Nothing in this Compact shall be construed to be a waiver of sovereign immunity.

B. Membership, Voting, and Meetings.

1. Each Member State shall have and be limited to one delegate selected by that Member State's licensing board.

2. The delegate shall be either:

a. A current member of the licensing board, who is an occupational therapist, occupational therapy assistant, or public member; or

b. An administrator of the licensing board.

3. Any delegate may be removed or suspended from office as provided by the law of the state from which the delegate is appointed.

4. The Member State board shall fill any vacancy occurring in the Commission within ninety days.

5. Each delegate shall be entitled to one vote with regard to the promulgation of Rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the Commission. A delegate shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for delegates' participation in meetings by telephone or other means of communication.

6. The Commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws.

7. The Commission shall establish by Rule a term of office for delegates.

C. The Commission shall have the following powers and duties:

1. Establish a Code of Ethics for the Commission;

2. Establish the fiscal year of the Commission;

3. Establish bylaws;

4. Maintain its financial records in accordance with the bylaws;

5. Meet and take such actions as are consistent with the provisions of this Compact and the bylaws;

6. Promulgate uniform Rules to facilitate and coordinate implementation and administration of this Compact. The Rules shall have the force and effect of law and shall be binding in all Member States;

7. Bring and prosecute legal proceedings or actions in the name of the Commission, provided that the standing of any state licensing board to sue or be sued under applicable law shall not be affected;

8. Purchase and maintain insurance and bonds;

9. Borrow, accept, or contract for services of personnel, including, but not limited to, employees of a Member State;

10. Hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of this Compact, and to establish the Commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;

11. Accept any and all appropriate donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of the same; provided that at all times the Commission shall avoid any appearance of impropriety or conflict of interest;

12. Lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve, or use, any property, real, personal, or mixed; provided that at all times the Commission shall avoid any appearance of impropriety;

13. Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property real, personal, or mixed;

14. Establish a budget and make expenditures;

15. Borrow money;

16. Appoint committees, including standing committees composed of members, state regulators, state legislators or their representatives, and consumer representatives, and such other interested persons as may be designated in this Compact and the bylaws;

17. Provide and receive information from, and cooperate with, law enforcement agencies;

18. Establish and elect an executive committee; and

19. Perform such other functions as may be necessary or appropriate to achieve the purposes of this Compact consistent with the state regulation of occupational therapy licensure and practice.

D. The Executive Committee.

The executive committee shall have the power to act on behalf of the Commission according to the terms of this Compact.

1. The executive committee shall be composed of nine members:

a. Seven voting members who are elected by the Commission from the current membership of the Commission;

b. One ex officio, nonvoting member from a recognized national occupational therapy professional association; and

c. One ex officio, nonvoting member from a recognized national occupational therapy certification organization.

2. The ex officio members will be selected by their respective organizations.

3. The Commission may remove any member of the executive committee as provided in bylaws.

4. The executive committee shall meet at least annually.

5. The executive committee shall have the following duties and responsibilities:

a. Recommend to the entire Commission changes to the Rules or bylaws, changes to this Compact, fees paid by Member States such as annual dues, and any Commission Compact fee charged to Licensees for the Compact Privilege;

b. Ensure Compact administration services are appropriately provided, contractual or otherwise;

c. Prepare and recommend the budget;

d. Maintain financial records on behalf of the Commission;

e. Monitor Compact compliance of Member States and provide compliance reports to the Commission;

f. Establish additional committees as necessary; and

g. Other duties as provided in Rules or bylaws.

E. Meetings of the Commission.

1. All meetings shall be open to the public, and public notice of meetings shall be given in the same manner as required under the Rulemaking provisions in Article 10.

2. The Commission or the executive committee or other committees of the Commission may convene in a closed, nonpublic meeting if the Commission or executive committee or other committees of the Commission must discuss:

a. Noncompliance of a Member State with its obligations under this Compact;

b. The employment, compensation, discipline, or other matters, practices, or procedures related to specific employees or other matters related to the Commission's internal personnel practices and procedures;

c. Current, threatened, or reasonably anticipated litigation;

d. Negotiation of contracts for the purchase, lease, or sale of goods, services, or real estate;

e. Accusing any person of a crime or formally censuring any person;

f. Disclosure of trade secrets or commercial or financial information that is privileged or confidential;

g. Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

h. Disclosure of investigative records compiled for law enforcement purposes;

i. Disclosure of information related to any investigative reports prepared by or on behalf of or for use of the Commission or other committee charged with responsibility of investigation or determination of compliance issues pursuant to this Compact; or

j. Matters specifically exempted from disclosure by federal or Member State statute.

3. If a meeting, or portion of a meeting, is closed pursuant to this provision, the Commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision.

4. The Commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefor, including a description of the views expressed. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the Commission or order of a court of competent jurisdiction.

F. Financing of the Commission.

1. The Commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.

2. The Commission may accept any and all appropriate revenue sources, donations, and grants of money, equipment, supplies, materials, and services.

3. The Commission may levy on and collect an annual assessment from each Member State or impose fees on other parties to cover the cost of the operations and activities of the Commission and its staff, which must be in a total amount sufficient to cover its annual budget as approved by the Commission each year for which revenue is not provided by other sources. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Commission, which shall promulgate a Rule binding upon all Member States.

4. The Commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Commission pledge the credit of any of the Member States, except by and with the authority of the Member State.

5. The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the Commission.

G. Qualified Immunity, Defense, and Indemnification.

1. The members, officers, executive director, employees, and representatives of the Commission shall have no greater liability than a state employee would have under the same or similar circumstances, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred, within the scope of Commission employment, duties, or responsibilities; provided that nothing in

this paragraph shall be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful or wanton misconduct of that person.

2. The Commission shall defend any member, officer, executive director, employee, or representative of the Commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities; provided that nothing herein shall be construed to prohibit that person from retaining his or her own counsel; and provided further, that the actual or alleged act, error, or omission did not result from that person's intentional or willful or wanton misconduct.

3. The Commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the Commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities; provided that the actual or alleged act, error, or omission did not result from the intentional or willful or wanton misconduct of that person.

ARTICLE 9. DATA SYSTEM.

A. The Commission shall provide for the development, maintenance, and utilization of a coordinated database and reporting system containing licensure, adverse action, and investigative information on all licensed individuals in Member States.

B. A Member State shall submit a uniform data set to the data system on all individuals to whom this Compact is applicable utilizing a unique identifier as required by the Rules of the Commission, including:

1. Identifying information;

2. Licensure data;

3. Adverse actions against a license or Compact Privilege;

4. Nonconfidential information related to alternative program participation;

5. Any denial of application for licensure, and the reason for such denial;

6. Other information that may facilitate the administration of this Compact, as determined by the Rules of the Commission; and

7. Current significant investigative information.

C. Current significant investigative information and other investigative information pertaining to a Licensee in any Member State will only be available to other Member States.

D. The Commission shall promptly notify all Member States of any adverse action taken against a Licensee or an individual applying for a license. Adverse action information pertaining to a Licensee in any Member State will be available to any other Member State.

E. Member States contributing information to the data system may designate information that may not be shared with the public without the express permission of the contributing state.

F. Any information submitted to the data system that is subsequently required to be expunged by the laws of the Member State contributing the information shall be removed from the data system.

ARTICLE 10. RULEMAKING.

A. The Commission shall exercise its Rulemaking powers pursuant to the criteria set forth in this Article and the Rules adopted thereunder. Rules and amendments shall become binding as of the date specified in each Rule or amendment.

B. The Commission shall promulgate reasonable rules in order to effectively and efficiently achieve the purposes of the Compact. Notwithstanding the foregoing, in the event the Commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of the Compact, or the powers granted hereunder, then such an action by the Commission shall be invalid and have no force and effect.

C. If a majority of the legislatures of the Member States rejects a Rule, by enactment of a statute or resolution in the same manner used to adopt this Compact within four years of the date of adoption of the Rule, then such Rule shall have no further force and effect in any Member State.

D. Rules or amendments to the Rules shall be adopted at a regular or special meeting of the Commission.

E. Prior to promulgation and adoption of a final Rule or Rules by the Commission, and at least thirty days in advance of the meeting at which the Rule will be considered and voted upon, the Commission shall file a Notice of Proposed Rulemaking:

1. On the website of the Commission or other publicly accessible platform; and

2. On the website of each Member State occupational therapy licensing board or other publicly accessible platform or the publication in which each State would otherwise publish proposed Rules.

F. The Notice of Proposed Rulemaking shall include:

1. The proposed time, date, and location of the meeting in which the Rule will be considered and voted upon;

2. The text of the proposed Rule or amendment and the reason for the proposed Rule;

3. A request for comments on the proposed Rule from any interested person; and

4. The manner in which interested persons may submit notice to the Commission of their intention to attend the public hearing and any written comments.

G. Prior to adoption of a proposed Rule, the Commission shall allow persons to submit written data, facts, opinions, and arguments, which shall be made available to the public.

H. The Commission shall grant an opportunity for a public hearing before it adopts a Rule or amendment if a hearing is requested by:

1. At least twenty-five persons;

2. A State or federal governmental subdivision or agency; or

3. An association or organization having at least twenty-five members.

I. If a hearing is held on the proposed Rule or amendment, the Commission shall publish the place, time, and date of the scheduled public hearing. If the hearing is held via electronic means, the Commission shall publish the mechanism for access to the electronic hearing.

1. All persons wishing to be heard at the hearing shall notify the executive director of the Commission or other designated member in writing of their desire to appear and testify at the hearing not less than five business days before the scheduled date of the hearing.

2. Hearings shall be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing.

3. All hearings will be recorded. A copy of the recording will be made available on request.

4. Nothing in this Article shall be construed as requiring a separate hearing on each Rule.

Rules may be grouped for the convenience of the Commission at hearings required by this Article.

J. Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the Commission shall consider all written and oral comments received.

K. If no written notice of intent to attend the public hearing by interested parties is received, the Commission may proceed with promulgation of the proposed Rule without a public hearing.

L. The Commission shall, by majority vote of all members, take final action on the proposed Rule and shall determine the effective date of the Rule, if any, based on the Rulemaking record and the full text of the Rule.

M. Upon determination that an emergency exists, the Commission may consider and adopt an emergency Rule without prior notice, opportunity for comment, or hearing; provided that the usual Rulemaking procedures provided in this Compact and in this Article shall be retroactively applied to the Rule as soon as reasonably possible, in no event later than ninety days after the effective date of the Rule. For the purposes of this provision, an emergency Rule is one that must be adopted immediately in order to:

1. Meet an imminent threat to public health, safety, or welfare;

2. Prevent a loss of Commission or Member State funds;

3. Meet a deadline for the promulgation of an administrative Rule that is established by federal law or Rule; or

4. Protect public health and safety.

N. The Commission or an authorized committee of the Commission may direct revisions to a previously adopted Rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions shall be posted on the website of the Commission. The revision shall be subject to challenge by any person for a period of thirty days after posting. The revision may be challenged only on grounds that the revision results in a material change to a Rule. A challenge shall be made in writing and delivered to the chair of the Commission prior to the end of the notice period. If no challenge is made, the revision

will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the Commission.

ARTICLE 11. OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT.

A. Oversight.

1. The executive, legislative, and judicial branches of state government in each Member State shall enforce this Compact and take all actions necessary and appropriate to effectuate this Compact's purposes and intent. The provisions of this Compact and the Rules promulgated hereunder shall have standing as statutory law.

2. All courts shall take judicial notice of this Compact and the Rules in any judicial or administrative proceeding in a Member State pertaining to the subject matter of this Compact which may affect the powers, responsibilities, or actions of the Commission.

3. The Commission shall be entitled to receive service of process in any such proceeding and shall have standing to intervene in such a proceeding for all purposes. Failure to provide service of process to the Commission shall render a judgment or order void as to the Commission, this Compact, or promulgated Rules.

B. Default, Technical Assistance, and Termination.

1. If the Commission determines that a Member State has defaulted in the performance of its obligations or responsibilities under this Compact or the promulgated Rules, the Commission shall:

a. Provide written notice to the defaulting state and other Member States of the nature of the default, the proposed means of curing the default, and any other action to be taken by the Commission; and

b. Provide remedial training and specific technical assistance regarding the default.

2. If a state in default fails to cure the default, the defaulting state may be terminated from this Compact upon an affirmative vote of a majority of the Member States, and all rights, privileges, and benefits conferred by this Compact may be terminated on the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.

3. Termination of membership in this Compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the Commission to the governor, the majority and minority leaders of the defaulting State's legislature, and each of the Member States.

4. A state that has been terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.

5. The Commission shall not bear any costs related to a state that is found to be in default or that has been terminated from this Compact, unless agreed upon in writing between the Commission and the defaulting state.

6. The defaulting state may appeal the action of the Commission by petitioning the United States District Court for the District of Columbia or the federal district where the Commission has its principal offices. The prevailing member

shall be awarded all costs of such litigation, including reasonable attorney's fees.

C. Dispute Resolution.

1. Upon request by a Member State, the Commission shall attempt to resolve disputes related to this Compact that arise among Member States and between Member and non-Member States.

2. The Commission shall promulgate a Rule providing for both mediation and binding dispute resolution for disputes as appropriate.

D. Enforcement.

1. The Commission, in the reasonable exercise of its discretion, shall enforce the provisions and Rules of this Compact.

2. By majority vote, the Commission may initiate legal action in the United States District Court for the District of Columbia or the federal district where the Commission has its principal offices against a Member State in default to enforce compliance with the provisions of this Compact and its promulgated Rules and bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.

3. The remedies herein shall not be the exclusive remedies of the Commission. The Commission may pursue any other remedies available under federal or State law.

ARTICLE 12. DATE OF IMPLEMENTATION OF THE INTERSTATE COMMISSION FOR OCCUPATIONAL THERAPY PRACTICE AND ASSOCIATED RULES, WITHDRAWAL, AND AMENDMENT.

A. This Compact shall come into effect on the date on which this Compact statute is enacted into law in the tenth Member State. The provisions, which become effective at that time, shall be limited to the powers granted to the Commission relating to assembly and the promulgation of Rules. Thereafter, the Commission shall meet and exercise Rulemaking powers necessary to the implementation and administration of this Compact.

B. Any state that joins this Compact subsequent to the Commission's initial adoption of the Rules shall be subject to the Rules as they exist on the date on which this Compact becomes law in that state. Any Rule that has been previously adopted by the Commission shall have the full force and effect of law on the day this Compact becomes law in that State.

C. Any Member State may withdraw from this Compact by enacting a statute repealing the same.

1. A Member State's withdrawal shall not take effect until six months after enactment of the repealing statute.

2. Withdrawal shall not affect the continuing requirement of the withdrawing state's occupational therapy licensing board to comply with the investigative and adverse action reporting requirements of this Compact prior to the effective date of withdrawal.

D. Nothing contained in this Compact shall be construed to invalidate or prevent any occupational therapy licensure agreement or other cooperative

arrangement between a Member State and a non-Member State that does not conflict with the provisions of this Compact.

E. This Compact may be amended by the Member States. No amendment to this Compact shall become effective and binding upon any Member State until it is enacted into the laws of all Member States.

ARTICLE 13. CONSTRUCTION AND SEVERABILITY.

This Compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Compact shall be severable and if any phrase, clause, sentence, or provision of this Compact is declared to be contrary to the constitution of any Member State or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this Compact shall be held contrary to the constitution of any Member State, this Compact shall remain in full force and effect as to the remaining Member States and in full force and effect as to the Member State affected as to all severable matters.

ARTICLE 14. BINDING EFFECT OF COMPACT AND OTHER LAWS.

A. A Licensee providing occupational therapy in a Remote State under the Compact Privilege shall function within the laws and regulations of the Remote State.

B. Nothing herein prevents the enforcement of any other law of a Member State that is not inconsistent with this Compact.

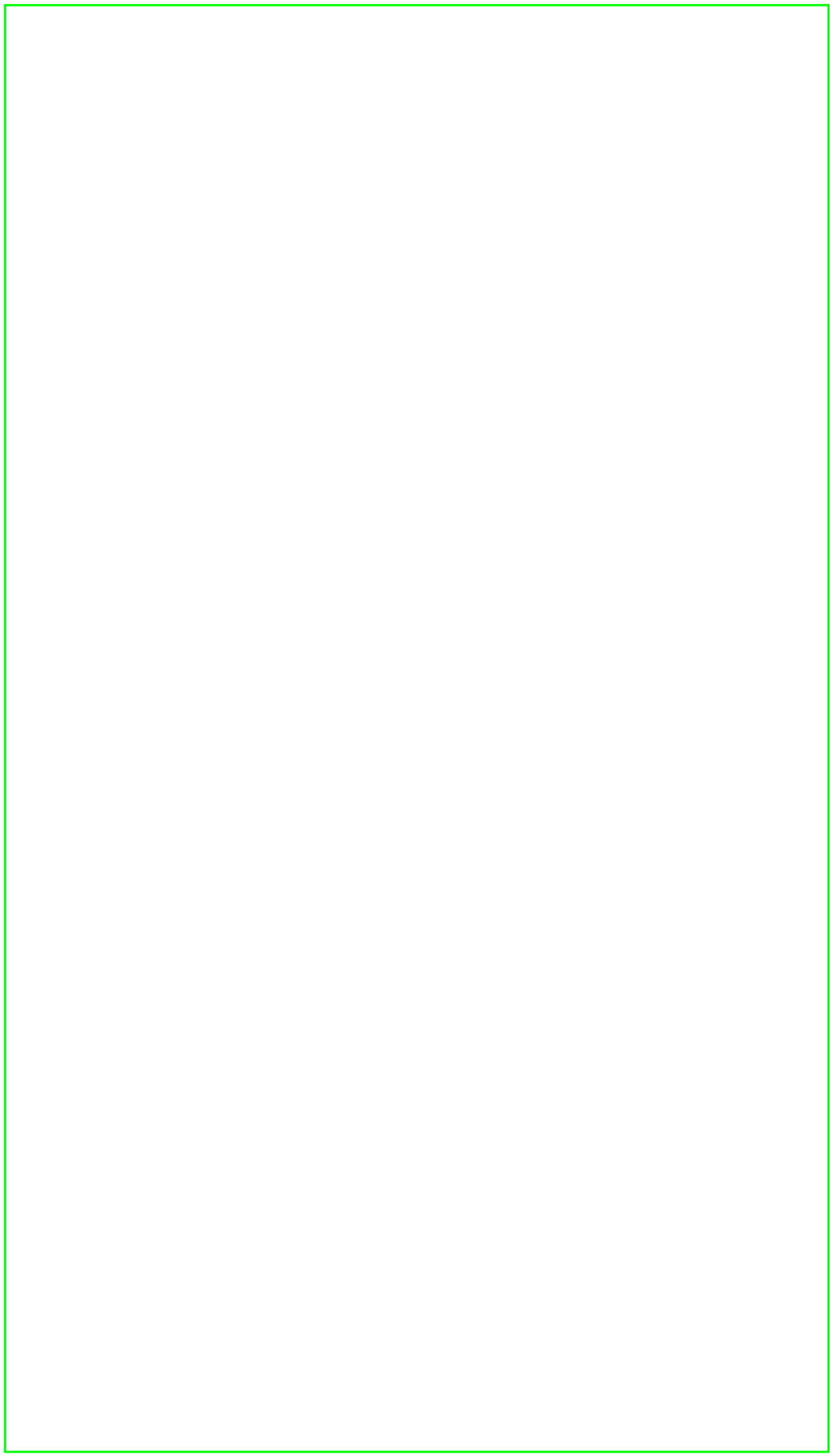
C. Any laws in a Member State in conflict with this Compact are superseded to the extent of the conflict.

D. Any lawful actions of the Commission, including all Rules and bylaws promulgated by the Commission, are binding upon the Member States.

E. All agreements between the Commission and the Member States are binding in accordance with their terms.

F. In the event any provision of this Compact exceeds the constitutional limits imposed on the legislature of any Member State, the provision shall be ineffective to the extent of the conflict with the constitutional provision in question in that Member State.

Source: Laws 2022, LB752, § 2.
Effective date July 21, 2022.



CHAPTER 39
HIGHWAYS AND BRIDGES

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ARTICLE 1
GENERAL HIGHWAY PROVISIONS

Section
39-102. Rules and regulations; promulgated by Department of Transportation to promote public safety.
39-103. Department of Transportation; rules and regulations; violation; penalty.

39-102 Rules and regulations; promulgated by Department of Transportation to promote public safety.

In order to promote public safety, to preserve and protect state highways, and to prevent immoderate and destructive use of state highways, the Department of Transportation may formulate, adopt, and promulgate rules and regulations in regard to the use of and travel upon the state highways consistent with Chapter 39 and the Nebraska Rules of the Road. Such rules and regulations may include specifications, standards, limitations, conditions, requirements, definitions, enumerations, descriptions, procedures, prohibitions, restrictions, instructions, controls, guidelines, and classifications relative to the following:

(1) The issuance or denial of special permits for the travel of vehicles or objects exceeding statutory size and weight capacities upon the highways as authorized by section 60-6,298;

(2) Qualification and prequalification of contractors, including, but not limited to, maximum and minimum qualifications, ratings, classifications, classes of contractors or classes of work, or both, and procedures to be followed;

(3) The setting of special load restrictions as provided in Chapter 39 and the Nebraska Rules of the Road;

(4) The placing, location, occupancy, erection, construction, or maintenance, upon any highway or area within the right-of-way, of any pole line, pipeline, or other utility located above, on, or under the level of the ground in such area;

(5) Protection and preservation of trees, shrubbery, plantings, buildings, structures, and all other things located upon any highway or any portion of the right-of-way of any highway by the department;

(6) Applications for the location of, and location of, private driveways, commercial approach roads, facilities, things, or appurtenances upon the right-of-way of state highways, including, but not limited to, procedures for applications for permits therefor and standards for the issuance or denial of such permits, based on highway traffic safety, and the foregoing may include reapplication for permits and applications for permits for existing facilities, and in any event, issuance of permits may also be conditioned upon approval of the design of such facilities;

(7) Outdoor advertising signs, displays, and devices in areas where the department is authorized by law to exercise such controls; and

(8) The Grade Crossing Protection Fund provided for in section 74-1317, including, but not limited to, authority for application, procedures on application, effect of application, procedures for and effect of granting such applications, and standards and specifications governing the type of control thereunder.

This section shall not amend or derogate any other grant of power or authority to the department to make or promulgate rules and regulations but shall be additional and supplementary thereto.

Source: Laws 1973, LB 45, § 99; Laws 1985, LB 395, § 1; R.S.1943, (1988), § 39-699; Laws 1993, LB 370, § 17; Laws 2017, LB339, § 83.

Cross References

Nebraska Rules of the Road, see section 60-601.

39-103 Department of Transportation; rules and regulations; violation; penalty.

Any person who operates a vehicle upon any highway in violation of the rules and regulations of the Department of Transportation governing the use of state highways shall be guilty of a Class III misdemeanor.

Source: Laws 1967, c. 235, § 4, p. 633; R.R.S.1943, § 39-7,134.01; Laws 1977, LB 41, § 17; R.S.1943, (1988), § 39-699.01; Laws 1993, LB 370, § 18; Laws 2017, LB339, § 84.

ARTICLE 2

SIGNS

Section

39-202 Advertising signs, displays, or devices; visible from highway; prohibited; exceptions; permitted signs enumerated.

(1) Except as provided in sections 39-202 to 39-205, 39-215, 39-216, and 39-220, the erection or maintenance of any advertising sign, display, or device beyond six hundred sixty feet of the right-of-way of the National System of

Interstate and Defense Highways and visible from the main-traveled way of such highway system is prohibited.

(2) The following signs shall be permitted:

(a) Directional and official signs to include, but not be limited to, signs and notices pertaining to natural wonders, scenic attractions, and historical attractions. Such signs shall comply with standards and criteria established by regulations of the Department of Transportation as promulgated from time to time;

(b) Signs, displays, and devices advertising the sale or lease of property upon which such media are located;

(c) Signs, displays, and devices advertising activities conducted on the property on which such media are located; and

(d) Signs in existence in accordance with sections 39-212 to 39-222, to include landmark signs, signs on farm structures, markers, and plaques of historical or artistic significance.

(3) For purposes of this section, visible shall mean the message or advertising content of an advertising sign, display, or device is capable of being seen without visual aid by a person of normal visual acuity. A sign shall be considered visible even though the message or advertising content may be seen but not read.

Source: Laws 1975, LB 213, § 1; R.S.1943, (1988), § 39-618.02; Laws 1993, LB 370, § 20; Laws 1995, LB 264, § 2; Laws 2017, LB339, § 85.

39-203 Advertising sign; compensation upon removal; Department of Transportation; make expenditures; when.

Just compensation shall be paid upon the removal of any advertising sign, display, or device lawfully erected or in existence prior to May 27, 1975, and not conforming to the provisions of sections 39-202 to 39-205, 39-215, 39-216, and 39-220 except as otherwise authorized by such sections. The Department of Transportation shall not be required to expend any funds under the provisions of such sections unless and until federal-aid matching funds are made available for this purpose.

Source: Laws 1975, LB 213, § 3; R.S.1943, (1988), § 39-618.04; Laws 1993, LB 370, § 21; Laws 1995, LB 264, § 3; Laws 2017, LB339, § 86.

39-204 Informational signs; erection; conform with rules and regulations; minimum service requirements.

(1) Signs, displays, and devices giving specific information of interest to the traveling public shall be erected by or at the direction of the Department of Transportation and maintained within the right-of-way at appropriate distances from interchanges on the National System of Interstate and Defense Highways and from roads of the state primary system as shall conform with the rules and regulations adopted and promulgated by the department to carry out this section and section 39-205. Such rules and regulations shall be consistent with national standards promulgated from time to time by the appropriate authority of the federal government pursuant to 23 U.S.C. 131(f).

(2) For purposes of this section, specific information of interest to the traveling public shall mean only information about camping, lodging, food, attractions, and motor fuel and associated services, including trade names.

(3) The minimum service that is required to be available for each type of service shall include:

(a) Motor fuel services including:

(i) Vehicle services, which shall include fuel, oil, and water;

(ii) Restroom facilities and drinking water;

(iii) Continuous operation of such services for at least sixteen hours per day, seven days per week, for freeways and expressways and continuous operation of such services for at least twelve hours per day, seven days per week, for conventional roads; and

(iv) Telephone services;

(b) Attraction services including:

(i) An attraction of regional significance with the primary purpose of providing amusement, historical, cultural, or leisure activity to the public;

(ii) Restroom facilities and drinking water; and

(iii) Adequate parking accommodations;

(c) Food services including:

(i) Licensing or approval of such services, when required;

(ii) Continuous operation of such services to serve at least two meals per day, six days per week;

(iii) Modern sanitary facilities; and

(iv) Telephone services;

(d) Lodging services including:

(i) Licensing or approval of such services, when required;

(ii) Adequate sleeping accommodations; and

(iii) Telephone services; and

(e) Camping services including:

(i) Licensing or approval of such services, when required;

(ii) Adequate parking accommodations; and

(iii) Modern sanitary facilities and drinking water.

Source: Laws 1975, LB 213, § 9; Laws 1987, LB 741, § 1; R.S.1943, (1988), § 39-634.01; Laws 1993, LB 370, § 22; Laws 2010, LB926, § 1; Laws 2017, LB339, § 87.

39-205 Informational signs; business signs; posted by department; costs and fees; disposition; notice of available space.

(1) Applicants for business signs shall furnish business signs to the Department of Transportation and shall pay to the department an annual fee for posting each business sign and the actual cost of material for, fabrication of, and erecting the specific information sign panels where specific information sign panels have not been installed.

(2) Upon receipt of the business signs and the annual fee, the department shall post or cause to be posted the business signs where specific information

sign panels have been installed. The applicant shall not be required to remove any advertising device to qualify for a business sign except any advertising device which was unlawfully erected or in violation of section 39-202, 39-203, 39-204, 39-205, 39-206, 39-215, 39-216, or 39-220, any rule or regulation of the department, or any federal rule or regulation relating to informational signs. The specific information sign panels and business signs shall conform to the requirements of the Federal Beautification Act and the Manual on Uniform Traffic Control Devices adopted pursuant to section 60-6,118.

(3) All revenue received for the posting or erecting of business signs or specific information sign panels pursuant to this section shall be deposited in the Highway Cash Fund, except that any revenue received from the annual fee and for posting or erecting such signs in excess of the state's costs shall be deposited in the General Fund.

(4) For purposes of this section, unless the context otherwise requires:

(a) Business sign means a sign displaying a commercial brand, symbol, trademark, or name, or combination thereof, designating a motorist service. Business signs shall be mounted on a rectangular information panel; and

(b) Specific information sign panel means a rectangular sign panel with:

(i) The word gas, food, attraction, lodging, or camping;

(ii) Directional information; and

(iii) One or more business signs.

(5) The department shall provide notice of space available for business signs on any specific information sign panel at least ninety days prior to accepting or approving the posting of any business sign.

Source: Laws 1975, LB 213, § 10; Laws 1987, LB 741, § 2; R.S.1943, (1988), § 39-634.02; Laws 1993, LB 370, § 23; Laws 1995, LB 264, § 4; Laws 2010, LB926, § 2; Laws 2017, LB339, § 88.

39-206 Informational signs; erection; conditions; fee.

It is the intent of sections 39-204 and 39-205 to allow the erection of specific information sign panels on the right-of-way of the state highways under the following conditions:

(1) No state funds shall be used for the erection, maintenance, or servicing of such signs;

(2) Such signs shall be erected in accordance with federal standards and the rules and regulations adopted and promulgated by the Department of Transportation;

(3) Such signs may be erected by the department or by a contractor selected through the competitive bidding process; and

(4) The department shall charge an annual fee in an amount equal to the fair market rental value of the sign site and any other cost to the state associated with the erection, maintenance, or servicing of specific information sign panels. If such sign is erected by a contractor, the annual fee shall be limited to the fair market rental value of the sign site.

Source: Laws 1987, LB 741, § 3; R.S.1943, (1988), § 39-634.03; Laws 1993, LB 370, § 24; Laws 2017, LB339, § 89.

39-207 Tourist-oriented directional sign panels; erection and maintenance.

Tourist-oriented directional sign panels shall be erected and maintained by or at the direction of the Department of Transportation within the right-of-way of rural highways which are part of the state highway system to provide tourist-oriented information to the traveling public in accordance with sections 39-207 to 39-211.

For purposes of such sections:

(1) Rural highways means (a) all public highways and roads outside the limits of an incorporated municipality exclusive of freeways and interchanges on expressways and (b) all public highways and roads within incorporated municipalities having a population of forty thousand inhabitants or less as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census exclusive of freeways and interchanges on expressways. Expressway, freeway, and interchange are used in this subdivision as they are defined in section 39-1302; and

(2) Sign panel means one or more individual signs mounted as an assembly on the same supports.

Source: Laws 1993, LB 108, § 1; Laws 1995, LB 112, § 1; Laws 2017, LB113, § 39; Laws 2017, LB339, § 90.

39-208 Sign panels; erection; conditions; fee; disposition.

(1) The Department of Transportation shall erect tourist-oriented directional sign panels on the right-of-way of the rural highways pursuant to section 39-207 under the following conditions:

(a) No state funds shall be used for the erection, maintenance, or servicing of the sign panels;

(b) The sign panels shall be erected in accordance with federal standards and the rules and regulations adopted and promulgated by the department;

(c) The sign panels may be erected by the department or by a contractor selected by the department through the competitive negotiation process;

(d) No more than three sign panels shall be installed on the approach to an intersection; and

(e) The department shall charge an annual fee in an amount equal to the fair market rental value of the sign panel site and any other cost to the state associated with the erection, maintenance, or servicing of tourist-oriented directional sign panels. If the sign panel is erected by a contractor, the annual fee to the department shall be limited to the fair market rental value of the sign panel site.

(2) All revenue received for the posting or erecting of tourist-oriented directional sign panels pursuant to this section shall be deposited in the Highway Cash Fund, except that any revenue received from the annual fee and for posting or erecting such sign panels in excess of the state's costs shall be deposited in the General Fund.

Source: Laws 1993, LB 108, § 2; Laws 2017, LB339, § 91.

39-210 Sign panels; qualification of activities; minimum requirements; violation; effect.

To qualify to appear on a tourist-oriented directional sign panel, an activity shall be licensed and approved by the state and local agencies if required by

law and be open to the public at least eight hours per day, five days per week, including Saturdays or Sundays, during the normal season of the activity, except that if the activity is a winery, the winery shall be open at least twenty hours per week. The activity, before qualifying to appear on a sign panel, shall provide to the Department of Transportation assurance of its conformity with all applicable laws relating to discrimination based on race, creed, color, sex, national origin, ancestry, political affiliation, or religion. If the activity violates any of such laws, it shall lose its eligibility to appear on a tourist-oriented directional sign panel. In addition, the qualifying activity shall be required to remove any advertising device which was unlawfully erected or which is in violation of section 39-202, 39-203, 39-204, 39-205, 39-206, 39-215, 39-216, or 39-220, any rule or regulation of the department, or any federal rule or regulation relating to tourist-oriented directional sign panels. The tourist-oriented directional sign panels shall conform to the requirements of the Federal Beautification Act and the Manual on Uniform Traffic Control Devices as adopted pursuant to section 60-6,118.

Source: Laws 1993, LB 108, § 4; Laws 1995, LB 264, § 5; Laws 2010, LB926, § 3; Laws 2017, LB339, § 92.

39-211 Sign panels; rules and regulations.

The Department of Transportation shall adopt and promulgate rules and regulations deemed necessary by the department to carry out sections 39-207 to 39-211.

Source: Laws 1993, LB 108, § 5; Laws 2017, LB339, § 93.

39-212 Acquisition of interest in property; control of advertising outside of right-of-way; compensation; removal; costs; payment by department.

(1) The Department of Transportation may acquire the interest in real or personal property necessary to exercise the power authorized by subdivision (2)(m) of section 39-1320 and to pay just compensation upon removal of the following outdoor advertising signs, displays, and devices, as well as just compensation for the disconnection and removal of electrical service to the same:

(a) Those lawfully erected or in existence prior to March 27, 1972, and not conforming to the provisions of sections 39-212 to 39-222 except as otherwise authorized by such sections; and

(b) Those lawfully erected after March 27, 1972, which become nonconforming after being erected.

(2) Such compensation for removal of such signs, displays, and devices is authorized to be paid only for the following:

(a) The taking from the owner of such sign, display, or device or of all right, title, leasehold, and interest in connection with such sign, display, or device, or both; and

(b) The taking from the owner of the real property on which the sign, display, or device is located of the right to erect and maintain such signs, displays, and devices thereon.

(3) In all instances where signs, displays, or devices which are served electrically are taken under subdivision (2)(a) of this section, the department shall pay just compensation to the supplier of electricity for supportable costs of

disconnection and removal of such service to the nearest distribution line or, in the event such sign, display, or device is relocated, just compensation for removal of such service to the point of relocation.

Except for expenditures for the removal of nonconforming signs erected between April 16, 1982, and May 27, 1983, the department shall not be required to expend any funds under sections 39-212 to 39-222 and 39-1320 unless and until federal-aid matching funds are made available for this purpose.

Source: Laws 1961, c. 195, § 2, p. 596; Laws 1972, LB 1181, § 4; Laws 1974, LB 490, § 1; Laws 1979, LB 322, § 12; Laws 1981, LB 545, § 7; Laws 1983, LB 120, § 3; Laws 1994, LB 848, § 1; R.S.Supp.,1994, § 39-1320.01; Laws 1995, LB 264, § 6; Laws 2017, LB339, § 94.

39-213 Control of advertising outside of right-of-way; agreements authorized; commercial and industrial zones; provisions.

(1) In order that this state may qualify for the payments authorized in 23 U.S.C. 131(c) and (e), and to comply with the provisions of 23 U.S.C. 131 as revised and amended on October 22, 1965, by Public Law 89-285, the Nebraska Department of Transportation, for and in the name of the State of Nebraska, is authorized to enter into an agreement, or agreements, with the Secretary of Transportation of the United States, which agreement or agreements shall include provisions for regulation and control of the erection and maintenance of advertising signs, displays, and other advertising devices and may include, among other things, provisions for preservation of natural beauty, prevention of erosion, landscaping, reforestation, development of viewpoints for scenic attractions that are accessible to the public without charge, and the erection of markers, signs, or plaques, and development of areas in appreciation of sites of historical significance.

(2) It is the intention of the Legislature that the state shall be and is hereby empowered and directed to continue to qualify for and accept bonus payments pursuant to 23 U.S.C. 131(j) and subsequent amendments as amended in the Federal Aid Highway Acts of 1968 and 1970 for controlling outdoor advertising within the area adjacent to and within six hundred sixty feet of the edge of the right-of-way of the National System of Interstate and Defense Highways constructed upon any part of the right-of-way the entire width of which is acquired subsequent to July 1, 1956, and, to this end, to continue any agreements with, and make any new agreements with the Secretary of Transportation, to accomplish the same. Such agreement or agreements shall also provide for excluding from application of the national standards segments of the National System of Interstate and Defense Highways which traverse commercial or industrial zones within the boundaries of incorporated municipalities as they existed on September 21, 1959, wherein the use of real property adjacent to the National System of Interstate and Defense Highways is subject to municipal regulation or control, or which traverse other areas where the land use, as of September 21, 1959, is clearly established by state law as industrial or commercial.

(3) It is also the intention of the Legislature that the state shall comply with 23 U.S.C. 131, as revised and amended on October 22, 1965, by Public Law 89-285, in order that the state not be penalized by the provisions of subsection (b) thereof, and that the Nebraska Department of Transportation shall be and is hereby empowered and directed to make rules and regulations in accord with

the agreement between the Nebraska Department of Transportation and the United States Department of Transportation dated October 29, 1968.

Source: Laws 1961, c. 195, § 3, p. 596; Laws 1963, c. 236, § 1, p. 726; Laws 1972, LB 1058, § 11; Laws 1972, LB 1181, § 5; R.S.1943, (1993), § 39-1320.02; Laws 1995, LB 264, § 7; Laws 2017, LB339, § 95.

39-214 Control of advertising outside of right-of-way; adoption of rules and regulations by Department of Transportation; minimum requirements.

Whenever advertising rights are acquired by the Department of Transportation pursuant to subdivision (2)(m) of section 39-1320 or an agreement has been entered into as authorized by section 39-213, it shall be the duty of the department to adopt and promulgate reasonable rules and regulations for the control of outdoor advertising within the area specified in such subdivision, which rules and regulations shall have as their minimum requirements the provisions of 23 U.S.C. 131 and regulations adopted pursuant thereto, as amended on March 27, 1972.

Source: Laws 1961, c. 195, § 4, p. 597; Laws 1972, LB 1181, § 6; R.S.1943, (1993), § 39-1320.03; Laws 1995, LB 264, § 8; Laws 2017, LB339, § 96.

39-216 Control of advertising visible from main-traveled way; unlawful; when permitted; written lease and permit from Department of Transportation.

It shall be unlawful for any person to place or cause to be placed any advertising sign, display, or device which is visible from the main-traveled way of the Highway Beautification Control System or upon land not owned by such person, without first procuring a written lease from the owner of such land and a permit from the Department of Transportation authorizing such display or device to be erected as permitted by the advertising laws, rules, and regulations of this state.

Source: Laws 1972, LB 1181, § 8; Laws 1975, LB 213, § 7; R.S.1943, (1993), § 39-1320.07; Laws 1995, LB 264, § 10; Laws 2017, LB339, § 97.

39-217 Scenic byway designations.

(1) The Department of Transportation may designate portions of the state highway system as a scenic byway when the highway corridor possesses unusual, exceptional, or distinctive scenic, historic, recreational, cultural, or archeological features. The department shall adopt and promulgate rules and regulations establishing the procedure and criteria to be utilized in making scenic byway designations.

(2) Any portion of a highway designated as a scenic byway which is located within the limits of any incorporated municipality shall not be designated as part of the scenic byway, except when such route possesses intrinsic scenic, historic, recreational, cultural, or archaeological features which support designation of the route as a scenic byway.

Source: Laws 1995, LB 264, § 11; Laws 2017, LB339, § 98.

39-218 Scenic byways; prohibition of signs visible from main-traveled way; exceptions.

No sign shall be erected which is visible from the main-traveled way of any scenic byway except (1) directional and official signs to include, but not be limited to, signs and notices pertaining to natural wonders, scenic attractions, and historical attractions, (2) signs, displays, and devices advertising the sale or lease of property upon which such media are located, and (3) signs, displays, and devices advertising activities conducted on the property on which such media are located. Signs which are allowed shall comply with the standards and criteria established by rules and regulations of the Department of Transportation.

Source: Laws 1995, LB 264, § 12; Laws 2017, LB339, § 99.

39-219 Control of advertising outside of right-of-way; erected prior to March 27, 1972; effect.

Outdoor advertising signs, displays, and devices erected prior to March 27, 1972, may continue in zoned or unzoned commercial or industrial areas, notwithstanding the fact that such outdoor advertising signs, displays, and devices do not comply with standards and criteria established by sections 39-212 to 39-222 or rules and regulations of the Department of Transportation.

Source: Laws 1972, LB 1181, § 9; Laws 1994, LB 848, § 3; R.S.Supp.,1994, § 39-1320.08; Laws 1995, LB 264, § 13; Laws 2017, LB339, § 100.

39-220 Control of advertising visible from main-traveled way; permit; rules and regulations.

The Department of Transportation may at its discretion require permits for advertising signs, displays, or devices which are placed or allowed to exist along or upon the Highway Beautification Control System or which are at any point visible from the main-traveled way of the Highway Beautification Control System, except for on-premise signs, displays, and devices, as defined in the department's rules and regulations, for advertising activities conducted on the property on which the sign, display, or device is located. Such permits shall be renewed biennially. Each sign shall bear on the side facing the highway the permit number in a readily observable place for inspection purposes from the highway right-of-way. The department shall adopt and promulgate rules and regulations to implement and administer sections 39-212 to 39-226. The department may revoke the permit for noncompliance reasons and remove the sign if, after thirty days' notification to the sign owner, the sign remains in noncompliance. Printed sale bills not exceeding two hundred sixteen square inches in size shall not require a permit if otherwise conforming.

Source: Laws 1972, LB 1181, § 10; Laws 1974, LB 490, § 2; Laws 1975, LB 213, § 8; R.S.1943, (1993), § 39-1320.09; Laws 1995, LB 264, § 14; Laws 2017, LB339, § 101; Laws 2018, LB472, § 1.

39-221 Control of advertising outside of right-of-way; compliance; damages; violations; penalty.

Any person, firm, company, or corporation violating any of the provisions of sections 39-212 to 39-222 shall be guilty of a Class V misdemeanor. In addition

to any other available remedies, the Director-State Engineer, for the Department of Transportation and in the name of the State of Nebraska, may apply to the district court having jurisdiction for an injunction to force compliance with any of the provisions of such sections or rules and regulations promulgated thereunder. When any person, firm, company, or corporation deems its property rights have been adversely affected by the application of the provisions of such sections, such person, firm, company, or corporation shall have the right to have damages ascertained and determined pursuant to Chapter 76, article 7.

Source: Laws 1972, LB 1181, § 11; Laws 1974, LB 490, § 3; Laws 1977, LB 40, § 211; Laws 1994, LB 848, § 4; R.S.Supp.,1993, § 39-1320.10; Laws 1995, LB 264, § 15; Laws 2017, LB339, § 102.

39-222 Control of advertising outside of right-of-way; eminent domain; authorized.

Sections 39-212 to 39-221 shall not be construed to prevent the Department of Transportation from (1) exercising the power of eminent domain to accomplish the removal of any sign or signs or (2) acquiring any interest in real or personal property necessary to exercise the powers authorized by such sections whether within or without zoned or unzoned commercial or industrial areas.

Source: Laws 1972, LB 1181, § 12; Laws 1994, LB 848, § 5; R.S.Supp.,1994, § 39-1320.11; Laws 1995, LB 264, § 16; Laws 2017, LB339, § 103.

39-223 Governmental or quasi-governmental agency; removal of signs, displays, or devices along Highway Beautification Control System; exemption; petition.

Any community, board of county commissioners, municipality, county, city, a specific region or area of the state, or other governmental or quasi-governmental agency which is part of a specific economic area located along the Highway Beautification Control System of the State of Nebraska may petition the Department of Transportation for an exemption from mandatory removal of any legal, nonconforming directional signs, displays, or devices as defined by 23 U.S.C. 131(o), which signs, displays, or devices were in existence on May 5, 1976. The petitioning agency shall supply such documents as are supportive of its petition for exemption.

The Department of Transportation is hereby authorized to seek the exemptions authorized by 23 U.S.C. 131(o) in accordance with the federal regulations promulgated thereunder, 23 C.F.R., part 750, subpart E, if the petitioning agency shall supply the necessary documents to justify such exemptions.

Source: Laws 1978, LB 534, § 1; R.S.1943, (1993), § 39-1320.12; Laws 1995, LB 264, § 17; Laws 2017, LB339, § 104.

39-224 Department of Transportation; retention of signs, displays, or devices; request.

Upon receipt of a petition under section 39-223, the Nebraska Department of Transportation shall make request of the United States Department of Transportation for permission to retain the directional signs, displays, or devices

which provide information for the specific economic area responsible for the petition.

Source: Laws 1978, LB 534, § 2; R.S.1943, (1993), § 39-1320.13; Laws 1995, LB 264, § 18; Laws 2017, LB339, § 105.

39-225 Department of Transportation; removal of nonconforming signs; program.

The Department of Transportation shall adopt future programs to assure that removal of directional signs, displays, or devices, providing directional information about goods and services in the interest of the traveling public, not otherwise exempted by economic hardship, be deferred until all other nonconforming signs, on a statewide basis, are removed.

Source: Laws 1978, LB 534, § 3; R.S.1943, (1993), § 39-1320.14; Laws 1995, LB 264, § 19; Laws 2017, LB339, § 106.

ARTICLE 3

MISCELLANEOUS PENALTY PROVISIONS

Section
39-308. Removal of traffic hazards; determined by Department of Transportation and local authority; violation; penalty.
39-311. Rubbish on highways; prohibited; signs; enforcement; violation; penalties.
39-312. Camping; permitted; where; violation; penalty.

39-308 Removal of traffic hazards; determined by Department of Transportation and local authority; violation; penalty.

It shall be the duty of the owner of real property to remove from such property any tree, plant, shrub, or other obstruction, or part thereof, which, by obstructing the view of any driver, constitutes a traffic hazard. When the Department of Transportation or any local authority determines upon the basis of engineering and traffic investigation that such a traffic hazard exists, it shall notify the owner and order that the hazard be removed within ten days. Failure of the owner to remove such traffic hazard within ten days shall constitute a Class V misdemeanor, and every day such owner fails to remove it shall be a separate offense.

Source: Laws 1973, LB 45, § 101; R.S.1943, (1988), § 39-6,101; Laws 1993, LB 370, § 32; Laws 2017, LB339, § 107.

39-311 Rubbish on highways; prohibited; signs; enforcement; violation; penalties.

(1) No person shall throw or deposit upon any highway:

(a) Any glass bottle, glass, nails, tacks, wire, cans, or other substance likely to injure any person or animal or damage any vehicle upon such highway; or

(b) Any burning material.

(2) Any person who deposits or permits to be deposited upon any highway any destructive or injurious material shall immediately remove such or cause it to be removed.

(3) Any person who removes a wrecked or damaged vehicle from a highway shall remove any glass or other injurious substance deposited on the highway from such vehicle.

(4) The Department of Transportation or a local authority as defined in section 60-628 may procure and place at reasonable intervals on the side of highways under its respective jurisdiction appropriate signs showing the penalty for violating this section. Such signs shall be of such size and design as to be easily read by persons on such highways, but the absence of such a sign shall not excuse a violation of this section.

(5) It shall be the duty of all Nebraska State Patrol officers, conservation officers, sheriffs, deputy sheriffs, and other law enforcement officers to enforce this section and to make prompt investigation of any violations of this section reported by any person.

(6) Any person who violates any provision of this section shall be guilty of (a) a Class III misdemeanor for the first offense, (b) a Class II misdemeanor for the second offense, and (c) a Class I misdemeanor for the third or subsequent offense.

Source: Laws 1973, LB 45, § 83; Laws 1988, LB 1030, § 40; R.S.1943, (1988), § 39-683; Laws 1993, LB 370, § 35; Laws 1994, LB 570, § 3; Laws 1997, LB 495, § 5; Laws 1998, LB 922, § 403; Laws 2017, LB339, § 108.

Cross References

Littering, penalty, see section 28-523.

39-312 Camping; permitted; where; violation; penalty.

It shall be unlawful to camp on any state or county public highway, roadside area, park, or other property acquired for highway or roadside park purposes except at such places as are designated campsites by the Department of Transportation or the county or other legal entity of government owning or controlling such places. This provision shall not apply to lands originally acquired for highway purposes which have been transferred or leased to the Game and Parks Commission or a natural resources district or to other lands owned or controlled by the Game and Parks Commission where camping shall be controlled by the provisions of section 37-305 or by a natural resources district where camping shall be controlled by the provisions of section 2-3292.

For purposes of this section, camping means temporary lodging out of doors and presupposes the occupancy of a shelter designed or used for such purposes, such as a sleeping bag, tent, trailer, station wagon, pickup camper, camper-bus, or other vehicle, and the use of camping equipment and camper means an occupant of any such shelter.

Any person who camps on any state or county public highway, roadside area, park, or other property acquired for highway or roadside park purposes, which has not been properly designated as a campsite, or any person who violates any lawfully promulgated rules or regulations properly posted to regulate camping at designated campsites shall be guilty of a Class V misdemeanor and shall be ordered to pay any amount as determined by the court which may be necessary to reimburse the department or the county for the expense of repairing any damage to such campsite resulting from such violation.

Source: Laws 1969, c. 306, § 1, p. 1097; Laws 1977, LB 41, § 37; Laws 1984, LB 861, § 18; R.S.1943, (1988), § 39-712.01; Laws 1993, LB 370, § 36; Laws 1998, LB 922, § 404; Laws 2017, LB339, § 109.

ARTICLE 8
BRIDGES

(a) MISCELLANEOUS PROVISIONS

(a) MISCELLANEOUS PROVISIONS

39-805 Bridge over irrigation or drainage ditch; construction and maintenance; cost; how paid.

Whenever any public highway within this state shall cross or be crossed by any ditch or channel of any public drainage or irrigation district, it shall be the duty of the governing board of the drainage or irrigation district and the governing board of the county or municipal corporation involved to negotiate and agree for the building and maintenance of bridges and approaches thereto on such terms as shall be equitable, all things considered, between such drainage or irrigation district and such county or municipality. If such boards for any reason shall fail to agree with reference to such matter, it shall be the duty of the drainage or irrigation district to build the necessary bridges and approaches, and restore the highway in question to its former state as nearly as may be as it was laid out prior to the construction of the ditch or channel in question, and it shall be the duty of the county or municipal corporation involved to maintain the bridges and approaches. Where more than seventy-five percent of the water passing through any such ditch or channel is used by any person, firm, or corporation for purposes other than irrigation or drainage, it shall be the duty of such person, firm, or corporation, so using such seventy-five percent or more of such water, to build and maintain solely at the expense of such person, firm, or corporation, all such bridges and approaches thereto. Any bridge that may be built by any drainage or irrigation district or by any person, firm, or corporation under the provisions of this section shall be constructed under the supervision of the Department of Transportation, if on a state highway, and under the supervision of the county board or governing body of a municipality, if under the jurisdiction of such board or governing body of such municipality.

Source: Laws 1913, c. 172, § 1, p. 524; R.S.1913, § 2983; C.S.1922, § 2734; Laws 1929, c. 172, § 1, p. 586; C.S.1929, § 39-821; R.S.1943, § 39-805; Laws 2017, LB339, § 110.

Cross References

Irrigation ditches, bridges across, see sections 46-251 and 46-255.

(b) CONTRACTS FOR CONSTRUCTION AND REPAIR OF BRIDGES

39-810 Bridges; culverts; construction and repair; road improvements; contracts; letting; procedures.

(1)(a) The county board of each county may erect and repair all bridges and approaches thereto and build all culverts and make improvements on roads, including the purchase of gravel for roads, and stockpile any materials to be used for such purposes, the cost and expense of which shall for no project exceed one hundred thousand dollars.

(b) All contracts for the erection or repair of bridges and approaches thereto or for the building of culverts and improvements on roads, the cost and expense of which shall exceed one hundred thousand dollars, shall be let by the county board to the lowest responsible bidder.

(c) All contracts for materials for repairing, erecting, and constructing bridges and approaches thereto or culverts or for the purchase of gravel for roads, the cost and expense of which exceed twenty thousand dollars, shall be let to the lowest responsible bidder, but the board may reject any and all bids submitted for such materials.

(d) Upon rejection of any bid or bids by the board of such a county, such board shall have power and authority to purchase materials to repair, erect, or construct the bridges of such county, approaches thereto, or culverts or to purchase gravel for roads.

(e) All contracts for bridge erection or repair, approaches thereto, culverts, or road improvements in excess of twenty thousand dollars shall require individual cost-accounting records on each individual project.

(2)(a) Except as otherwise provided in subdivision (b) of this subsection, all bids for the letting of contracts shall be deposited with the county clerk of such a county, opened by him or her in the presence of the county board, and filed in such clerk's office.

(b) In a county with a population of more than one hundred fifty thousand inhabitants with a purchasing agent under section 23-3105, the bids shall be opened as directed pursuant to section 23-3111.

Source: Laws 1905, c. 126, § 1, p. 540; Laws 1911, c. 111, § 1, p. 391; R.S.1913, § 2956; C.S.1922, § 2714; C.S.1929, § 39-801; Laws 1931, c. 84, § 1, p. 222; C.S.Supp.,1941, § 39-801; R.S.1943, § 39-810; Laws 1955, c. 159, § 1, p. 462; Laws 1969, c. 328, § 1, p. 1173; Laws 1975, LB 115, § 1; Laws 1988, LB 429, § 1; Laws 2013, LB623, § 1; Laws 2017, LB86, § 1; Laws 2019, LB82, § 1.

Cross References

Authority of board to purchase materials, other provisions, see sections 39-818, 39-824, and 39-826.

39-822 Bridge and culvert construction contracts; plans, specifications, and estimates furnished to bidders; statement of construction done.

The county board shall keep in the office of the county clerk of the county a sufficient supply of the prints of the plans and the printed copies of the specifications and estimates of the cost of construction mentioned in section

39-821, to be furnished by the Director-State Engineer for distribution to prospective bidders and taxpayers of the county. No contract shall be entered into under the provisions of sections 39-810 to 39-826 for the construction or erection of any bridge or bridges unless, for the period of thirty days immediately preceding the time of entering into such contract, there shall have been available for distribution by the county clerk such plans and specifications. The county boards of the several counties shall prepare and transmit to the Department of Transportation a statement accompanied by the plans and specifications, showing the cost of all bridges built in their counties under the provisions of such sections, and state therein whether they were built under a contract or by the county.

Source: Laws 1905, c. 126, § 15, p. 544; Laws 1913, c. 88, § 1, p. 232; R.S.1913, § 2969; Laws 1921, c. 286, § 2, p. 934; C.S.1922, § 2727; C.S.1929, § 39-814; R.S.1943, § 39-822; Laws 2017, LB339, § 111.

39-826.01 Proposed bridge or culvert; dam in lieu of; how determined.

The Department of Transportation or the county board shall, prior to the design or construction of a new bridge or culvert in a new or existing highway or road within its jurisdiction, notify in writing, by first-class mail, the natural resources district in which such bridge or culvert will be located. The natural resources district shall, pursuant to section 39-826.02, determine whether it would be beneficial to the district to have a dam constructed in lieu of the proposed bridge or culvert. If the district shall determine that a dam would be more beneficial, the department or the county board and the natural resources district shall jointly determine the feasibility of constructing a dam to support the road in lieu of a bridge or culvert. If the department or the county board and the natural resources district cannot agree regarding the feasibility of a dam, the decision of the department, in the case of the state highway system, or the county board, in the case of the county road system, shall be controlling.

Source: Laws 1979, LB 213, § 1; Laws 2017, LB339, § 112.

39-826.02 Proposed bridge or culvert; natural resources district; dam; feasibility study.

If a natural resources district shall receive notice of a proposed bridge or culvert pursuant to section 39-826.01, the district shall make a study to determine whether it would be practicable to construct a dam at or near the proposed site which could be used to support a highway or road. In making the study, such district shall consider the benefit which would be derived and the feasibility of such a dam. After it has made its determination, the natural resources district shall notify the Department of Transportation or the county board and shall, if the district favors such a dam, assist in the joint feasibility study and provide any other assistance which may be required.

Source: Laws 1979, LB 213, § 2; Laws 2017, LB339, § 113.

(g) STATE AID BRIDGES

39-847 State aid for bridges; application for replacement; costs; priorities; plans and specifications; contracts; maintenance.

(1) Any county board may apply, in writing, to the Department of Transportation for state aid in the replacement of any bridge under the jurisdiction of such

board. The application shall contain a description of the bridge, with a preliminary estimate of the cost of replacement thereof, and a certified copy of the resolution of such board, pledging such county to furnish fifty percent of the cost of replacement of such bridge. The county's share of replacement cost may be from any source except the State Aid Bridge Fund, except that where there is any bridge which is the responsibility of two counties, either county may make application to the department and, if the application is approved by the department, such county and the department may replace such bridge and recover, by suit, one-half of the county's cost of such bridge from the county failing or refusing to join in such application. All requests for bridge replacement under sections 39-846 to 39-847.01 shall be forwarded by the department to the Board of Public Roads Classifications and Standards. Such board shall establish priorities for bridge replacement based on critical needs. The board shall consider such applications and establish priorities for a period of time consistent with sections 39-2115 to 39-2119. The board shall return the applications to the department with the established priorities.

(2) The plans and specifications for each bridge shall be furnished by the department and replacement shall be under the supervision of the department and the county board.

(3) Any contract for the replacement of any such bridge shall be made by the department consistent with procedures for contracts for state highways and federal-aid secondary roads.

(4) After the replacement of any such bridge and the acceptance thereof by the department, any county having jurisdiction over it shall have sole responsibility for maintenance.

Source: Laws 1911, c. 112, § 2, p. 393; R.S.1913, § 2977; Laws 1919, c. 190, tit. VII, art. III, § 2, p. 815; Laws 1921, c. 260, § 1, p. 875; C.S.1922, § 8357; Laws 1923, c. 157, § 1, p. 382; Laws 1923, c. 156, § 1, p. 381; C.S.1929, § 39-1502; R.S.1943, § 39-847; Laws 1953, c. 287, § 61, p. 966; Laws 1973, LB 87, § 2; Laws 2017, LB339, § 114; Laws 2019, LB82, § 2.

39-847.01 State Aid Bridge Fund; State Treasurer; transfer funds to.

The State Treasurer shall transfer monthly thirty-two thousand dollars from the share of the Department of Transportation of the Highway Trust Fund and thirty-two thousand dollars from the counties' share of the Highway Trust Fund which is allocated to bridges to the State Aid Bridge Fund.

Source: Laws 1973, LB 87, § 3; Laws 1986, LB 599, § 4; Laws 2017, LB339, § 115.

Cross References

Highway Trust Fund, see section 39-2215.

(k) INTERSTATE BRIDGE ACT OF 1959

39-891 Interstate bridges; declaration of purpose.

Recognizing that obstructions on or near the boundary of the State of Nebraska impede commerce and travel between the State of Nebraska and adjoining states, the Legislature hereby declares that bridges over these obstructions are essential to the general welfare of the State of Nebraska.

Providing bridges over these obstructions and for the safe and efficient operation of such bridges is deemed an urgent problem that is the proper concern of legislative action.

Such bridges, properly planned, designated, and managed, provide a safe passage for highway traffic to and from the state highway system and encourage commerce and travel between the State of Nebraska and adjoining states which increase the social and economic progress and general welfare of the state.

It is recognized that bridges between the State of Nebraska and adjoining states are not and cannot be the sole concern of the State of Nebraska. The nature of such bridges requires that a high degree of cooperation be exercised between the State of Nebraska and adjoining states in all phases of planning, construction, maintenance, and operation if proper benefits are to be realized.

It is also recognized that parties other than the State of Nebraska may wish to erect and control bridges between the State of Nebraska and adjoining states and that the construction, operation, and financing of such bridges have previously been authorized by the Legislature. Such bridges also benefit the State of Nebraska, and it is not the intent of the Legislature to abolish such power previously granted.

To this end, it is the intention of the Legislature to supplement sections 39-1301 to 39-1362 and 39-1393, relating to state highways, in order that the powers and authority of the department relating to the planning, construction, maintenance, acquisition, and operation of interstate bridges upon the state highway system may be clarified within a single act.

Acting under the direction of the Director-State Engineer, the department, with the advice of the State Highway Commission and the consent of the Governor, is given the power to enter into agreements with the United States and adjoining states, subject to the limitations imposed by the Constitution and the provisions of the Interstate Bridge Act of 1959.

The Legislature intends to place a high degree of trust in the hands of those officials whose duty it may be to enter into agreements with adjoining states and the United States for the planning, development, construction, acquisition, operation, maintenance, and protection of interstate bridges.

In order that the persons concerned may understand the limitations and responsibilities for planning, constructing, acquiring, operating, and maintaining interstate bridges upon the state highway system, it is necessary that the responsibilities for such work shall be fixed, but it is intended that the department, acting under the Director-State Engineer, shall have sufficient freedom to enter into agreements with adjoining states regarding any phase of planning, constructing, acquiring, maintaining, and operating interstate bridges upon the state highway system in order that the best interests of the State of Nebraska may always be served. The authority of the department to enter into agreements with adjoining states, as granted in the act, is therefor essential.

The Legislature hereby determines and declares that the provisions of the act are necessary for the preservation of the public peace, health, and safety, for the promotion of the general welfare, and as a contribution to the national defense.

Source: Laws 1959, c. 175, § 1, p. 630; Laws 1993, LB 15, § 1; Laws 2016, LB1038, § 5; Laws 2017, LB271, § 1.

39-892 Interstate bridges; terms, defined.

For purposes of the Interstate Bridge Act of 1959, unless the context otherwise requires:

(1) Approach shall mean that portion of any interstate bridge which allows the highway access to the bridge structure. It shall be measured along the centerline of the highway from the end of the bridge structure to the nearest right-of-way line of the closest street or road where traffic may leave the highway to avoid crossing the bridge, but in no event shall such approach exceed a distance of one mile. The term shall be construed to include all embankments, fills, grades, supports, drainage facilities, and appurtenances necessary therefor;

(2) Appurtenances shall include, but not be limited to, sidewalks, storm sewers, guardrails, handrails, steps, curb or grate inlets, fire plugs, retaining walls, lighting fixtures, and all other items of a similar nature which the department deems necessary for the proper operation of any interstate bridge or for the safety and convenience of the traveling public;

(3) Boundary line bridge shall mean any bridge upon which no toll, fee, or other consideration is charged for passage thereon and which connects the state highway systems of the State of Nebraska and an adjoining state in the same manner as an interstate bridge. Such bridges shall be composed of right-of-way, bridge structure, approaches, and road in the same manner as an interstate bridge but shall be distinguished from an interstate bridge in that no part of such bridge shall be a part of the state highway system, the title to such bridge being vested in a person other than the State of Nebraska, or the State of Nebraska and an adjoining state jointly. Any boundary line bridge purchased or acquired by the department, or the department and an adjoining state jointly, and added to the state highway system shall be deemed an interstate bridge;

(4) Boundary line toll bridge shall mean any boundary line bridge upon which a fee, toll, or other consideration is charged traffic for the use thereof. Any boundary line toll bridge purchased or acquired by the department, or by the department and an adjoining state jointly, and added to the state highway system shall be deemed an interstate bridge;

(5) Bridge structure shall mean the superstructure and substructure of any interstate bridge having a span of not less than twenty feet between undercopings of extreme end abutments, or extreme ends of openings of multiple boxes, when measured along the centerline of the highway thereon, and shall be construed to include the supports therefor and all appurtenances deemed necessary by the department;

(6) Construction shall mean the erection, fabrication, or alteration of the whole or any part of any interstate bridge. For purposes of this subdivision, alteration shall be construed to be the performance of construction by which the form or design of any interstate bridge is changed or modified;

(7) Department shall mean the Department of Transportation;

(8) Emergency shall include, but not be limited to, acts of God, invasion, enemy attack, war, flood, fire, storm, traffic accidents, or other actions of similar nature which usually occur suddenly and cause, or threaten to cause, damage requiring immediate attention;

(9) Expressway shall be defined in the manner provided by section 39-1302;

(10) Freeway shall be defined in the manner provided by section 39-1302;

(11) Highway shall mean a road, street, expressway, or freeway, including the entire area within the right-of-way, which has been designated a part of the state highway system;

(12) Interstate bridge shall mean the right-of-way, approaches, bridge structure, and highway necessary to form a passageway for highway traffic over the boundary line of the State of Nebraska from a point within the State of Nebraska to a point within an adjoining state for the purpose of spanning any obstruction or obstructions which would otherwise hinder the free and safe flow of traffic between such points, such bridge being a part of the state highway system with title vested in the State of Nebraska or in the State of Nebraska and an adjoining state jointly;

(13) Interstate bridge purposes shall include, but not be limited to, the applicable provisions of subdivisions (2)(a) through (l) of section 39-1320;

(14) Maintenance shall mean the act, operation, or continuous process of repair, reconstruction, or preservation of the whole or any part of any interstate bridge for the purpose of keeping it at or near its original standard of usefulness and shall include the performance of traffic services for the safety and convenience of the traveling public. For purposes of this subdivision, reconstruction shall be construed to be the repairing or replacing of any part of any interstate bridge without changing or modifying the form or design of such bridge;

(15) Person shall include bodies politic and corporate, societies, communities, the public generally, individuals, partnerships, limited liability companies, joint-stock companies, and associations;

(16) Right-of-way shall mean land, property, or interest therein, usually in a strip, acquired for or devoted to an interstate bridge;

(17) State highway system shall mean the highways within the State of Nebraska as shown on the map provided for in section 39-1311 and as defined by section 39-1302;

(18) Street shall be defined in the manner provided by section 39-1302;

(19) Title shall mean the evidence of right to property or the right itself; and

(20) Traffic services shall mean the operation of an interstate bridge facility, and the services incidental thereto, to provide for the safe and convenient flow of traffic over such bridge. Such services shall include, but not be limited to, erection of snow fence, snow and ice removal, painting, repairing, and replacing signs, guardrails, traffic signals, lighting standards, pavement stripes and markings, adding conventional traffic control devices, furnishing power for road lighting and traffic control devices, and replacement of parts.

Source: Laws 1959, c. 175, § 2, p. 631; Laws 1993, LB 121, § 210; Laws 1993, LB 370, § 38; Laws 2017, LB339, § 116.

39-893 Act; applicability.

The provisions of the Interstate Bridge Act of 1959 are intended to be cumulative to, and not amendatory of, sections 39-1301 to 39-1362 and 39-1393.

Source: Laws 1959, c. 175, § 3, p. 635; Laws 1993, LB 15, § 2; Laws 2016, LB1038, § 6; Laws 2017, LB271, § 2.

ARTICLE 10
RURAL MAIL ROUTES

Section
39-1010. Mailboxes; location; violation; duty of Department of Transportation.
39-1011. Mailboxes; Department of Transportation; turnouts; provide.

39-1010 Mailboxes; location; violation; duty of Department of Transportation.

(1) Except as otherwise provided in this subsection, all mailboxes shall be placed such that no part of the mailbox extends beyond the shoulder line of any highway and the mailbox support shall be placed a minimum of one foot outside the shoulder line of any gravel-surfaced highway, and of any hard-surfaced highway having a shoulder width of six feet or more as measured from the edge of the hard surfacing. Along hard-surfaced highways having a shoulder width of less than six feet, the Department of Transportation shall, on new construction or reconstruction, where feasible, provide a shoulder width of not less than six feet, or provide for a minimum clear traffic lane of ten feet in width at mailbox turnouts. On highways built before October 9, 1961, having a shoulder width of less than six feet, the department may, where feasible and deemed advisable, provide a shoulder width of not less than six feet or provide for minimum clear traffic lane of ten feet in width at mailbox turnouts. For a hard-surfaced highway having either a mailbox turnout or a hard-surfaced shoulder width of eight feet or more, the mailbox shall be placed such that no part of the mailbox extends beyond the outside edge of the mailbox turnout or hard-surfaced portion of the shoulder and the mailbox support shall be placed a minimum of one foot outside the outside edge of the mailbox turnout or hard-surfaced portion of the shoulder.

(2) It shall be the duty of the department to notify the owner of all mailboxes in violation of the provisions of this section, and the department may remove such mailboxes if the owner fails or refuses to remove the same after a reasonable time after he or she is notified of such violations.

Source: Laws 1961, c. 194, § 1, p. 593; Laws 2014, LB757, § 1; Laws 2017, LB339, § 117.

39-1011 Mailboxes; Department of Transportation; turnouts; provide.

The Department of Transportation shall provide and maintain gravel, crushed-rock, or hard-surface turnouts for delivery of mail to all mailboxes placed on the highway rights-of-way to conform with section 39-1010.

Source: Laws 1961, c. 194, § 2, p. 593; Laws 2017, LB339, § 118.

ARTICLE 11
STATE HIGHWAY COMMISSION

Section
39-1101. State Highway Commission; creation; members.
39-1108. State Highway Commission; meetings; quorum; minutes; open to public.
39-1110. State Highway Commission; powers and duties.

39-1101 State Highway Commission; creation; members.

There is hereby created in the Department of Transportation a State Highway Commission which shall consist of eight members to be appointed by the

Governor with the consent of a majority of all the members of the Legislature. One member shall at all times be appointed from each of the eight districts designated in section 39-1102. Each member of the commission shall be (1) a citizen of the United States, (2) not less than thirty years of age, and (3) a bona fide resident of the State of Nebraska and of the district from which he or she is appointed for at least three years immediately preceding his or her appointment. Not more than four members shall be of the same political party. The Director-State Engineer shall be an ex officio member of the commission who shall vote in case of a tie.

Source: Laws 1953, c. 334, § 1, p. 1095; Laws 1955, c. 163, § 1, p. 468; Laws 1987, LB 161, § 1; Laws 2017, LB339, § 119.

39-1108 State Highway Commission; meetings; quorum; minutes; open to public.

Regular meetings of the State Highway Commission shall be held upon call of the chairperson, but not less than six times per year. Special meetings may be held upon call of the chairperson or pursuant to a call signed by three other members, of which the chairperson shall have three days' written notice.

All regular meetings shall be held in suitable offices to be provided in Lincoln unless a majority of the members deem it necessary to hold a regular meeting at another location within this state. Members of the commission may participate by virtual conferencing as long as the chairperson or vice-chairperson conducts the meeting in an open forum where the public is able to participate by attendance at the scheduled meeting.

Five members of the commission constitute a quorum for the transaction of business. Every act of a majority of the members of the commission shall be deemed to be the act of the commission.

All meetings shall be open to the public and shall be conducted in accordance with the Open Meetings Act.

The minutes of the meetings shall show the action of the commission on matters presented. The minutes shall be open to public inspection.

Source: Laws 1953, c. 334, § 8, p. 1097; Laws 1971, LB 101, § 1; Laws 1981, LB 544, § 4; Laws 1987, LB 161, § 4; Laws 2003, LB 101, § 1; Laws 2004, LB 821, § 11; Laws 2021, LB83, § 5.

Cross References

Open Meetings Act, see section 84-1407.

39-1110 State Highway Commission; powers and duties.

(1) It shall be the duty of the State Highway Commission:

(a) To conduct studies and investigations and to act in an advisory capacity to the Director-State Engineer in the establishment of broad policies for carrying out the duties and responsibilities of the Department of Transportation;

(b) To advise the public regarding the policies, conditions, and activities of the department;

(c) To hold hearings, make investigations, studies, and inspections, and do all other things necessary to carry out the duties imposed upon it by law;

(d) To advance information and advice conducive to providing adequate and safe highways in the state;

(e) When called upon by the Governor, to advise him or her relative to the appointment of the Director-State Engineer; and

(f) To submit to the Governor its written advice regarding the feasibility of each relinquishment or abandonment of a fragment of a route, section of a route, or a route on the state highway system proposed by the department. The chairperson of the commission shall designate one or more of the members of the commission, prior to submitting such advice, to personally inspect the fragment of a route, section of a route, or a route to be relinquished or abandoned, who shall take into consideration the following factors: Cost to the state for maintenance, estimated cost to the state for future improvements, whether traffic service provided is primarily local or otherwise, whether other facilities provide comparable service, and the relationship to an integrated state highway system. The department shall furnish to the commission all needed assistance in making its inspection and study. If the commission, after making such inspection and study, shall fail to reach a decision as to whether or not the fragment of a route, section of a route, or a route should be relinquished or abandoned, it may hold a public hearing on such proposed relinquishment or abandonment. The commission shall give a written notice of the time and place of such hearing, not less than two weeks prior to the time of the hearing, to the political or governmental subdivisions or public corporations wherein such portion of the state highway system is proposed to be relinquished or abandoned. The commission shall submit to the Governor, within two weeks after such hearing, its written advice upon such proposed relinquishment or abandonment.

(2) All funds rendered available by law to the department, including funds already collected for such purposes, may be used by the State Highway Commission in administering and effecting such purposes, to be paid upon approval by the Director-State Engineer.

(3) All data and information of the department shall be available to the State Highway Commission.

(4) The State Highway Commission may issue bonds under the Nebraska Highway Bond Act.

Source: Laws 1953, c. 334, § 10, p. 1098; Laws 1955, c. 163, § 3, p. 469; Laws 2000, LB 1135, § 4; Laws 2017, LB339, § 120.

Cross References

Nebraska Highway Bond Act, see section 39-2222.

ARTICLE 13

STATE HIGHWAYS

(a) INTENT, DEFINITIONS, AND RULES

(b) INTERGOVERNMENTAL RELATIONS

(a) INTENT, DEFINITIONS, AND RULES

39-1301 State highways; declaration of legislative intent.

Recognizing that safe and efficient highway transportation is a matter of important interest to all of the people in the state, the Legislature hereby determines and declares that an integrated system of highways is essential to the general welfare of the State of Nebraska.

Providing such a system of facilities and the efficient management, operation, and control thereof are recognized as urgent problems and the proper objectives of highway legislation.

Adequate highways provide for the free flow of traffic, result in low cost of motor vehicle operation, protect the health and safety of the citizens of the state, increase property values, and generally promote economic and social progress of the state.

It is the intent of the Legislature to consider of paramount importance the convenience and safety of the traveling public in the location, relocation, or abandonment of highways.

In designating the highway system of this state, as provided by sections 39-1301 to 39-1362 and 39-1393, the Legislature places a high degree of trust in the hands of those officials whose duty it shall be, within the limits of available funds, to plan, develop, construct, operate, maintain, and protect the highway facilities of this state, for present as well as for future uses.

The design, construction, maintenance, operation, and protection of adequate state highway facilities sufficient to meet the present demands as well as future requirements will, of necessity, require careful organization, with lines of authority definitely fixed, and basic rules of procedure established by the Legislature.

To this end, it is the intent of the Legislature, subject to the limitations of the Constitution and such mandates as the Legislature may impose by the provisions of such sections, to designate the Director-State Engineer and the department, acting under the direction of the Director-State Engineer, as direct custodian of the state highway system, with full authority in all departmental administrative details, in all matters of engineering design, and in all matters having to do with the construction, maintenance, operation, and protection of the state highway system.

The Legislature intends to declare, in general terms, the powers and duties of the Director-State Engineer, leaving specific details to be determined by reasonable rules and regulations which may be promulgated by him or her. It is the intent of the Legislature to grant authority to the Director-State Engineer to exercise sufficient power and authority to enable him or her and the department to carry out the broad objectives stated in this section.

While it is necessary to fix responsibilities for the construction, maintenance, and operation of the several systems of highways, it is intended that the State of Nebraska shall have an integrated system of all roads and streets to provide safe and efficient highway transportation throughout the state. The authority granted in sections 39-1301 to 39-1362 and 39-1393 to the Director-State

Engineer and to the political or governmental subdivisions or public corporations of this state to assist and cooperate with each other is therefor essential.

The Legislature hereby determines and declares that such sections are necessary for the preservation of the public peace, health, and safety, for promotion of the general welfare, and as a contribution to the national defense.

Source: Laws 1955, c. 148, § 1, p. 414; Laws 1993, LB 15, § 3; Laws 2016, LB1038, § 7; Laws 2017, LB271, § 3.

39-1302 Terms, defined.

For purposes of sections 39-1301 to 39-1393, unless the context otherwise requires:

(1) Abandon means to reject all or part of the department's rights and responsibilities relating to all or part of a fragment, section, or route on the state highway system;

(2) Alley means an established passageway for vehicles and pedestrians affording a secondary means of access in the rear to properties abutting on a street or highway;

(3) Approach or exit road means any highway or ramp designed and used solely for the purpose of providing ingress or egress to or from an interchange or rest area of a highway. An approach road shall begin at the point where it intersects with any highway not a part of the highway for which such approach road provides access and shall terminate at the point where it merges with an acceleration lane of a highway. An exit road shall begin at the point where it intersects with a deceleration lane of a highway and shall terminate at the point where it intersects any highway not a part of a highway from which the exit road provides egress;

(4) Arterial highway means a highway primarily for through traffic, usually on a continuous route;

(5) Beltway means the roads and streets not designated as a part of the state highway system and that are under the primary authority of a county or municipality, if the location of the beltway has been approved by (a) record of decision or finding of no significant impact and (b) the applicable local planning authority as a part of the comprehensive plan;

(6) Business means any lawful activity conducted primarily for the purchase and resale, manufacture, processing, or marketing of products, commodities, or other personal property or for the sale of services to the public or by a nonprofit corporation;

(7) Channel means a natural or artificial watercourse;

(8) Commercial activity means those activities generally recognized as commercial by zoning authorities in this state, and industrial activity means those activities generally recognized as industrial by zoning authorities in this state, except that none of the following shall be considered commercial or industrial:

(a) Outdoor advertising structures;

(b) General agricultural, forestry, ranching, grazing, farming, and related activities, including wayside fresh produce stands;

(c) Activities normally or regularly in operation less than three months of the year;

(d) Activities conducted in a building principally used as a residence;

(e) Railroad tracks and minor sidings; and

(f) Activities more than six hundred sixty feet from the nearest edge of the right-of-way of the road or highway;

(9) Connecting link means the roads, streets, and highways designated as part of the state highway system and which are within the corporate limits of any city or village in this state;

(10) Controlled-access facility means a highway or street especially designed for through traffic and over, from, or to which owners or occupants of abutting land or other persons have no right or easement or only a controlled right or easement of access, light, air, or view by reason of the fact that their property abuts upon such controlled-access facility or for any other reason. Such highways or streets may be freeways, or they may be parkways;

(11) Department means the Department of Transportation;

(12) Displaced person means any individual, family, business, or farm operation which moves from real property acquired for state highway purposes or for a federal-aid highway;

(13) Easement means a right acquired by public authority to use or control property for a designated highway purpose;

(14) Expressway means a divided arterial highway for through traffic with full or partial control of access which may have grade separations at intersections;

(15) Extreme weather event means a weather event that generates extraordinary costs related to such event for construction, reconstruction, relocation, improvement, or maintenance occurring on or after January 1, 2023, resulting from weather conditions including, but not limited to, snow, rain, drought, flood, storm, extreme heat, or extreme cold;

(16) Family means two or more persons living together in the same dwelling unit who are related to each other by blood, marriage, adoption, or legal guardianship;

(17) Farm operation means any activity conducted primarily for the production of one or more agricultural products or commodities for sale and home use and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support;

(18) Faulty engineering means a defect in the design of, construction of, workmanship on, or the materials or systems used on a project that results in failure of a component part or the structural integrity of a structure and that such failure causes damage;

(19) Federal-aid primary roads means roads, streets, and highways, whether a part of the state highway system, county road systems, or city streets, which have been designated as federal-aid primary roads by the Nebraska Department of Transportation and approved by the United States Secretary of Transportation and shown on the maps provided for in section 39-1311;

(20) Freeway means an expressway with full control of access;

(21) Frontage road means a local street or road auxiliary to an arterial highway for service to abutting property and adjacent areas and for control of access;

(22) Full control of access means that the right of owners or occupants of abutting land or other persons to access or view is fully controlled by public

authority having jurisdiction and that such control is exercised to give preference to through traffic by providing access connections with selected public roads only and by prohibiting crossings or intersections at grade or direct private driveway connections;

(23) Grade separation means a crossing of two highways at different levels;

(24) Highway means a road or street, including the entire area within the right-of-way, which has been designated a part of the state highway system;

(25) Highway approach means the portion of a county road located within the right-of-way of a highway;

(26) Individual means a person who is not a member of a family;

(27) Interchange means a grade-separated intersection with one or more turning roadways for travel between any of the highways radiating from and forming part of such intersection;

(28) Map means a drawing or other illustration or a series of drawings or illustrations which may be considered together to complete a representation;

(29) Mileage means the aggregate distance in miles without counting double mileage where there are one-way or divided roads, streets, or highways;

(30) Parking lane means an auxiliary lane primarily for the parking of vehicles;

(31) Parkway means an arterial highway for noncommercial traffic, with full or partial control of access, and usually located within a park or a ribbon of park-like development;

(32) Relinquish means to surrender all or part of the rights and responsibilities relating to all or part of a fragment, section, or route on the state highway system to a political or governmental subdivision or public corporation of Nebraska;

(33) Right of access means the rights of ingress and egress to or from a road, street, or highway and the rights of owners or occupants of land abutting a road, street, or highway or other persons to a way or means of approach, light, air, or view;

(34) Right-of-way means land, property, or interest therein, usually in a strip, acquired for or devoted to a road, street, or highway;

(35) Road means a public way for the purposes of vehicular travel, including the entire area within the right-of-way. A road designated as part of the state highway system may be called a highway, while a road in an urban area may be called a street;

(36) Roadside means the area adjoining the outer edge of the roadway. Extensive areas between the roadways of a divided highway may also be considered roadside;

(37) Roadway means the portion of a highway, including shoulders, for vehicular use;

(38) Separation structure means that part of any bridge or road which is directly overhead of the roadway of any part of a highway;

(39) State highway purposes has the same meaning set forth in subsection (2) of section 39-1320;

(40) State highway system means the roads, streets, and highways shown on the map provided for in section 39-1311 as forming a group of highway

transportation lines for which the Nebraska Department of Transportation shall be the primary authority. The state highway system shall include, but not be limited to, rights-of-way, connecting links, drainage facilities, and the bridges, appurtenances, easements, and structures used in conjunction with such roads, streets, and highways;

(41) Street means a public way for the purposes of vehicular travel in a city or village and shall include the entire area within the right-of-way;

(42) Structure means anything constructed or erected, the use of which requires permanent location on the ground or attachment to something having a permanent location;

(43) Title means the evidence of a person's right to property or the right itself;

(44) Traveled way means the portion of the roadway for the movement of vehicles, exclusive of shoulders and auxiliary lanes;

(45) Unzoned commercial or industrial area for purposes of control of outdoor advertising means all areas within six hundred sixty feet of the nearest edge of the right-of-way of the interstate and federal-aid primary systems which are not zoned by state or local law, regulation, or ordinance and on which there is located one or more permanent structures devoted to a business or industrial activity or on which a commercial or industrial activity is conducted, whether or not a permanent structure is located thereon, the area between such activity and the highway, and the area along the highway extending outward six hundred feet from and beyond each edge of such activity and, in the case of the primary system, may include the unzoned lands on both sides of such road or highway to the extent of the same dimensions if those lands on the opposite side of the highway are not deemed scenic or having aesthetic value as determined by the department. In determining such an area, measurements shall be made from the furthest or outermost edges of the regularly used area of the commercial or industrial activity, structures, normal points of ingress and egress, parking lots, and storage and processing areas constituting an integral part of such commercial or industrial activity;

(46) Visible, for purposes of section 39-1320, in reference to advertising signs, displays, or devices, means the message or advertising content of such sign, display, or device is capable of being seen without visual aid by a person of normal visual acuity. A sign shall be considered visible even though the message or advertising content may be seen but not read;

(47) Written instrument means a deed or any other document that states a contract, agreement, gift, or transfer of property; and

(48) Zoned commercial or industrial areas means those areas within six hundred sixty feet of the nearest edge of the right-of-way of the Highway Beautification Control System defined in section 39-201.01, zoned by state or local zoning authorities for industrial or commercial activities.

Source: Laws 1955, c. 148, § 2, p. 415; Laws 1969, c. 329, § 1, p. 1174; Laws 1972, LB 1181, § 1; Laws 1975, LB 213, § 4; Laws 1983, LB 120, § 2; Laws 1993, LB 15, § 4; Laws 1993, LB 121, § 211; Laws 1993, LB 370, § 39; Laws 1995, LB 264, § 21; Laws 2005, LB 639, § 1; Laws 2016, LB1038, § 8; Laws 2017, LB271, § 4; Laws 2017, LB339, § 121; Laws 2022, LB750, § 2.
Operative date July 21, 2022.

(b) INTERGOVERNMENTAL RELATIONS

39-1306.01 Federal aid; political subdivisions; department; unused funds; allocation.

Unused funds shall be made available by the department to other political or governmental subdivisions or public corporations for an additional period of six months. The department shall likewise make available unused funds from allotments which have been made prior to December 25, 1969. The department shall separately classify all unused funds referred to in section 39-1306 from their sources on the basis of the type of political or governmental subdivision or public corporation to which they were allotted. It is the intent of the Legislature that such funds which were allotted to counties and were unused be made available to other counties, and that such funds which were allotted to cities and villages and were unused be made available to other cities and villages. The funds in each classification shall be made available by the department to other subdivisions which have utilized all of the federal funds available to them, and shall be subject to the same conditions as apply to funds received under section 39-1306. Such funds shall be reallocated upon application therefor by the subdivisions.

Source: Laws 1967, c. 237, § 2, p. 635; Laws 1969, c. 330, § 3, p. 1185; Laws 2017, LB339, § 122.

39-1306.02 Federal aid; political subdivisions; allotment; department; duration; notice.

When any political or governmental subdivision or any public corporation of this state has an allotment of federal-aid funds made available to it by the federal government, the department shall give notice to the political or governmental subdivision of the amount of such funds the department has allotted to it, and, that the duration of the allotment to the political or governmental subdivision or public corporation is for not less than an eighteen-month period, which notice shall state the last date of such allotment to the subdivision or political corporation. The department shall give notice a second time six months before the last date of such allotment of the impending six months expiration of the allotment and of the amount of funds remaining.

Source: Laws 1969, c. 330, § 2, p. 1185; Laws 2017, LB339, § 123.

39-1306.03 United States Department of Transportation; department assume responsibilities; agreements authorized; waiver of immunity; department; powers and duties.

(1) The department may assume, pursuant to 23 U.S.C. 326, all or part of the responsibilities of the United States Department of Transportation:

(a) For determining whether federal-aid design and construction projects are categorically excluded from requirements for environmental assessments or environmental impact statements; and

(b) For environmental review, consultation, or other related actions required under any federal law applicable to activities that are classified as categorical exclusions.

(2) The department may assume, pursuant to 23 U.S.C. 327, all or part of the responsibilities of the United States Department of Transportation:

(a)(i) With respect to one or more highway projects within the state, under the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 et seq.; and

(ii) For environmental review, consultation, or other action required under any federal environmental law pertaining to the review or approval of a specific project; and

(b) With respect to one or more railroad, public transportation, or multimodal projects within the state under the National Environmental Policy Act of 1969, as amended.

(3) The department may enter into one or more agreements with the United States Secretary of Transportation, including memoranda of understanding, in furtherance of the assumption by the department of duties under 23 U.S.C. 326 and 327.

(4) The State of Nebraska hereby waives its immunity from civil liability, including immunity from suit in federal court under the Eleventh Amendment to the United States Constitution, and consents to the jurisdiction of the federal courts solely for the compliance, discharge, or enforcement of responsibilities assumed by the department pursuant to 23 U.S.C. 326 and 327, in accordance with the same procedural and substantive requirements applicable to a suit against a federal agency. This waiver of immunity shall only be valid if:

(a) The department executes a memorandum of understanding with the United States Department of Transportation accepting the jurisdiction of the federal courts as required by 23 U.S.C. 326(c) and 327(c);

(b) The act or omission that is the subject of the lawsuit arises out of compliance, discharge, or enforcement of responsibilities assumed by the department pursuant to 23 U.S.C. 326 and 327; and

(c) The memorandum of understanding is in effect when the act or omission that is the subject of the federal lawsuit occurred.

(5) The department may adopt and promulgate rules and regulations to implement this section and may adopt relevant federal environmental standards as the standards for the department.

Source: Laws 2017, LB271, § 5.

(c) DESIGNATION OF SYSTEM

39-1309 State highway system; designation; redesignation; factors.

(1) The map prepared by the State Highway Commission showing a proposed state highway system in Nebraska, filed with the Clerk of the Legislature and referred to in the resolution filed with the Legislature on February 3, 1955, is hereby adopted by the Legislature as the state highway system on September 18, 1955, except that a highway from Rushville in Sheridan County going south on the most feasible and direct route to the Smith Lake State Recreation Grounds shall be known as state highway 250 and shall be a part of the state highway system.

(2) The state highway system may be redesignated, relocated, redetermined, or recreated by the department with the written advice of the State Highway Commission and the consent of the Governor. In redesignating, relocating, redetermining, or recreating the several routes of the state highway system, the following factors, except as provided in section 39-1309.01, shall be considered:

(a) The actual or potential traffic volumes and other traffic survey data, (b) the relevant factors of construction, maintenance, right-of-way, and the costs thereof, (c) the safety and convenience of highway users, (d) the relative importance of each highway to existing business, industry, agriculture, enterprise, and recreation and to the development of natural resources, business, industry, agriculture, enterprise, and recreation, (e) the desirability of providing an integrated system to serve interstate travel, principal market centers, principal municipalities, county seat municipalities, and travel to places of statewide interest, (f) the desirability of connecting the state highway system with any state park, any state forest reserve, any state game reserve, the grounds of any state institution, or any recreational, scenic, or historic place owned or operated by the state or federal government, (g) the national defense, and (h) the general welfare of the people of the state.

(3) Any highways not designated as a part of the state highway system as provided by sections 39-1301 to 39-1362 and 39-1393 shall be a part of the county road system, and the title to the right-of-way of such roads shall vest in the counties in which the roads are located.

Source: Laws 1955, c. 148, § 9, p. 420; Laws 1959, c. 176, § 1, p. 647; Laws 1981, LB 285, § 5; Laws 1993, LB 15, § 6; Laws 2016, LB1038, § 9; Laws 2017, LB271, § 6.

39-1311 State highway system; department; maintain current map; contents; corridor location; map; notice; beltway; duties.

(1) The department at all times shall maintain a current map of the state, which shall show all the roads, highways, and connecting links which have been designated, located, created, or constituted as part of the state highway system, including all corridors. All changes in designation or location of highways constituting the state highway system, or additions thereto, shall be indicated upon the map. The department shall also maintain six separate and additional maps. These maps shall include (a) the roads, highways, and streets designated as federal-aid primary roads as of March 27, 1972, (b) the National System of Interstate and Defense Highways, (c) the roads designated as the federal-aid primary system as it existed on June 1, 1991, (d) the National Highway System, (e) the Highway Beautification Control System as defined in section 39-201.01, and (f) scenic byways as defined in section 39-201.01. The National Highway System is the system designated as such under the federal Intermodal Surface Transportation Efficiency Act. The maps shall be available at all times for public inspection at the offices of the Director-State Engineer and shall be filed with the Legislature of the State of Nebraska each biennium.

(2) Whenever the department has received a corridor location approval for a proposed state highway or proposed beltway to be located in any county or municipality, it shall prepare a map of such corridor sufficient to show the location of such corridor on each parcel of land to be traversed. If the county or municipality in which such corridor is located does not have a requirement for the review and approval of a preliminary subdivision plat or a requirement that a building permit be obtained prior to commencement of a structure, the department shall send notice of the approval of such corridor by certified mail to the owner of each parcel traversed by the corridor at the address shown for such owner on the county tax records. Such notice shall advise the owner of the

requirement of sections 39-1311 to 39-1311.05 for preliminary subdivision plats and for building permits.

(3) For any beltway proposed under sections 39-1311 to 39-1311.05, the duties of the department shall be assumed by the county or municipality that received approval for the beltway project.

Source: Laws 1955, c. 148, § 11, p. 422; Laws 1972, LB 1181, § 2; Laws 1974, LB 805, § 1; Laws 1995, LB 264, § 22; Laws 2003, LB 187, § 7; Laws 2005, LB 639, § 2; Laws 2017, LB339, § 124.

39-1314 State highways; relinquishment; abandonment; fragment or section; offer to political subdivision; procedure; memorandum of understanding; contents.

No fragment or section of a route nor any route on the state highway system shall be abandoned without first offering to relinquish such fragment, section, or route to the political or governmental subdivisions or public corporations wherein any portion of the state highway system is to be abandoned. The department shall offer to relinquish such fragment, section, or route by written notification to such political or governmental subdivisions or public corporations of the department's offer to relinquish. Four months after sending the notice of offer to relinquish, the department may proceed to abandon such fragment, section, or route on the state highway system unless a petition from a notified political or governmental subdivision or public corporation has been filed with the department, prior to abandonment, setting forth that the political or governmental subdivision or public corporation desires to maintain such fragment, section, route, or portion thereof. After the filing of such petition, the department and political or governmental subdivision or public corporation may negotiate the terms or conditions of any relinquishment, including any reservation of rights by either party, except that any rights and conditions asserted by the department as existing at the time of right-of-way acquisition or stipulated to as a requirement for federal funding of project development and construction shall not be negotiable. The petition and a written memorandum of understanding executed by the department and the political or governmental subdivision or public corporation, together with a written instrument describing the proposed relinquishment, shall be filed as a public record in the department. The memorandum of understanding shall detail the reservation of rights made by either party, including any restrictions upon any future use of the fragment, section, or route to be relinquished, and shall also state the right of the political or governmental subdivision or public corporation to petition the department to seek renegotiation of the terms and conditions of the relinquishment at a future date. Such written instrument shall bear the department seal and shall be dated and subscribed by the Director-State Engineer and state the terms or conditions, if any pursuant to the memorandum of understanding, upon which the relinquishment shall be qualified. Such written instrument shall be certified by the department and be recorded in the office of the register of deeds of the county where the portion of the state highway system is being relinquished. No fee shall be charged for such recording. After such recording, the fragment, section, route, or portion relinquished will be the responsibility of such political or governmental subdivision or public corporation, subject to any mutually agreed terms or conditions. At any time after the relinquishment, the political or governmental subdivision or public corporation may, upon a showing of a change in financial or other circumstances or for

economic development purposes, petition the department to renegotiate the agreed terms or conditions of the relinquishment or revert to abandonment. If the department agrees to new terms or conditions, it shall file an amended memorandum of understanding executed by the department and the political or governmental subdivision or public corporation and certify and record an amended written instrument with the register of deeds.

Source: Laws 1955, c. 148, § 14, p. 423; Laws 2018, LB78, § 1.

(d) PLANNING AND RESEARCH

39-1316 State highway system; establishment, construction, maintenance; plans and specifications.

The department shall be responsible for the preparation and adoption of plans and specifications for the establishment, construction, and maintenance of the state highway system. Such plans and specifications may be amended, from time to time, as the department deems advisable. Such plans and specifications should conform, as closely as practicable, to those adopted by the American Association of State Highway and Transportation Officials.

Source: Laws 1955, c. 148, § 16, p. 424; Laws 2021, LB174, § 1.

(e) LAND ACQUISITION

39-1320 State highway purposes; acquisition of property; eminent domain; purposes enumerated.

(1) The department is hereby authorized to acquire, either temporarily or permanently, lands, real or personal property or any interests therein, or any easements deemed to be necessary or desirable for present or future state highway purposes by gift, agreement, purchase, exchange, condemnation, or otherwise. Such lands or real property may be acquired in fee simple or in any lesser estate. It is the intention of the Legislature that all property leased or purchased from the owner shall receive a fair price.

(2) State highway purposes, as referred to in subsection (1) of this section or otherwise in sections 39-1301 to 39-1362 and 39-1393, shall include provision for, but shall not be limited to, the following:

(a) The construction, reconstruction, relocation, improvement, and maintenance of the state highway system and highway approaches. The right-of-way for such highways shall be of such width as is deemed necessary by the department;

(b) Adequate drainage in connection with any highway, cuts, fills, or channel changes and the maintenance thereof;

(c) Controlled-access facilities, including air, light, view, and frontage and service roads to highways;

(d) Weighing stations, shops, storage buildings and yards, and road maintenance or construction sites;

(e) Road material sites, sites for the manufacture of road materials, and access roads to such sites;

(f) The preservation of objects of attraction or scenic value adjacent to, along, or in close proximity to highways and the culture of trees and flora which may increase the scenic beauty of such highways;

(g) Roadside areas or parks adjacent to or near any highway;

(h) The exchange of property for other property to be used for rights-of-way or other purposes set forth in subsection (1) or (2) of this section if the interests of the state will be served and acquisition costs thereby reduced;

(i) The maintenance of an unobstructed view of any portion of a highway so as to promote the safety of the traveling public;

(j) The construction and maintenance of stock trails and cattle passes;

(k) The erection and maintenance of marking and warning signs and traffic signals;

(l) The construction and maintenance of sidewalks and highway illumination;

(m) The control of outdoor advertising which is visible from the nearest edge of the right-of-way of the Highway Beautification Control System as defined in section 39-201.01 to comply with the provisions of 23 U.S.C. 131, as amended;

(n) The relocation of or giving assistance in the relocation of individuals, families, businesses, or farm operations occupying premises acquired for state highway or federal-aid road purposes; and

(o) The establishment and maintenance of wetlands to replace or to mitigate damage to wetlands affected by highway construction, reconstruction, or maintenance. The replacement lands shall be capable of being used to create wetlands comparable to the wetlands area affected. The area of the replacement lands may exceed the wetlands area affected. Lands may be acquired to establish a large or composite wetlands area, sometimes called a wetlands bank, not larger than an area which is one hundred fifty percent of the lands reasonably expected to be necessary for the mitigation of future impact on wetlands brought about by highway construction, reconstruction, or maintenance during the six-year plan or program as required by section 39-2115 or an annual plan or program under section 39-2118. For purposes of this section, wetlands shall have the definition found in 33 C.F.R. 328.3(c).

(3) The procedure to condemn property authorized by subsection (1) of this section or elsewhere in sections 39-1301 to 39-1362 and 39-1393 shall be exercised in the manner set forth in sections 76-704 to 76-724 or as provided by section 39-1323, as the case may be.

Source: Laws 1955, c. 148, § 20, p. 425; Laws 1961, c. 195, § 1, p. 594; Laws 1969, c. 329, § 2, p. 1178; Laws 1972, LB 1181, § 3; Laws 1975, LB 213, § 5; Laws 1992, LB 899, § 1; Laws 1992, LB 1241, § 3; Laws 1993, LB 15, § 7; Laws 1995, LB 264, § 23; Laws 2007, LB277, § 1; Laws 2016, LB1038, § 10; Laws 2017, LB271, § 7; Laws 2017, LB339, § 125; Laws 2019, LB82, § 3; Laws 2022, LB750, § 3.
Operative date July 21, 2022.

Cross References

Advertising and informational signs along highways and roads, see sections 39-201.01 to 39-226.
Outdoor advertising signs, displays, and devices, rules and regulations of the Department of Transportation, see section 39-102.
Outdoor advertising signs, removal, see sections 69-1701 and 69-1702.

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

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

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

(f) CONTROL OF ACCESS

39-1328.01 State highways; frontage roads; request by municipality, county, or property owners; right-of-way acquired by purchase or lease; department; maintenance.

Whenever a highway not a freeway, which formerly traversed the corporate limits of a municipality of not more than five thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, is relocated and is made a controlled-access facility, and the department is or is not providing any frontage road as authorized by section 39-1328, near an intersection with a roadway connecting with such municipality, the department shall, when consistent with requirements of traffic safety, and when the cost of drainage structures does not exceed five thousand dollars, and upon the conditions hereinafter set out construct such frontage roads if requested to do so by such municipality, by the county, or by the owners of sixty percent of the property abutting on such relocated highway if such request is made prior to the purchase, lease, or lease with option to purchase of right-of-way by the department. The quadrant of such intersection in which the frontage road or roads shall be located shall be designated by the governing board of such municipality. The department shall at the request of the county or municipality procure the right-of-way for such frontage road by lease or lease-option to buy or in the same manner as though it were for state highway purposes after receiving from the county or municipality reasonable assurance of reimbursement for such right-of-way costs. The responsibility for the maintenance of such frontage road shall be as provided in section 39-1372.

Source: Laws 1965, c. 211, § 1, p. 619; Laws 2017, LB113, § 40; Laws 2017, LB339, § 127.

39-1328.02 State highways; frontage roads; request by municipality, county, or property owners; consent of federal government, when; right-of-way; reimbursement; maintenance.

Whenever a highway not a freeway, which formerly traversed the corporate limits of a municipality, has been relocated since January 1, 1960, and has been made or will be made a controlled-access facility, and the department has not provided any frontage road as authorized by section 39-1328, near an intersection with a roadway connecting with such municipality, the department shall, when consistent with requirements of traffic safety, and when the cost of drainage structures does not exceed five thousand dollars, and upon the conditions hereinafter set out construct such frontage roads if requested to do so by such municipality, the county, or by the owners of sixty percent of the property abutting on such relocated highway within two years after November 18, 1965, or within two years after the highway is made a controlled-access facility. If agreements exist with the federal government requiring its consent to the relinquishment of control of access, the department shall make a bona fide effort to secure such consent, but upon failure to obtain such consent, the frontage road shall not be constructed, or, if conditions are imposed by the federal government, the department shall construct such frontage roads only in accordance with such conditions. The municipality, county, or owners requesting such frontage road shall reimburse the department for any damages which it paid for such control of access and also for payment to the federal government of such sum, if any, demanded by it for the relinquishment of the access control. The quadrant of such intersection in which the frontage road may be located shall be designated by the governing board of such municipality. The department shall at the request of the county or municipality procure the right-of-way for such frontage road in the same manner as though it were for state highway purposes after receiving from the county or municipality reasonable assurance of reimbursement for such right-of-way costs. The responsibility for the maintenance of such frontage road shall be as provided in section 39-1372.

Source: Laws 1965, c. 211, § 2, p. 620; Laws 2017, LB339, § 128.

(g) CONSTRUCTION AND MAINTENANCE

39-1337 State highway system and highway approach; department; construction, maintenance, control; improvement; sufficiency rating.

(1) The construction, maintenance, protection, and control of the state highway system shall be under the authority and responsibility of the department, except as otherwise provided in sections 39-1339 and 39-1372.

(2) The construction, reconstruction, relocation, improvement, or maintenance of a highway approach damaged or destroyed due to (a) an extreme weather event or (b) faulty engineering shall be under the authority and responsibility of the department. The department may seek reimbursement from any party responsible for causing faulty engineering.

(3) The relative urgency of proposed improvements on the state highway system and highway approaches shall be determined by a sufficiency rating established by the department, insofar as the use of such a rating is deemed practicable. The sufficiency rating shall include, but not be limited to, the

following factors: (a) Surface condition, (b) economic factors, (c) safety, and (d) service.

Source: Laws 1955, c. 148, § 37, p. 433; Laws 1961, c. 184, § 3, p. 565; Laws 2022, LB750, § 4.
Operative date July 21, 2022.

39-1345.01 State highways; public use while under construction, repair, or maintenance; contractor; liability.

Whenever the department, under the authority of section 39-1345, permits the public use of a highway undergoing construction, repair, or maintenance in lieu of a detour route, the contractor shall not be held responsible for damages to those portions of the project upon which the department has permitted public use, when such damages are the result of no proximate act or failure to act on the part of the contractor.

Source: Laws 1969, c. 310, § 1, p. 1114; Laws 2001, LB 489, § 11; Laws 2017, LB339, § 129.

(h) CONTRACTS

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

(1) Except as provided in subsections (5) and (6) of this section, all contracts for the construction, reconstruction, improvement, maintenance, or repair of state highway system roads and bridges and their appurtenances shall be let by the department to the lowest responsible bidder. Bidders on such contracts must be prequalified to bid by the department except as provided in subsection (2) of section 39-1351. The department may reject any or all bids and cause the work to be done as may be directed by the department.

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

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

(4) When the department is required by acts of Congress and rules and regulations made by an agent of the United States in pursuance of such acts to predetermine minimum wages to be paid laborers and mechanics employed on highway construction, the Director-State Engineer shall cause minimum rates of wages for such laborers and mechanics to be predetermined and set forth in contracts for such construction. The minimum rates shall be the scale of wages which the Director-State Engineer finds are paid and maintained by at least fifty percent of the contractors in performing highway work contracted with the

department unless the Director-State Engineer further finds that such scale of wages so determined would unnecessarily increase the cost of such highway work to the state, in which event he or she shall reduce such determination to such scale of wages as he or she finds is required to avoid such unnecessary increase in the cost of such highway work.

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

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

Source: Laws 1955, c. 148, § 49, p. 439; Laws 1959, c. 177, § 1, p. 648; Laws 1961, c. 197, § 1, p. 599; Laws 1967, c. 240, § 1, p. 640; Laws 1969, c. 332, § 1, p. 1188; Laws 1980, LB 279, § 3; Laws 1993, LB 539, § 1; Laws 2002, LB 491, § 1; Laws 2015, LB312, § 2; Laws 2019, LB616, § 1.

39-1350 Bids; contracts; department powers; department authorized to act for political subdivision.

The department shall have the authority to act for any political or governmental subdivision or public corporation of this state for the purpose of taking bids or letting contracts for the construction, reconstruction, improvement, maintenance, or repair of roads, bridges, and their appurtenances. The department, while so acting, may take such bids and let such contracts at the offices of the department in Lincoln, Nebraska, or at such other location as designated by the department if the department has the written consent of the political or governmental subdivision or public corporation where the work is to be done.

Source: Laws 1955, c. 148, § 50, p. 439; Laws 1969, c. 333, § 1, p. 1189; Laws 2015, LB312, § 3; Laws 2017, LB339, § 130.

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

(1) Except as provided in subsection (2) of this section, any person desiring to submit to the department a bid for the performance of any contract for the construction, reconstruction, improvement, maintenance, or repair of roads, bridges, and their appurtenances, which the department proposes to let, shall apply to the department for prequalification. Such application shall be made not later than five days before the letting of the contract unless fewer than five

days is specified by the department. The department shall determine the extent of any applicant's qualifications by a full and appropriate evaluation of the applicant's experience, bonding capacity as determined by a bonding agency licensed to do business in the State of Nebraska or other sufficient financial showing deemed satisfactory by the department, and performance record. In determining the qualification of an applicant to bid on any particular contract, the department shall consider the resources available for the particular contract contemplated.

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

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

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

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

(2) Subsection (1) of this section shall not apply to any contract granted an exemption from prequalification requirements pursuant to subsection (2) of section 39-1351.

Source: Laws 1955, c. 148, § 52, p. 440; Laws 1961, c. 198, § 1, p. 601; Laws 2015, LB312, § 5; Laws 2019, LB117, § 2.

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

(1) Any person desiring to bid on any contract for the construction, reconstruction, improvement, maintenance, or repair of roads, bridges, and their appurtenances to be let by the department shall request an authorization to bid from the department at the offices of the department in Lincoln, Nebraska, or at such other location as designated by the department not later than 5 p.m. of the day before the letting of the contract.

(2) Such authorization shall be issued only to those persons previously qualified by the department and bids shall be accepted only from such qualified persons. This subsection shall not apply to any contract granted an exemption from prequalification requirements pursuant to subsection (2) of section 39-1351.

Source: Laws 1955, c. 148, § 53, p. 440; Laws 1969, c. 333, § 2, p. 1189; Laws 1995, LB 447, § 1; Laws 2015, LB312, § 6; Laws 2017, LB339, § 131; Laws 2019, LB117, § 3.

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

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

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

(j) MISCELLANEOUS

39-1359.01 Rights-of-way; mowing and harvesting of hay; permit; fee; department; powers and duties.

For purposes of this section, the definitions in section 39-1302 apply.

The department shall issue permits which authorize and regulate the mowing and harvesting of hay on the right-of-way of highways of the state highway system. The applicant for a permit shall be informed in writing and shall sign a release acknowledging (1) that he or she will assume all risk and liability for hay quality and for any accidents and damages that may occur as a result of the work and (2) that the State of Nebraska assumes no liability for the hay quality or for work done by the permittee. The applicant shall show proof of liability insurance of at least one million dollars. The owner or the owner's assignee of land abutting the right-of-way shall have priority to receive a permit for such land under this section until July 30 of each year. Applicants who are not owners of abutting land shall be limited to a permit for five miles of right-of-way per year. The department shall allow mowing and hay harvesting on or after July 15 of each year. The department shall charge a permit fee in an amount calculated to defray the costs of administering this section. All fees received under this section shall be remitted to the State Treasurer for credit to the Highway Cash Fund. The department shall adopt and promulgate rules and regulations to carry out this section.

Source: Laws 2007, LB43, § 1; Laws 2014, LB698, § 1; Laws 2017, LB339, § 132.

39-1363 Preservation of historical, archaeological, and paleontological remains; agreements; funds; payment.

To more effectually preserve the historical, archaeological, and paleontological remains of the state, the department is authorized to enter into agreements with the appropriate agencies of the state charged with preserving historical, archaeological, and paleontological remains to have these agencies remove and preserve such remains disturbed or to be disturbed by highway construction and to use highway funds, when appropriated, for this purpose. This authority specifically extends to highways which are part of the National System of Interstate and Defense Highways as defined in the Federal Aid Highway Act of 1956, Public Law 627, 84th Congress, and the use of state funds on a matching basis with federal funds therein.

Source: Laws 1959, c. 178, § 1, p. 649; Laws 2017, LB339, § 133.

39-1364 Plans, specifications, and records of highway projects; available to public, when.

The department shall, upon the request of any citizen of this state, disclose to such citizen full information concerning any highway construction, alteration, maintenance, or repair project in this state, whether completed, presently in process, or contemplated for future action, and permit an examination of the plans, specifications, and records concerning such project, except that any information received by the department as confidential by the laws of this state shall not be disclosed. Any person who willfully fails to comply with the provisions of this section shall be guilty of official misconduct. By the provisions of this section, the officials of the department will not be required to furnish information on the right-of-way of any proposed highway until such information can be made available to the general public.

Source: Laws 1959, c. 179, § 1, p. 650; Laws 2017, LB339, § 134.

39-1365.01 State highway system; plans; department; duties; priorities.

The department shall be responsible for developing a specific and long-range state highway system plan. The department shall annually formulate plans to meet the state highway system needs of all facets of the state and shall assign priorities for such needs. The department shall, on or before December 1 of each year, present such plans and the report required in section 39-1365.02 to the Legislature. The plans shall be referred to the appropriate standing committees of the Legislature for review. The department shall consider the preservation of the existing state highway system asset as its primary priority except as may otherwise be provided in state or federal law. In establishing secondary priorities, the department shall consider a variety of factors, including, but not limited to, current and projected traffic volume, safety requirements, economic development needs, current and projected demographic trends, and enhancement of the quality of life for all Nebraska citizens. The state highway system plan shall include the designation of those portions of the state highway system which shall be expressways.

Source: Laws 1988, LB 632, § 24; Laws 2010, LB821, § 1; Laws 2017, LB339, § 135; Laws 2021, LB579, § 1.

39-1365.02 State highway system; federal funding; maximum use; department; report on system needs and planning procedures.

(1) The department shall apply for and make maximum use of available federal funding, including discretionary funding, on all highway construction projects which are eligible for such assistance.

(2) The department shall transmit electronically to the Legislature, by December 1 of each year, a report on the needs of the state highway system, the department's planning procedures, and the progress being made on the expressway system. Such report shall include:

(a) The criteria by which highway needs are determined;

(b) The standards established for each classification of highways;

(c) An assessment of current and projected needs of the state highway system, such needs to be defined by category of improvement required to bring each segment up to standards. Projected fund availability shall not be a consideration by which needs are determined;

(d) Criteria and data, including factors enumerated in section 39-1365.01, upon which decisions may be made on possible special priority highways for commercial growth;

(e) A review of the department's procedure for selection of projects for the annual construction program, the five-year planning program, and extended planning programs. The review shall include a statement of all state highway projects under construction, other than any part of the expressway system, and the estimated cost of each project;

(f) A review of the progress being made toward completion of the expressway system, as such system was designated on January 1, 2016, and whether such work is on pace for completion prior to June 30, 2033. The review shall include a statement of the amount of money spent on the expressway system, as of the date of the report, and the number of miles of the expressway system yet to be completed and expected milestone dates for other expressway projects, including planning, permitting, designing, bid letting, and required funding for project completion;

(g) A review of the Transportation Infrastructure Bank Fund and the fund's component programs under sections 39-2803 to 39-2807. This review shall include a listing of projects funded and planned to be funded under each of the three component programs; and

(h) A review of the outcomes of the Economic Opportunity Program, including the growth in permanent jobs and related income and the net increase in overall business activity.

Source: Laws 1988, LB 632, § 25; Laws 2012, LB782, § 40; Laws 2016, LB960, § 27; Laws 2017, LB339, § 136; Laws 2021, LB579, § 2.

(l) STATE RECREATION ROADS

39-1390 State Recreation Road Fund; created; use; preferences; maintenance; investment.

The State Recreation Road Fund is created. The money in the fund shall be transferred by the State Treasurer, on the first day of each month, to the department and shall be expended by the Director-State Engineer with the approval of the Governor for construction and maintenance of dustless-surface roads to be designated as state recreation roads as provided in this section, except that (1) transfers may be made from the fund to the State Park Cash Revolving Fund at the direction of the Legislature through July 31, 2016, and (2) if the balance in the State Recreation Road Fund exceeds fourteen million dollars on the first day of each month, the State Treasurer shall transfer the amount greater than fourteen million dollars to the Game and Parks State Park Improvement and Maintenance Fund. Except as to roads under contract as of March 15, 1972, those roads, excluding state highways, giving direct and immediate access to or located within state parks, state recreation areas, or other recreational or historical areas, shall be eligible for designation as state recreation roads. Such eligibility shall be determined by the Game and Parks Commission and certified to the Director-State Engineer, who shall, after receiving such certification, be authorized to commence construction on such recreation roads as funds are available. In addition, those roads, excluding state highways, giving direct and immediate access to a state veteran cemetery are state recreation roads. After construction of such roads they shall be shown on

the map provided by section 39-1311. Preference in construction shall be based on existing or potential traffic use by other than local residents. Unless the State Highway Commission otherwise recommends, such roads upon completion of construction shall be incorporated into the state highway system. If such a road is not incorporated into the state highway system, the department and the county within which such road is located shall enter into a maintenance agreement establishing the responsibility for maintenance of the road, the maintenance standards to be met, and the responsibility for maintenance costs. Any money in the State Recreation Road Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1963, c. 348, § 2, p. 1119; Laws 1965, c. 225, § 1, p. 649; Laws 1965, c. 501, § 1, p. 1595; Laws 1969, c. 584, § 42, p. 2369; Laws 1972, LB 1131, § 1; Laws 1995, LB 7, § 36; Laws 2003, LB 408, § 1; Laws 2009, First Spec. Sess., LB3, § 20; Laws 2010, LB749, § 1; Laws 2014, LB906, § 15; Laws 2015, LB661, § 30; Laws 2017, LB339, § 137.

Cross References

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

39-1392 Exterior access roads; interior service roads; department; develop and file plans with Governor and Legislature; reviewed annually.

The department shall develop and file with the Governor and the Legislature a one-year and a long-range five-year plan of scheduled design, construction, and improvement for all exterior access roads and interior service roads as certified to it by the Game and Parks Commission. The first such plans shall be filed on or before January 1, 1974. The plans shall be reviewed and extended annually, on or before January 1 of each year, so that there shall always be a current one-year and five-year plan on file. The plans submitted to the Legislature shall be submitted electronically. The department shall also, at the time it files such plans and extensions thereof, report the design, construction, and improvement accomplished during each of the two immediately preceding calendar years.

Source: Laws 1973, LB 374, § 2; Laws 2012, LB782, § 42; Laws 2017, LB339, § 138.

ARTICLE 14

COUNTY ROADS. GENERAL PROVISIONS

Section
39-1407. County road improvement projects; lettings; procedure; county board may authorize Department of Transportation to conduct; contractors' bonds.
39-1411. Road and bridge records, who must keep; carrying capacity posted on bridges.
39-1412. County bridges; loads exceeding limits or posted capacity; no damage recovery; violation; penalty.

39-1407 County road improvement projects; lettings; procedure; county board may authorize Department of Transportation to conduct; contractors' bonds.

Whenever contracts are to be let for road improvements, it shall be the duty of the county board to cause to be prepared and filed with the county clerk an

estimate of the nature of the work and the cost thereof. After such estimate has been filed, bids for such contracts shall be advertised by publication of a notice thereof once a week for three consecutive weeks in a legal newspaper of the county prior to the date set for receiving bids. Bids shall be let to the lowest responsible bidder. The board shall have the discretionary power to reject any and all bids for sufficient cause. If all bids are rejected, the county board shall have the power to negotiate any contract for road improvements, but the county board shall adhere to all specifications that were required for the initial bids on contracts. The board shall have the discretionary power to authorize the Department of Transportation to take and let bids on behalf of the county at the offices of the department in Lincoln, Nebraska. When the bid is accepted the bidder shall enter into a sufficient bond for the use and benefit of the county, precinct, or township, for the faithful performance of the contract, and for the payment of all laborers employed in the performance of the work, and for the payment of all damages which the county, precinct, or township may sustain by reason of any failure to perform the work in the manner stipulated. It shall be the duty of the county to determine whether or not the work is performed in keeping with such contract before paying for the same.

Source: Laws 1957, c. 155, art. I, § 7, p. 510; Laws 1972, LB 1058, § 12; Laws 1975, LB 114, § 2; Laws 2017, LB339, § 139.

39-1411 Road and bridge records, who must keep; carrying capacity posted on bridges.

The county highway superintendent or some other qualified person designated by the county board shall keep in his or her office a road record which shall include a record of the proceedings in regard to the laying out, establishing, changing, or discontinuing of all roads in the county hereafter established, changed, or discontinued, and a record of the cost and maintenance of all such roads. Such person shall record in the bridge record a record of all county bridges and culverts showing number, location, and description of each, and a record of the cost of construction and maintenance of all such bridges and culverts. If the carrying capacity or weight limit of any bridge is less than the limits set forth in subsections (2), (3), and (4) of section 60-6,294, the county shall cause to be firmly posted or attached upon such bridge in a conspicuous place at each end thereof a board or metal sign showing the carrying capacity or weight which the bridge will safely carry or bear.

Source: Laws 1957, c. 155, art. I, § 11, p. 511; Laws 2018, LB310, § 1.

Cross References

Road record, duties of county clerk, see section 23-1305.

39-1412 County bridges; loads exceeding limits or posted capacity; no damage recovery; violation; penalty.

(1) No person shall drive across or go upon any county bridge with a greater weight than the limits set forth in subsections (2), (3), and (4) of section 60-6,294 or the carrying capacity or weight posted or attached pursuant to section 39-1411.

(2) A person who violates this section shall recover no damages from the county for any accident or injury which may happen to him or her upon such bridge because of damage to or the failure of such bridge caused by such violation.

(3) A person who violates this section shall be guilty of a Class III misdemeanor.

Source: Laws 1957, c. 155, art. I, § 12, p. 512; Laws 1977, LB 40, § 214; Laws 2018, LB310, § 2.

ARTICLE 15

COUNTY ROADS. ORGANIZATION AND ADMINISTRATION

(a) COUNTY HIGHWAY BOARD

(b) COUNTY HIGHWAY SUPERINTENDENT

(a) COUNTY HIGHWAY BOARD

39-1503 Highway superintendent or road unit system counties; county boards; duties.

It shall be the duty of the county board in commissioner-type counties having a county highway superintendent and in township-type counties having adopted a county road unit system to:

(1) Give notice to the public of the date set for public hearings upon the proposed county highway program of the county highway superintendent for the forthcoming year by publication once a week for three consecutive weeks in a legal newspaper published in the county or, if none is published in the county, in a legal newspaper of general circulation in the county. The notice shall clearly state the purpose, time, and place of such public hearings;

(2) Adopt a county highway annual program no later than March 1 of each year which shall include a schedule of construction, repair, and maintenance projects and the order of priority of such projects to be undertaken and carried out by the county and a list of equipment to be purchased and the priority of such purchases, within the limits of the estimated funds available during the next twelve months;

(3) Adopt standards to be applied in road and bridge repair, maintenance, and construction;

(4) Advertise for and take and let bids for all or any portion of the county road work when letting bids, except that when the Department of Transportation takes bids on behalf of the county, the county shall have authority to permit such bids to be taken and let at the offices of the department in Lincoln, Nebraska; and

(5) Cause investigations, studies, and inspections to be made, hold public hearings, and do all other things necessary to carry out the duties imposed upon it by law.

Source: Laws 1957, c. 155, art. II, § 3, p. 514; Laws 1969, c. 333, § 3, p. 1190; Laws 1986, LB 960, § 28; Laws 2017, LB339, § 140.

(b) COUNTY HIGHWAY SUPERINTENDENT

39-1506 County highway superintendent; qualifications.

Any person, whether or not a resident of the county, who is a duly licensed engineer in this state, any firm of consulting engineers duly licensed in this state, or any other person who is a competent, experienced, practical road builder shall be qualified to serve as county highway superintendent, except that no member of the county board shall be eligible for appointment. In counties having a population of one hundred thousand but less than one hundred fifty thousand inhabitants according to the most recent official United States census, the county surveyor shall perform all the duties and possess all the powers and functions of the county highway superintendent. In counties having a population of one hundred fifty thousand or more inhabitants, the county engineer shall serve as county highway superintendent.

Source: Laws 1957, c. 155, art. II, § 6, p. 515; Laws 1982, LB 127, § 9; Laws 1986, LB 512, § 3; Laws 2017, LB200, § 4; Laws 2022, LB791, § 4.
Effective date July 21, 2022.

39-1508 Highway superintendent; duties.

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

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

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

(3) Undertake the projects contained in subdivision (1) of this section, and when requested by the county board report the projects completed, the projects in construction, the equipment and material purchased, the amounts expended upon roads and bridges, and the sum remaining to be expended, except that deviations from the adopted program may be authorized by the unanimous vote of the county board in case of an emergency.

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

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

ARTICLE 16

COUNTY ROADS. ROAD IMPROVEMENT DISTRICTS

(a) SPECIAL IMPROVEMENT DISTRICTS

(a) SPECIAL IMPROVEMENT DISTRICTS

39-1621 Budget; taxes; levy; limitation; certification; collection; disbursement.

(1) The board of trustees may, after adoption of the budget statement for such district, annually levy and collect the amount of taxes provided in the adopted budget statement of the district to be received from taxation for corporate purposes upon property within the limits of such road improvement district to the amount of not more than three and five-tenths cents on each one hundred dollars upon the taxable value of the taxable property in such district for general maintenance and operating purposes subject to section 77-3443. The board shall, on or before September 30 of each year, certify any such levy to the county clerk of the counties in which such district is located who shall extend the levy upon the county tax list.

(2) The county treasurer of the county in which the greater portion of the area of the district is located shall be ex officio treasurer of the road improvement district and shall be responsible for all funds of the district coming into his or her hands. The treasurer shall collect all taxes and special assessments levied by the district and collected by him or her from his or her county or from other county treasurers if there is more than one county having land in the district and all money derived from the sale of bonds or warrants. The treasurer shall not be responsible for such funds until they are received by him or her. The treasurer shall disburse the funds of the district only on warrants authorized by the trustees and signed by the president and clerk.

Source: Laws 1957, c. 155, art. III, § 21, p. 533; Laws 1969, c. 145, § 35, p. 694; Laws 1979, LB 187, § 159; Laws 1992, LB 1063, § 36; Laws 1992, Second Spec. Sess., LB 1, § 36; Laws 1993, LB 734, § 39; Laws 1995, LB 452, § 12; Laws 1996, LB 1114, § 57; Laws 2021, LB644, § 17.

39-1635 Annexation of territory by a city or village; effect on certain contracts.

Whenever any city or village annexes all the territory within the boundaries of any road improvement district organized under sections 39-1601 to 39-1636.01, the district shall merge with the city or village and the city or village shall succeed to all the property and property rights of every kind, contracts, obligations, and choses in action of every kind, held by or belonging to the district, and the city or village shall be liable for and recognize, assume, and carry out all valid contracts and obligations of the district. All taxes, assessments, claims, and demands of every kind due or owing to the district shall be paid to and collected by the city or village. Any special assessments which the district was authorized to levy, assess, relevy, or reassess, but which were not levied, assessed, relevied, or reassessed, at the time of the merger, for improvements made by it or in the process of construction or contracted for may be levied, assessed, relevied, or reassessed by the annexing city or village to the same extent as the district may have levied or assessed but for the merger. Nothing in this section shall authorize the annexing city or village to revoke any resolution, order, or finding made by the district in regard to special benefits or increase any assessments made by the district, but such city or village shall be bound by all such findings or orders and assessments to the same extent as the district would be bound. No district so annexed shall have power to levy any special assessments after the effective date of such annexation.

Source: Laws 2018, LB130, § 10.

39-1635.01 Annexation; trustees; accounting; effect.

The trustees of a road improvement district shall, within thirty days after the effective date of the merger, submit to the city or village a written accounting of all assets and liabilities, contingent or fixed, of the district. Unless the city or village within six months thereafter brings an action against the trustees of the district for an accounting or for damages for breach of duty, the trustees shall be discharged of all further duties and liabilities and their bonds exonerated. If the city or village brings such an action and does not recover judgment in its favor, the taxable costs may include reasonable expenses incurred by the trustees of the road improvement district in connection with such suit and a reasonable attorney's fee for the trustees' attorney. The city or village shall represent the district and all parties who might be interested in such an action. The city or village and such trustees shall be the only necessary parties to such action. Nothing contained in this section shall authorize the trustees to levy any special assessments after the effective date of the merger.

Source: Laws 2018, LB130, § 11.

39-1635.02 Annexation; when effective; trustees; duties; special assessments prohibited.

The merger shall be effective thirty days after the effective date of the ordinance annexing the territory within the road improvement district. If the validity of the ordinance annexing the territory is challenged by a proceeding in a court of competent jurisdiction, the effective date of the merger shall be thirty days after the final determination of the validity of the ordinance. The trustees of the road improvement district shall continue in possession and conduct the affairs of the district until the effective date of the merger, but shall not during such period levy any special assessments after the effective date of annexation.

Source: Laws 2018, LB130, § 12.

39-1635.03 Annexation; obligations and assessments; agreement to divide; approval; decree.

If only a part of the territory within any road improvement district is annexed by a city or village, the road improvement district acting through its trustees and the city or village acting through its governing body may agree between themselves as to the division of the assets, liabilities, maintenance, contracts, or other obligations of the district for a change in the boundaries of the district so as to exclude the portion annexed by the city or village or may agree upon a merger of the district with the city or village. The division of assets, liabilities, maintenance, contracts, or other obligations of the district shall be equitable, shall be proportionate to the valuation of the portion of the district annexed and to the valuation of the portion of the district remaining following annexation, and shall, to the greatest extent feasible, reflect the actual impact of the annexation on the ability of the district to perform its duties and responsibilities within its new boundaries following annexation. In the event a merger is agreed upon, the city or village shall have all the rights, privileges, duties, and obligations as provided in sections 39-1635 to 39-1635.02 when the city or village annexes the entire territory within the district, and the trustees shall be relieved of all further duties and liabilities and their bonds exonerated as provided in section 39-1635.01. No agreement between the district and the city or village shall be effective until submitted to and approved by the district court

of the county in which the major portion of the district is located. No agreement shall be approved which may prejudice the rights of any bondholder or creditor of the district or employee under contract to the district. The court may authorize or direct amendments to the agreement before approving the same. If the district and city or village do not agree upon the proper adjustment of all matters growing out of the annexation of a part of the territory located within the district, the district, the annexing city or village, any bondholder or creditor of the district, or any employee under contract to the district may apply to the district court of the county where the major portion of the district is located for an adjustment of all matters growing out of or in any way connected with the annexation of such territory, and after a hearing thereon the court may enter an order or decree fixing the rights, duties, and obligations of the parties. In every case such decree or order shall require a change of the district boundaries so as to exclude from the district that portion of the territory of the district which has been annexed. Such change of boundaries shall become effective on the date of entry of such decree. Only the district and the city or village shall be necessary parties to such an action. Any bondholder or creditor of the district or any employee under contract to the district whose interests may be adversely affected by the annexation may intervene in the action pursuant to section 25-328. The decree when entered shall be binding on the parties the same as though the parties had voluntarily agreed thereto. Nothing contained in this section shall authorize any district to levy any special assessments within the annexed area after the effective date of annexation.

Source: Laws 2018, LB130, § 13.

ARTICLE 17

COUNTY ROADS. LAND ACQUISITION, ESTABLISHMENT, ALTERATION, SURVEY, RELOCATION, VACATION, AND ABANDONMENT

(a) LAND ACQUISITION

(a) LAND ACQUISITION

39-1703 State lands; acquisition for county road purposes; approval of Governor and Department of Transportation; damages.

The county board of any county and the governing authority of any city or village may acquire land owned, occupied, or controlled by the state or any state institution, board, agency, or commission, whenever such land is necessary to construct, reconstruct, improve, relocate, or maintain a county road or a city or village street or to provide adequate drainage for such roads or streets. The procedure for such acquisition shall, as nearly as possible, be that provided in sections 72-224.02 and 72-224.03. Prior to taking any land for any such purposes, a certificate that the taking of such land is in the public interest must be obtained from the Governor and from the Department of Transportation and

be filed in the office of the Department of Administrative Services and a copy thereof in the office of the Board of Educational Lands and Funds. The damages assessed in such proceedings shall be paid to the Board of Educational Lands and Funds and shall be remitted by that board to the State Treasurer for credit to the proper account.

Source: Laws 1957, c. 155, art. IV, § 3, p. 542; Laws 1969, c. 317, § 10, p. 1149; Laws 2017, LB339, § 141.

(b) ESTABLISHMENT, ALTERATION, AND SURVEY

39-1713 Isolated land; access; affidavit; petition; hearing before county board; time; terms, defined.

(1) When any person presents to the county board an affidavit satisfying it (a) that he or she is the owner of the real estate described therein located within the county, (b) that such real estate is shut out from all public access, other than a waterway, by being surrounded on all sides by real estate belonging to other persons, or by such real estate and by water, (c) that he or she is unable to purchase from any of such persons the right-of-way over or through the same to a public road or that it cannot be purchased except at an exorbitant price, stating the lowest price for which the same can be purchased by him or her, and (d) asking that an access road be provided in accordance with section 39-1716, the county board shall appoint a time and place for hearing the matter, which hearing shall be not more than thirty days after the receipt of such affidavit. The application for an access road may be included in a separate petition instead of in such affidavit.

(2) For purposes of sections 39-1713 to 39-1719:

(a) Access road means a right-of-way open to the general public for ingress to and egress from a tract of isolated land provided in accordance with section 39-1716; and

(b) State of Nebraska includes the Board of Educational Lands and Funds, Board of Regents of the University of Nebraska, Board of Trustees of the Nebraska State Colleges, Department of Transportation, Department of Administrative Services, and Game and Parks Commission and all other state agencies, boards, departments, and commissions.

Source: Laws 1957, c. 155, art. IV, § 13, p. 544; Laws 1982, LB 239, § 1; Laws 1999, LB 779, § 4; Laws 2017, LB339, § 142.

ARTICLE 18

COUNTY ROADS. MAINTENANCE

Section

39-1804 Main thoroughfare through cities and villages of 1,500 inhabitants or less; graveling by county; when authorized; chargeable to Highway Allocation Fund.

The county board may, with the approval of the mayor and council or the chairperson and board of trustees, as the case may be, whenever conditions

warrant, furnish, deliver, and spread gravel of a depth not exceeding three inches on certain streets in cities of the second class and villages having a population of not more than fifteen hundred inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census and shall charge the cost of such improvement to that portion of the Highway Allocation Fund allocated to such counties from the Highway Trust Fund under section 39-2215. No improvement of any street or streets in cities of the second class or villages having a population of not more than fifteen hundred inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census shall be made under the provisions of this section unless the street or streets, when graveled, will constitute one main thoroughfare through such city or village that connects with or forms a part of the county highway system of such county which has been or which shall be graveled up to the corporate limits of such city or village. Before being entitled to such county aid in graveling such thoroughfare, the same must have been properly graded by such city or village in accordance with the grade established in the construction of the county road system.

Source: Laws 1957, c. 155, art. V, § 4, p. 553; Laws 1972, LB 1058, § 13; Laws 1986, LB 599, § 10; Laws 2017, LB113, § 41.

39-1811 Weeds; mowing; duty of landowner; neglect of duty; obligation of county board; cost; assessment and collection.

(1) It shall be the duty of the landowners in this state to mow all weeds that can be mowed with the ordinary farm mower to the middle of all public roads and drainage ditches running along their lands at least twice each year, namely, sometime in July for the first time and sometime in September for the second time.

(2) This section shall not restrict landowners, a county, or a township from management of (a) roadside vegetation on road shoulders or of sight distances at intersections and entrances at any time of the year or (b) snow control mowing as may be necessary.

(3) Except as provided in subsection (2) of this section, no person employed by or under contract with a county or township to mow roadside ditches shall do such mowing before July 1 of any year.

(4) Whenever a landowner, referred to in subsections (1) and (5) of this section, neglects to mow the weeds as provided in this section, it shall be the duty of the county board on complaint of any resident of the county to cause the weeds to be mowed or otherwise destroyed on neglected portions of roads or ditches complained of.

(5) The county board shall cause to be ascertained and recorded an accurate account of the cost of mowing or destroying such weeds, as referred to in subsections (1) and (4) of this section, in such places, specifying, in such statement or account of costs, the description of the land abutting upon each side of the highway where such weeds were mowed or destroyed, and, if known, the name of the owner of such abutting land. The board shall file such statement with the county clerk, together with a description of the lands abutting on each side of the road where such expenses were incurred, and the county board, at the time of the annual tax levy made upon lands and property of the county, may, if it desires, assess such cost upon such abutting land,

giving such landowner due notice of such proposed assessment and reasonable opportunity to be heard concerning the proposed assessment before the same is finally made.

Source: Laws 1957, c. 155, art. V, § 11, p. 555; Laws 2017, LB584, § 1.

ARTICLE 19

COUNTY ROADS. ROAD FINANCES

Section
39-1901. Road damages; payment from general fund; barricades by Department of Transportation; payment by department; claimant's petition.

39-1901 Road damages; payment from general fund; barricades by Department of Transportation; payment by department; claimant's petition.

All damages caused by the laying out, altering, opening, or discontinuing of any county road shall be paid by warrant on the general fund of the county in which such road is located, except that the Department of Transportation shall pay the damages, if any, which a person sustains and is legally entitled to recover because of the barricading of a county or township road pursuant to section 39-1728. Upon the failure of the party damaged and the county to agree upon the amount of damages, the damaged party, in addition to any other available remedy, may file a petition as provided for in section 76-705.

Source: Laws 1957, c. 155, art. VI, § 1, p. 558; Laws 2017, LB339, § 143.

ARTICLE 20

COUNTY ROAD CLASSIFICATION

Section
39-2001. Designation of primary and secondary county roads by county board; procedure; determination by Department of Transportation; when; certification; record.
39-2002. County primary road system; designation by county board; when; redesignation of primary roads; procedure; current map kept on file.

39-2001 Designation of primary and secondary county roads by county board; procedure; determination by Department of Transportation; when; certification; record.

(1) The county board of each county shall select and designate, from the laid out and platted public roads within the county, certain roads to be known as primary and secondary county roads. Primary county roads shall include (a) direct highways leading to and from rural schools where ten or more grades are being taught, (b) highways connecting cities, villages, and market centers, (c) rural mail route and star mail route roads, (d) main-traveled roads, and (e) such other roads as are designated as such by the county board. All county roads not designated as primary county roads shall be secondary county roads.

(2) As soon as the primary county roads are designated as provided by subsection (1) of this section, the county board shall cause such primary county roads to be plainly marked on a map to be deposited with the county clerk and be open to public inspection. Upon filing the map the county clerk shall at once fix a date of hearing thereon, which shall not be more than twenty days nor less than ten days from the date of filing. Notice of the filing of the map and of the

date of such hearing shall be published prior to the hearing in one issue of each newspaper published in the English language in the county.

(3) At any time before the hearing provided for by subsection (2) of this section is concluded, any ten freeholders of the county may file a petition with the county clerk asking for any change in the designated primary county roads, setting forth the reason for the proposed change. Such petition shall be accompanied by a plat showing such proposed change.

(4) The roads designated on the map by the county board shall be conclusively established as the primary roads. If no agreement is reached between the county board and the petitioners at the hearing, the county clerk shall forward the map, together with all petitions and plats, to the Department of Transportation.

(5) The department shall, upon receipt of the maps, petitions, and plats, proceed to examine the same, and shall determine the lines to be followed by the said county roads, having regard to volume of traffic, continuity, and cost of construction. The department shall, not later than twenty days from the receipt thereof, return the papers to the county clerk, together with the decision of the department in writing, duly certified, and accompanied by a plat showing the lines of the county roads as finally determined. The county clerk shall file the papers and record the decision, and the same shall be conclusive as to the lines of the county roads established therein.

Source: Laws 1957, c. 155, art. VII, § 1, p. 560; Laws 2017, LB339, § 144.

39-2002 County primary road system; designation by county board; when; redesignation of primary roads; procedure; current map kept on file.

The county board of each county shall select and designate, within six months from January 1, 1958, the roads which will be county primary roads and which will constitute the county primary road system. Such roads shall be selected from those roads which already have been designated as primary county roads pursuant to section 39-2001 or from those roads which were maintained by the Department of Transportation under section 39-1309. The primary county roads shall include only the more important county roads as determined by the actual or potential traffic volumes and other traffic survey data.

The county board of each county shall have authority to redesignate the county primary roads from time to time by naming additional roads as primary roads and by rescinding the designation of existing county primary roads. The county board shall follow the same procedure for redesignation as is required by law for initially designating the county primary roads. The principle of designating only the more important county roads as primary roads as determined by the actual or potential traffic volumes and other traffic survey data shall be adhered to.

A copy of a current map of the county roads showing the location of roads and bridges and reflecting the county primary road system as designated in this section shall be kept on file and available to public inspection at the office of the county clerk and with the department.

Source: Laws 1957, c. 155, art. VII, § 2, p. 561; Laws 1963, c. 240, § 1, p. 730; Laws 2017, LB339, § 145.

ARTICLE 21
FUNCTIONAL CLASSIFICATION

Section

39-2103 Rural highways; functional classifications.

Rural highways are hereby divided into nine functional classifications as follows:

(1) Interstate, which shall consist of the federally designated National System of Interstate and Defense Highways;

(2) Expressway, which shall consist of a group of highways following major traffic desires in Nebraska which rank next in importance to the National System of Interstate and Defense Highways. The expressway system is one which ultimately should be developed to multilane divided highway standards;

(3) Major arterial, which shall consist of the balance of routes which serve major statewide interests for highway transportation. This includes super-two, which shall consist of two-lane highways designed primarily for through traffic with passing lanes spaced intermittently and on alternating sides of the highway to provide predictable opportunities to pass slower moving vehicles. This system is characterized by high-speed, relatively long-distance travel patterns;

(4) Scenic-recreation, which shall consist of highways or roads located within or which provide access to or through state parks, recreation or wilderness areas, other areas of geographical, historical, geological, recreational, biological, or archaeological significance, or areas of scenic beauty;

(5) Other arterial, which shall consist of a group of highways of less importance as through-travel routes which would serve places of smaller population and smaller recreation areas not served by the higher systems;

(6) Collector, which shall consist of a group of highways which pick up traffic from many local or land-service roads and carry it to community centers or to the arterial systems. They are the main school bus routes, mail routes, and farm-to-market routes;

(7) Local, which shall consist of all remaining rural roads, except minimum maintenance roads and remote residential roads;

(8) Minimum maintenance, which shall consist of (a) roads used occasionally by a limited number of people as alternative access roads for areas served primarily by local, collector, or arterial roads or (b) roads which are the principal access roads to agricultural lands for farm machinery and which are not primarily used by passenger or commercial vehicles; and

(9) Remote residential, which shall consist of roads or segments of roads in remote areas of counties with (a) a population density of no more than five people per square mile or (b) an area of at least one thousand square miles, and which roads or segments of roads serve as primary access to no more than seven residences. For purposes of this subdivision, residence means a structure which serves as a primary residence for more than six months of a calendar year. Population shall be determined using data from the most recent federal decennial census.

The rural highways classified under subdivisions (1) through (3) of this section should, combined, serve every incorporated municipality having a minimum population of one hundred inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census or sufficient commerce, a part of which will be served by stubs or spurs, and along with rural highways classified under subdivision (4) of this section, should serve the major recreational areas of the state.

For purposes of this section, sufficient commerce means a minimum of two hundred thousand dollars of gross receipts under the Nebraska Revenue Act of 1967.

Source: Laws 1969, c. 312, § 3, p. 1119; Laws 1972, LB 866, § 2; Laws 1976, LB 724, § 1; Laws 1980, LB 873, § 1; Laws 1983, LB 10, § 3; Laws 2008, LB1068, § 4; Laws 2017, LB113, § 42; Laws 2018, LB1009, § 1.

Cross References

Nebraska Revenue Act of 1967, see section 77-2701.

39-2105 Functional classifications; jurisdictional responsibility.

Jurisdictional responsibility for the various functional classifications of public highways and streets shall be as follows:

(1) The state shall have the responsibility for the design, construction, reconstruction, maintenance, and operation of all roads classified under the

category of rural highways as interstate, expressway, and major arterial, and the municipal extensions thereof, except that the state shall not be responsible for that portion of a municipal extension which exceeds the design of the rural highway leading into the municipality. When the design of a rural highway differs at the different points where it leads into the municipality, the state's responsibility for the municipal extension thereof shall be limited to the lesser of the two designs. The state shall be responsible for the entire interstate system under either the rural or municipal category and for connecting links between the interstate and the nearest existing state highway system in rural areas, except that if such a connecting link has not been improved and a sufficient study by the Department of Transportation results in the determination that a link to an alternate state highway would provide better service for the area involved, the department shall have the option of providing the alternate route, subject to satisfactory local participation in the additional cost of the alternate route;

(2) The various counties shall have the responsibility for the design, construction, reconstruction, maintenance, and operation of all roads classified as other arterial, collector, local, minimum maintenance, and remote residential under the rural highway category;

(3) The various incorporated municipalities shall have the responsibility for the design, construction, reconstruction, maintenance, and operation of all streets classified as expressway which are of a purely local nature, that portion of municipal extensions of rural expressways and major arterials which exceeds the design of the rural portions of such systems, and responsibility for those streets classified as other arterial, collector, and local within their corporate limits; and

(4) Jurisdictional responsibility for all scenic-recreation roads and highways shall remain with the governmental subdivision which had jurisdictional responsibility for such road or highway prior to its change in classification to scenic-recreation made pursuant to this section and sections 39-2103, 39-2109, and 39-2113.

Source: Laws 1969, c. 312, § 5, p. 1121; Laws 1971, LB 738, § 1; Laws 1980, LB 873, § 2; Laws 1983, LB 10, § 4; Laws 2008, LB1068, § 5; Laws 2017, LB339, § 146.

39-2106 Board of Public Roads Classifications and Standards; established; members; number; appointment; qualifications; compensation; expenses.

(1) To assist in developing the functional classification system, there is hereby established the Board of Public Roads Classifications and Standards which shall consist of eleven members to be appointed by the Governor with the approval of the Legislature.

(2) Of the members of such board:

(a) Two shall be representatives of the Department of Transportation;

(b) Three shall be representatives of the counties. One of such members shall be a county highway superintendent licensed pursuant to the County Highway and City Street Superintendents Act and two of such members shall be county board members;

(c) Three shall be representatives of the municipalities. Each of such members shall be a city engineer, village engineer, public works director, city

manager, city administrator, street commissioner, or city street superintendent licensed pursuant to the County Highway and City Street Superintendents Act; and

(d) Three shall be lay citizens, with one representing each of the three congressional districts of the state.

(3) The county members on the board shall represent the various classes of counties, as defined in section 23-1114.01, in the following manner:

(a) One shall be a representative from either a Class 1 or Class 2 county;

(b) One shall be a representative from either a Class 3 or Class 4 county; and

(c) One shall be a representative from either a Class 5, Class 6, or Class 7 county.

(4) The municipal members of the board shall represent municipalities of the following sizes by population, as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census:

(a) One shall be a representative from a municipality of less than two thousand five hundred inhabitants;

(b) One shall be a representative from a municipality of two thousand five hundred to fifty thousand inhabitants; and

(c) One shall be a representative from a municipality of over fifty thousand inhabitants.

(5) In making such appointments, the Governor shall consult with the Director-State Engineer and with the appropriate county and municipal officials and may consult with organizations representing such officials or representing counties or municipalities as may be appropriate.

(6) At the expiration of the existing term, one member from the county representatives, the municipal representatives, and the lay citizens shall be appointed for a term of two years; and two members from the county representatives, the municipal representatives, and the lay citizens shall be appointed for terms of four years. One representative from the department shall be appointed for a two-year term and the other representative shall be appointed for a four-year term. Thereafter, all such appointments shall be for terms of four years each.

(7) Members of such board shall receive no compensation for their services as such, except that the lay members shall receive the same compensation as members of the State Highway Commission, and all members shall be reimbursed for expenses incurred in the performance of their official duties as provided in sections 81-1174 to 81-1177. All expenses of such board shall be paid by the department.

Source: Laws 1969, c. 312, § 6, p. 1122; Laws 1971, LB 100, § 1; Laws 1981, LB 204, § 61; Laws 2017, LB113, § 43; Laws 2017, LB339, § 147; Laws 2020, LB381, § 28; Laws 2021, LB174, § 2.

Cross References

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

39-2107 Board of Public Roads Classifications and Standards; office space; furniture; equipment; supplies; personnel.

The Department of Transportation shall furnish the Board of Public Roads Classifications and Standards with necessary office space, furniture, equipment, and supplies as well as necessary professional, technical, and clerical assistance.

Source: Laws 1969, c. 312, § 7, p. 1123; Laws 2017, LB339, § 148; Laws 2021, LB174, § 3.

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

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

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

39-2110 Functional classification; specific criteria; assignment to highways, roads, streets.

Following adoption and publication of the specific criteria required by section 39-2109, the Department of Transportation, after consultation with the appropriate local authorities in each instance, shall assign a functional classification to each segment of highway, road, and street in this state. Before assigning any such classification, the department shall make reasonable effort to resolve any differences of opinion between the department and any county or municipality. Whenever a new road or street is to be opened or an existing road or street is to be extended, the department shall, upon a request from the operating jurisdiction, assign a functional classification to such segment in accordance with the specific criteria established under section 39-2109.

Source: Laws 1969, c. 312, § 10, p. 1123; Laws 2008, LB1068, § 7; Laws 2017, LB339, § 149.

39-2111 Functional classification; assignment; appeal.

The county or municipality may appeal to the Board of Public Roads Classifications and Standards from any action taken by the Department of Transportation in assigning any functional classification under section 39-2110. Upon the taking of such an appeal, the board shall review all information pertaining to the assignment, hold a hearing thereon if deemed advisable, and render a decision on the assigned classification. The decision of the board may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1969, c. 312, § 11, p. 1123; Laws 1971, LB 100, § 2; Laws 1988, LB 352, § 32; Laws 2017, LB339, § 150.

Cross References

Administrative Procedure Act, see section 84-920.

39-2112 Functional classification; assignment; Department of Transportation; request to reclassify; county board; public hearing; decision; appeal.

Any county or municipality may, based on changing traffic patterns or volume or a change in jurisdiction, request the Department of Transportation to reclassify any segment of highway, road, or street. Any county that wants to use the minimum maintenance, remote residential, or scenic-recreation functional classification or wants to return a road to its previous functional classification may request the department to reclassify an applicable segment of highway or road. If a county board wants a road or a segment of road to be classified as remote residential, it shall hold a public hearing on the matter prior to requesting the department to reclassify such road or segment of road. The department shall review a request made under this section and either grant or deny the reclassification in whole or in part. Any county or municipality dissatisfied with the action taken by the department under this section may appeal to the Board of Public Roads Classifications and Standards in the manner provided in section 39-2111.

Source: Laws 1969, c. 312, § 12, p. 1124; Laws 1971, LB 100, § 3; Laws 2008, LB1068, § 8; Laws 2017, LB339, § 151.

39-2113 Board of Public Roads Classifications and Standards; minimum standards; signs required; when; rule for relaxing; request for review; decision; additional programs.

(1) In addition to the duties imposed upon it by section 39-2109, the Board of Public Roads Classifications and Standards shall develop minimum standards of design, construction, and maintenance for each functional classification set forth in sections 39-2103 and 39-2104. Except for scenic-recreation road standards, such standards shall be such as to assure that each segment of highway, road, or street will satisfactorily meet the requirements of the area it serves and the traffic patterns and volumes which it may reasonably be expected to bear.

(2) The standards for a scenic-recreation road and highway classification shall insure a minimal amount of environmental disruption practicable in the design, construction, and maintenance of such highways, roads, and streets by the use of less restrictive, more flexible design standards than other highway classifications. Design elements of such a road or highway shall incorporate parkway-like features which will allow the user-motorist to maintain a leisurely pace and enjoy the scenic and recreational aspects of the route and include rest areas and scenic overlooks with suitable facilities.

(3) The standards developed for a minimum maintenance road and highway classification shall provide for a level of minimum maintenance sufficient to serve farm machinery and the occasional or intermittent use by passenger and commercial vehicles. The standards shall provide that any defective bridges, culverts, or other such structures on, in, over, under, or part of the minimum maintenance road may be removed by the county in order to protect the public safety and need not be replaced by equivalent structures except when deemed by the county board to be essential for public safety or for the present or future transportation needs of the county. The standards for such minimum maintenance roads shall include the installation and maintenance by the county at

entry points to minimum maintenance roads and at regular intervals thereon of appropriate signs to adequately warn the public that the designated section of road has a lower level of maintenance effort than other public roads and thoroughfares. Such signs shall conform to the requirements in the Manual on Uniform Traffic Control Devices adopted pursuant to section 60-6,118.

(4) The standards developed for a remote residential road classification shall provide for a level of maintenance sufficient to provide access to remote residences, farms, and ranches by passenger and commercial vehicles. The standards shall allow for one-lane traffic where sight distance is adequate to warn motorists of oncoming traffic. The standards for remote residential roads shall include the installation and maintenance by the county at entry points to remote residential roads of appropriate signs to adequately warn members of the public that they are traveling on a one-lane road. Such signs shall conform to the requirements in the Manual on Uniform Traffic Control Devices adopted pursuant to section 60-6,118.

(5) The board shall by rule provide for the relaxation of standards for any functional classification in those instances in which their application is not feasible because of peculiar, special, or unique local situations.

(6) Any county or municipality which believes that the application of standards for any functional classification to any segment of highway, road, or street would work a special hardship, or any other interested party which believes that the application of standards for scenic-recreation roads and highways to any segment of highway, road, or street would defeat the purpose of the scenic-recreation functional classification contained in section 39-2103, may request the board to relax the standards for such segment. The Department of Transportation, when it believes that the application of standards for any functional classification to any segment of highway that is not hard surfaced would work a special hardship, may request the board to relax such standards. The board shall review any request made pursuant to this section and either grant or deny it in whole or in part. This section shall not be construed to apply to removal of a road or highway from the state highway system pursuant to section 39-1315.01.

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

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

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

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

Source: Laws 1969, c. 312, § 13, p. 1124; Laws 1973, LB 324, § 1; Laws 1980, LB 873, § 4; Laws 1983, LB 10, § 6; Laws 1993, LB 370, § 42; Laws 2008, LB1068, § 9; Laws 2017, LB339, § 152; Laws 2019, LB82, § 5.

39-2114 Counties and municipalities; contract between themselves.

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

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

Cross References

Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.

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

The Department of Transportation and each county and municipality shall develop, adopt, maintain as a public record, and annually update a long-range, six-year plan or program of highway, road, and street improvements based on priority of needs and calculated to contribute to the orderly development of an integrated statewide system of highways, roads, and streets. The department and each county and municipality shall annually certify compliance with the requirements of this section to the Board of Public Roads Classifications and Standards using the certification form developed by the board pursuant to section 39-2120. If any county or municipality, or the department, shall fail to file its certification form on or before its due date, the board shall so notify the local governing board, the Governor, and the State Treasurer, who shall suspend distribution of any highway-user revenue allocated to such county or municipality, or the department, until the certification form has been filed. Such funds shall be held in escrow for six months until the county or municipality complies. If the county or municipality complies within the six-month period it shall receive the money in escrow, but after six months, if the county or municipality fails to comply, the money in the escrow account shall be lost to the county or municipality and shall be distributed to other counties or municipalities, as appropriate, in the manner provided by law for allocation of highway-user revenue.

Source: Laws 1969, c. 312, § 15, p. 1124; Laws 1971, LB 100, § 4; Laws 1973, LB 137, § 1; Laws 1976, LB 724, § 2; Laws 2017, LB339, § 153; Laws 2019, LB82, § 7.

39-2116 Repealed. Laws 2019, LB82, § 18.

39-2117 Repealed. Laws 2019, LB82, § 18.

39-2118 Department of Transportation; plan or program for specific highway improvements; certify compliance with Board of Public Roads Classifications and Standards.

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

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

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

Each county and municipality shall annually develop, adopt, and maintain as a public record, a one-year plan or program for specific highway, road, or street improvements for the current year. No such plan or program, or revision to such plan or program, shall be adopted until after a public hearing thereon and its approval by the governing body. Each county and municipality shall schedule and hold the public hearing each year, and such hearing may be held prior to or in conjunction with that entity's annual public hearing on its proposed budget statement in any year such budget statement hearing is held pursuant to section 13-506. Each county and municipality shall annually certify compliance with the requirements of this section to the Board of Public Roads Classifications and Standards using the certification form developed by the board pursuant to section 39-2120. If any county or municipality shall fail to comply with the provisions of this section, the board shall so notify the local governing board, the Governor, and the State Treasurer, who shall suspend distribution of any highway-user revenue allocated to such county or municipality until there has been compliance. Such funds shall be held in escrow for six months until the county or municipality complies. If the county or municipality complies within the six-month period it shall receive the money in escrow, but after six months, if the county or municipality fails to comply, the money in the escrow account shall be lost to the county or municipality and shall be distributed to other counties or municipalities, as appropriate, in the manner provided by law for allocation of highway-user revenue.

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

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

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

The Board of Public Roads Classifications and Standards shall develop and schedule for implementation a certification form for annual filing pursuant to

section 39-2121 by the Department of Transportation and each county and municipality. The certification form shall include:

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) If any county or municipality or the department fails to file such certification form on or before its due date, the board shall so notify the local governing board, the Governor, and the State Treasurer who shall suspend distribution of any highway-user revenue allocated to such county or municipality or the department until the certification form has been filed. Such funds shall be held in escrow for six months until the county or municipality complies. If the county or municipality complies within the six-month period it shall receive the money in escrow, but after six months, if the county or municipality fails to comply, the money in the escrow account shall be lost to the county or municipality and shall be distributed to other counties or municipalities, as appropriate, in the manner provided by law for allocation of highway-user revenue.

(3) If any county or municipality either (a) files a materially false certification form or (b) constructs any highway, road, or street below the minimum standards developed under section 39-2113, without having received prior approval thereof, such county's or municipality's share of highway-user revenue allocated during the following calendar year shall be reduced by ten percent and the amount of any such reduction shall be distributed among the other counties or municipalities, as appropriate, in the manner provided by law for allocation of highway-user revenue. The penalty for filing a materially false certification form and the penalty for constructing a highway, road, or street below established minimum standards without prior approval shall be assessed by the board only after a review of the facts involved in such case and the holding of a public hearing on the matter. The decision thereafter rendered by the board may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1969, c. 312, § 21, p. 1127; Laws 1971, LB 100, § 10; Laws 1973, LB 137, § 3; Laws 1976, LB 724, § 6; Laws 1988, LB 352, § 33; Laws 2017, LB339, § 157; Laws 2019, LB82, § 11.

Cross References

Administrative Procedure Act, see section 84-920.

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

The Board of Public Roads Classifications and Standards may make occasional random checks of county and municipal construction projects to determine that the standards of design and construction developed under section 39-2113 are being met.

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

39-2124 Legislative intent.

It is the intent of the Legislature to recognize the responsibilities of the Department of Transportation, of the counties, and of the municipalities in their planning programs as authorized by state law and by home rule charter and to encourage the acceptance and implementation of comprehensive, continuing, cooperative, and coordinated planning by the state, the counties, and the municipalities. Sections 13-914 and 39-2101 to 39-2125 are not intended to prohibit or inhibit the actions of the counties and of the municipalities in their planning programs and their subdivision regulations, nor are sections 13-914 and 39-2101 to 39-2125 intended to restrict the actions of the municipalities in their creation of street improvement districts and in their assessment of property for special benefits as authorized by state law or by home rule charter.

Source: Laws 1969, c. 312, § 24, p. 1128; Laws 1971, LB 100, § 13; Laws 1983, LB 10, § 8; Laws 2007, LB277, § 5; Laws 2017, LB339, § 158.

ARTICLE 22

NEBRASKA HIGHWAY BONDS

Section

Section
39-2224. Bonds; sale; proceeds; appropriated to Highway Cash Fund.

39-2215 Highway Trust Fund; created; allocation; investment; State Treasurer; transfer; disbursements.

(1) There is hereby created in the state treasury a special fund to be known as the Highway Trust Fund.

(2) All funds credited to the Highway Trust Fund pursuant to sections 66-489.02, 66-499, 66-4,140, 66-4,147, 66-6,108, and 66-6,109.02, and related penalties and interest, shall be allocated as provided in such sections.

(3) All other motor vehicle fuel taxes, diesel fuel taxes, compressed fuel taxes, and alternative fuel fees related to highway use retained by the state, all motor vehicle registration fees retained by the state other than those fees credited to the State Recreation Road Fund pursuant to subdivision (3) of section 60-3,156, and other highway-user taxes imposed by state law and allocated to the Highway Trust Fund, except for the proceeds of the sales and use taxes derived from motor vehicles, trailers, and semitrailers credited to the fund pursuant to section 77-27,132, are hereby irrevocably pledged for the terms of the bonds issued prior to January 1, 1988, to the payment of the principal, interest, and redemption premium, if any, of such bonds as they mature and become due at maturity or prior redemption and for any reserves therefor and shall, as received by the State Treasurer, be deposited in the fund for such purpose.

(4) Of the money in the fund specified in subsection (3) of this section which is not required for the use specified in such subsection, (a) an amount to be determined annually by the Legislature through the appropriations process may be transferred to the Motor Fuel Tax Enforcement and Collection Cash Fund for use as provided in section 66-739 on a monthly or other less frequent basis as determined by the appropriation language, (b) an amount to be determined annually by the Legislature through the appropriations process shall be transferred to the License Plate Cash Fund as certified by the Director of Motor Vehicles, and (c) the remaining money may be used for the purchase for retirement of the bonds issued prior to January 1, 1988, in the open market.

(5) The State Treasurer shall monthly transfer, from the proceeds of the sales and use taxes credited to the Highway Trust Fund and any money remaining in the fund after the requirements of subsections (2) through (4) of this section are satisfied, thirty thousand dollars to the Grade Crossing Protection Fund.

(6) Except as provided in subsection (7) of this section, the balance of the Highway Trust Fund shall be allocated fifty-three and one-third percent, less the amount provided for in section 39-847.01, to the Department of Transportation, twenty-three and one-third percent, less the amount provided for in section 39-847.01, to the various counties for road purposes, and twenty-three and one-third percent to the various municipalities for street purposes. If bonds are issued pursuant to subsection (2) of section 39-2223, the portion allocated to the department shall be credited monthly to the Highway Restoration and Improvement Bond Fund, and if no bonds are issued pursuant to such subsection, the portion allocated to the department shall be credited monthly to the Highway Cash Fund. The portions allocated to the counties and municipalities shall be credited monthly to the Highway Allocation Fund and distributed monthly as provided by law. Vehicles accorded prorated registration pursuant to section 60-3,198 shall not be included in any formula involving motor vehicle

registrations used to determine the allocation and distribution of state funds for highway purposes to political subdivisions.

(7) If it is determined by December 20 of any year that a county will receive from its allocation of state-collected highway revenue and from any funds relinquished to it by municipalities within its boundaries an amount in such year which is less than such county received in state-collected highway revenue in calendar year 1969, based upon the 1976 tax rates for highway-user fuels and registration fees, the department shall notify the State Treasurer that an amount equal to the sum necessary to provide such county with funds equal to such county's 1969 highway allocation for such year shall be transferred to such county from the Highway Trust Fund. Such makeup funds shall be matched by the county as provided in sections 39-2501 to 39-2510. The balance remaining in the fund after such transfer shall then be reallocated as provided in subsection (6) of this section.

(8) The State Treasurer shall disburse the money in the Highway Trust Fund as directed by resolution of the commission. All disbursements from the fund shall be made by electronic funds transfer by the Director of Administrative Services. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act and the earnings, if any, credited to the fund.

Source: Laws 1969, c. 309, § 15, p. 1111; Laws 1971, LB 53, § 3; Laws 1979, LB 571, § 2; Laws 1981, LB 22, § 8; Laws 1983, LB 118, § 2; Laws 1984, LB 1089, § 1; Laws 1986, LB 599, § 11; Laws 1988, LB 632, § 9; Laws 1989, LB 258, § 3; Laws 1990, LB 602, § 1; Laws 1991, LB 627, § 4; Laws 1992, LB 319, § 1; Laws 1994, LB 1066, § 25; Laws 1994, LB 1160, § 49; Laws 1995, LB 182, § 22; Laws 2002, LB 989, § 7; Laws 2002, Second Spec. Sess., LB 1, § 2; Laws 2003, LB 563, § 17; Laws 2004, LB 983, § 1; Laws 2004, LB 1144, § 3; Laws 2005, LB 274, § 228; Laws 2008, LB846, § 1; Laws 2011, LB170, § 1; Laws 2011, LB289, § 3; Laws 2017, LB339, § 159; Laws 2019, LB512, § 2; Laws 2021, LB509, § 2.

Cross References

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

39-2224 Bonds; sale; proceeds; appropriated to Highway Cash Fund.

(1) The proceeds of the sale of bonds authorized by subsection (1) of section 39-2223 are hereby appropriated to the Highway Cash Fund of the Department of Transportation, for the biennium ending June 30, 1977, for expenditure for the construction of highways.

(2) The proceeds of the sale of bonds authorized by subsection (2) of section 39-2223 are hereby appropriated to the Highway Cash Fund of the Department of Transportation for expenditure for highway construction, resurfacing, reconstruction, rehabilitation, and restoration and for the elimination or alleviation of cash-flow problems resulting from the receipt of federal funds.

Source: Laws 1969, c. 314, § 2, p. 1132; Laws 1975, LB 401, § 2; Laws 1988, LB 632, § 17; Laws 2017, LB339, § 160.

ARTICLE 23

COUNTY HIGHWAY AND CITY STREET SUPERINTENDENTS ACT

Section

39-2301.01 Terms, defined.

For purposes of the County Highway and City Street Superintendents Act, unless the context otherwise requires:

(1) Board of examiners means the Board of Examiners for County Highway and City Street Superintendents;

(2) City street superintendent means a person who engages in the practice of street superintending for an incorporated municipality;

(3) County highway superintendent means a person who engages in the practice of highway superintending for a county; and

(4) Street or highway superintending means assisting an incorporated municipality or a county in the following:

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

(b) Developing annual programs for design, construction, and maintenance;

(c) Developing annual budgets based on programmed projects and activities;

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

(e) Managing personnel, contractors, and equipment in support of such planning, programming, budgeting, and implementation operations.

Source: Laws 2003, LB 500, § 2; Laws 2021, LB174, § 4.

39-2302 Incentive payments; county highway or city street superintendents; requirements.

No person shall be appointed by any county as a county highway superintendent or by any municipality as a city street superintendent to qualify for the incentive payments provided in sections 39-2501 to 39-2505 for counties and municipal counties or sections 39-2511 to 39-2515 for municipalities and municipal counties unless he or she has been licensed under the County

Highway and City Street Superintendents Act or is exempt from such licensure requirement as provided in section 39-2504 or 39-2514.

Source: Laws 1969, c. 144, § 2, p. 665; Laws 2003, LB 500, § 3; Laws 2021, LB174, § 5.

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

(1) The Board of Examiners for County Highway and City Street Superintendents is created. The board shall consist of seven members to be appointed by the Governor. Four of such members shall be county representatives and three of such members shall be municipal representatives.

(2)(a) Immediately preceding appointment to the board, each county and municipal representative shall hold a county highway and city street superintendent license pursuant to the County Highway and City Street Superintendents Act.

(b) Of the county representatives, no more than one member shall be appointed from each class of county as defined in section 23-1114.01.

(c) Of the municipal representatives:

(i) No more than one shall be appointed from each congressional district;

(ii) One shall be a representative of a city of the metropolitan class, primary class, or first class;

(iii) One shall be a representative of a city of the second class; and

(iv) One shall be a representative of a village.

(3) In making such appointments, the Governor may give consideration to the following lists of persons licensed pursuant to the County Highway and City Street Superintendents Act:

(a) A list of county engineers, county highway superintendents, and county surveyors submitted by the Nebraska Association of County Officials; and

(b) A list of city street superintendents, city managers, city administrators, street commissioners, city engineers, village engineers, and public works directors submitted by the League of Nebraska Municipalities.

(4) Two county representatives shall initially be appointed for terms of two years each, and two county representatives shall initially be appointed for terms of four years each. One municipal representative shall initially be appointed for a term of two years, and two municipal representatives shall initially be appointed for terms of four years each. Thereafter, all such appointments shall be for terms of four years each.

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

(6) Members of the board shall receive no compensation for their services as members of the board but shall be reimbursed for expenses incurred while

engaged in the performance of their official duties as provided in sections 81-1174 to 81-1177.

Source: Laws 1969, c. 144, § 4, p. 666; Laws 1981, LB 204, § 63; Laws 1992, LB 175, § 1; Laws 2003, LB 500, § 4; Laws 2020, LB381, § 29; Laws 2021, LB174, § 6.

39-2305 Board of examiners; office space; equipment; meetings.

The board of examiners shall be furnished necessary office space, furniture, equipment, stationery, and clerical assistance by the Department of Transportation. The board shall organize itself by selecting from among its members a chairperson and such other officers as it may find desirable. The board shall meet at such times at the headquarters of the department in Lincoln, Nebraska, as may be necessary for the administration of the County Highway and City Street Superintendents Act.

Source: Laws 1969, c. 144, § 5, p. 666; Laws 2003, LB 500, § 5; Laws 2017, LB339, § 161.

39-2306 Class B license; application; fee; exceptions.

(1) Any person desiring to be issued a Class B license under section 39-2308 shall apply to the board of examiners upon forms prescribed and furnished by the board. Such application shall be accompanied by an application fee of twenty-five dollars.

(2) Any professional engineer licensed pursuant to the Engineers and Architects Regulation Act shall be entitled to a Class B license under section 39-2308 without examination.

Source: Laws 1969, c. 144, § 6, p. 667; Laws 1997, LB 622, § 61; Laws 1997, LB 752, § 94; Laws 2003, LB 500, § 6; Laws 2021, LB174, § 7.

Cross References

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

39-2307 Board of examiners; examinations; conduct; test qualifications of applicants for Class B licenses.

The board of examiners shall, twice each year, conduct examinations of applicants for Class B licenses under section 39-2308. Such examinations shall be designed to test the qualifications of applicants for the position of county highway superintendent or city street superintendent and shall cover the ability to assist in:

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

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

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

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

Source: Laws 1969, c. 144, § 7, p. 667; Laws 2003, LB 500, § 7; Laws 2021, LB174, § 8.

39-2308 Class B license; term; renewal; fee.

Any person satisfactorily completing the examination required by section 39-2307 or exempt from such examination under subsection (2) of section 39-2306 shall be issued a Class B license as a county highway and city street superintendent. Such license shall be valid for a period of three years and shall be renewable upon the payment of a fee of thirty dollars.

Source: Laws 1969, c. 144, § 8, p. 668; Laws 2003, LB 500, § 8; Laws 2018, LB733, § 1; Laws 2021, LB174, § 9.

39-2308.01 Class A license; application; qualifications; fees; term; renewal.

Any person holding a Class B license issued pursuant to section 39-2308 may apply to the board of examiners for a Class A license upon forms prescribed and furnished by the board upon submitting evidence that (1) he or she has been employed and appointed by one or more county or counties or municipality or municipalities as a county highway or city street superintendent on at least a half-time basis for at least two years within the past six years or (2) he or she has at least four years' experience in work comparable to street or highway superintending, on at least a half-time basis, within the past eight years. Such application shall be accompanied by a fee of seventy-five dollars. A Class A license shall be valid for a period of three years and shall be renewable for three years as provided in section 39-2308.02 upon payment of a fee of fifty dollars.

Source: Laws 2003, LB 500, § 9; Laws 2018, LB733, § 2; Laws 2021, LB174, § 10.

39-2308.03 County highway and city street superintendent licenses; reissuance; renewal.

(1) Beginning on August 28, 2021:

(a) A county highway superintendent license or city street superintendent license, whether of Class A or Class B, issued prior to August 28, 2021, is deemed to be a county highway and city street superintendent license;

(b) The holder of any Class A license or licenses shall have such license or licenses reissued as a single Class A county highway and city street superintendent license;

(c) The holder of any Class A license and any Class B license shall have such licenses reissued as a single Class A county highway and city street superintendent license; and

(d) The holder of any Class B license or licenses who does not hold any Class A license shall have such Class B license or licenses reissued as a single Class B county highway and city street superintendent license.

(2) A license reissued under subsection (1) of this section shall remain on the same triennial renewal cycle as the license or licenses replaced.

Source: Laws 2003, LB 500, § 11; Laws 2018, LB733, § 3; Laws 2021, LB174, § 11.

39-2310 Funds received under act; use.

All funds received under the County Highway and City Street Superintendents Act shall be remitted to the State Treasurer for credit to the Highway

Cash Fund. Expenses of the members of the board of examiners as provided in section 39-2304 shall be paid by the Department of Transportation from the Highway Cash Fund.

Source: Laws 1969, c. 144, § 10, p. 668; Laws 1971, LB 53, § 4; Laws 1972, LB 1496, § 1; Laws 2003, LB 500, § 13; Laws 2017, LB339, § 162.

ARTICLE 25

DISTRIBUTION TO POLITICAL SUBDIVISIONS

(a) ROADS

Section

(b) STREETS

(a) ROADS

39-2501 Incentive payments for road purposes; priority.

Before distributing the February portion of funds under sections 39-2508 and 66-4,148, incentive payments shall first be made as provided in sections 39-2502 to 39-2505.

Source: Laws 1969, c. 315, § 1, p. 1133; Laws 2001, LB 142, § 39; Laws 2021, LB174, § 12.

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

An incentive payment shall be made to each county having appointed and employed a county highway superintendent licensed under the County Highway and City Street Superintendents Act, during the calendar year preceding the year in which payment is made. For purposes of sections 39-2501 to 39-2505, county highway superintendent means a person who assists the county with the following:

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

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

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

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

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

Source: Laws 1969, c. 315, § 2, p. 1133; Laws 1976, LB 724, § 7; Laws 2003, LB 500, § 15; Laws 2007, LB277, § 7; Laws 2019, LB82, § 13; Laws 2021, LB174, § 13.

Cross References

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

39-2503 Incentive payment; amount.

Except as provided in section 39-2504, the incentive payment to the various counties and municipal counties shall be based on the class of license of the county highway superintendent appointed and employed by the county and on the rural population of each county or municipal county, as determined by the most recent federal census, according to the following table:

Rural Population	Class B License Payment	Class A License Payment
Not more than 3,000	$4,500.00	$ 9,000.00
3,001 to 5,000	$4,875.00	$ 9,750.00
5,001 to 10,000	$5,250.00	$10,500.00
10,001 to 20,000	$5,625.00	$11,250.00
20,001 to 30,000	$6,000.00	$12,000.00
30,001 and more	$6,375.00	$12,750.00

Source: Laws 1969, c. 315, § 3, p. 1134; Laws 1981, LB 51, § 1; Laws 2001, LB 142, § 40; Laws 2003, LB 500, § 16; Laws 2021, LB174, § 14.

39-2504 Incentive payment; reduction; when.

(1) A reduced incentive payment shall be made to any county or municipal county having appointed and employed either (a) a licensed county highway superintendent for only a portion of the calendar year preceding the year in which the payment is made or (b) two or more successive licensed county highway superintendents for the calendar year preceding the year in which the payment is made. Such reduced payment shall be in the proportion of the payment amounts listed in section 39-2503 as the number of full months each such licensed superintendent was appointed and employed is of twelve.

(2) Any county or municipal county that contracts for the services of and appoints a consulting engineer licensed under the County Highway and City Street Superintendents Act or any other person licensed under the act to perform the duties outlined in section 39-2502 rather than appointing and employing a licensed county highway superintendent shall be entitled to an incentive payment equal to two-thirds the payment amount provided in section 39-2503 or two-thirds of the reduced incentive payment provided in subsection

(1) of this section, as determined by the Department of Transportation pursuant to section 39-2505.

(3) Any county or municipal county that contracts with another county or municipal county or with any city or village for the services of and appoints a licensed county highway superintendent as provided in section 39-2114 shall be entitled to the incentive payment provided in section 39-2503 or the reduced incentive payment provided in subsection (1) of this section.

(4) Beginning in calendar year 2022, any county or municipal county having a total population of sixty thousand or more inhabitants, as determined by the most recent official United States census, shall receive the full twelve-month Class A incentive payment amount provided in section 39-2503 applicable to such county's or municipal county's rural population as determined by the most recent federal census.

(5) Beginning in calendar year 2022, a county or municipal county having a total population of less than sixty thousand inhabitants, as determined by the most recent official United States census, may appoint and employ a professional engineer, who is licensed pursuant to the Engineers and Architects Regulation Act but is not licensed under the County Highway and City Street Superintendents Act, to perform the duties of county highway superintendent outlined in section 39-2502. In such case, the professional engineer's license under the Engineers and Architects Regulation Act shall serve as a Class A license for purposes of incentive payments under sections 39-2502 to 39-2505. This subsection only applies to a professional engineer in the direct employ of a county or municipal county and does not apply to an engineer serving as a contractor or consultant.

Source: Laws 1969, c. 315, § 4, p. 1134; Laws 1981, LB 51, § 2; Laws 2001, LB 142, § 41; Laws 2003, LB 500, § 17; Laws 2017, LB339, § 163; Laws 2021, LB174, § 15.

Cross References

County Highway and City Street Superintendents Act, see section 39-2301.
Engineers and Architects Regulation Act, see section 81-3401.

39-2505 County or municipal county; certify information; incentive payments; Department of Transportation; certify amount; State Treasurer; payment.

(1) By December 31 of each year, each county or municipal county shall certify to the Department of Transportation, using the certification process developed by the department:

(a) The name of any appointed county highway superintendent;

(b) Such superintendent's class of license, if applicable; and

(c) The type of appointment:

(i) Employed;

(ii) Contract consultant; or

(iii) Contract interlocal agreement with another municipality, county, or municipal county.

(2) The Department of Transportation shall, in January of each year commencing in 1970, determine and certify to the State Treasurer the amount of each incentive payment to be made under sections 39-2501 to 39-2505. The

State Treasurer shall, on or before February 15, make the incentive payments in accordance with such certification.

Source: Laws 1969, c. 315, § 5, p. 1134; Laws 2017, LB339, § 164; Laws 2021, LB174, § 16.

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

The following factors and weights shall be used in determining the amount to be allocated to each of the counties or municipal counties for road purposes each year:

(1) Rural population of each county or municipal county, as determined by the most recent federal census, twenty percent;

(2) Total population of each county or municipal county, as determined by the most recent federal census, ten percent;

(3) Lineal feet of bridges twenty feet or more in length and all overpasses in each county or municipal county, as determined by the most recent inventory available within the Department of Transportation, ten percent, and for purposes of this subdivision a bridge or overpass located partly in one county or municipal county and partly in another shall be considered as being located one-half in each county or municipal county;

(4) Total motor vehicle registrations, other than prorated commercial vehicles, in the rural areas of each county or municipal county, as determined from the most recent information available from the Department of Motor Vehicles, twenty percent;

(5) Total motor vehicle registrations, other than prorated commercial vehicles, in each county or municipal county as determined from the most recent information available from the Department of Motor Vehicles, ten percent;

(6) Total miles of county or municipal county and township roads within each county or municipal county, as determined by the most recent inventory available within the Department of Transportation, twenty percent; and

(7) Value of farm products sold from each county or municipal county, as determined from the most recent federal Census of Agriculture, ten percent.

Source: Laws 1969, c. 315, § 7, p. 1135; Laws 2001, LB 142, § 42; Laws 2017, LB339, § 165.

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

The Department of Transportation shall compute the amount allocated to each county or municipal county under each of the factors listed in section 39-2507 and shall then compute the total allocation to each such county or municipal county and transmit such information to the local governing board and the State Treasurer, who shall disburse funds accordingly.

Source: Laws 1969, c. 315, § 8, p. 1136; Laws 1985, LB 25, § 1; Laws 2001, LB 142, § 43; Laws 2017, LB339, § 166.

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

(1) All money derived from fees, excises, or license fees relating to registration, operation, or use of vehicles on the public highways, or to fuels used for the propulsion of such vehicles, shall be expended for payment of highway

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

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

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

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

(b) STREETS

39-2511 Incentive payments for street purposes; priority.

Before distributing the February portion of funds under sections 39-2518 and 66-4,148, incentive payments shall first be made as provided in sections 39-2512 to 39-2515.

Source: Laws 1969, c. 316, § 1, p. 1139; Laws 2001, LB 142, § 45; Laws 2021, LB174, § 17.

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

An incentive payment shall be made to each municipality or municipal county having appointed and employed a city street superintendent licensed under the County Highway and City Street Superintendents Act, during the calendar year preceding the year in which payment is made. For purposes of sections 39-2511 to 39-2515, city street superintendent means a person who assists the municipality or municipal county with the following:

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

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

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

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

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

Source: Laws 1969, c. 316, § 2, p. 1139; Laws 1976, LB 724, § 8; Laws 2001, LB 142, § 46; Laws 2003, LB 500, § 18; Laws 2007, LB277, § 8; Laws 2019, LB82, § 15; Laws 2021, LB174, § 18.

Cross References

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

39-2513 Incentive payment; amount.

Except as provided in section 39-2514, the incentive payment to the various municipalities or municipal counties shall be based on the class of license of the city street superintendent appointed and employed by the municipality or municipal counties and on the population of each municipality or urbanized area of each municipal county, as determined by the most recent federal census figures certified by the Tax Commissioner as provided in section 77-3,119, according to the following table:

Population	Class B License Payment	Class A License Payment
Not more than 500	$ 300.00	$ 600.00
501 to 1,000	$ 500.00	$1,000.00
1,001 to 2,500	$1,500.00	$3,000.00
2,501 to 5,000	$2,000.00	$4,000.00
5,001 to 10,000	$3,000.00	$6,000.00
10,001 to 20,000	$3,500.00	$7,000.00
20,001 to 40,000	$3,750.00	$7,500.00
40,001 to 200,000	$4,000.00	$8,000.00
200,001 and more	$4,250.00	$8,500.00

Source: Laws 1969, c. 316, § 3, p. 1139; Laws 1993, LB 726, § 9; Laws 1994, LB 1127, § 5; Laws 2001, LB 142, § 47; Laws 2003, LB 500, § 19; Laws 2021, LB174, § 19.

39-2514 Incentive payment; reduction; when.

(1) A reduced incentive payment shall be made to any municipality or municipal county having appointed and employed either (a) a licensed city street superintendent for only a portion of the calendar year preceding the year in which the payment is made or (b) two or more successive licensed city street superintendents for the calendar year preceding the year in which the payment is made. Such reduced payment shall be in the proportion of the payment amounts listed in section 39-2513 as the number of full months each such licensed superintendent was appointed and employed is of twelve.

(2) Any municipality or municipal county that contracts for the services of and appoints a consulting engineer licensed under the County Highway and

City Street Superintendents Act or any other person licensed under the act to perform the duties outlined in section 39-2512 rather than appointing and employing a licensed city street superintendent shall be entitled to an incentive payment as provided in section 39-2513 or to the reduced incentive payment provided in subsection (1) of this section, as determined by the Department of Transportation pursuant to section 39-2515.

(3) Any municipality or municipal county that contracts with another municipality, county, or municipal county for the services of and appoints a licensed city street superintendent as provided in section 39-2114 shall be entitled to the incentive payment provided in section 39-2513 or the reduced incentive payment provided in subsection (1) of this section.

(4) Beginning in calendar year 2022, a municipality or municipal county may appoint and employ a professional engineer who is licensed pursuant to the Engineers and Architects Regulation Act but is not licensed under the County Highway and City Street Superintendents Act and who is serving as city engineer, village engineer, public works director, city manager, city administrator, or street commissioner to perform the duties of city street superintendent outlined in section 39-2512. In such case, the professional engineer's license under the Engineers and Architects Regulation Act shall serve as a Class A license for purposes of incentive payments under sections 39-2512 to 39-2515. This subsection only applies to a professional engineer in the direct employ of a municipality or municipal county and does not apply to an engineer serving as a contractor or consultant.

Source: Laws 1969, c. 316, § 4, p. 1140; Laws 2001, LB 142, § 48; Laws 2003, LB 500, § 20; Laws 2017, LB339, § 167; Laws 2021, LB174, § 20.

Cross References

County Highway and City Street Superintendents Act, see section 39-2301.
Engineers and Architects Regulation Act, see section 81-3401.

39-2515 Municipality or municipal county; certify information; incentive payments; Department of Transportation, certify amount; State Treasurer; payment.

(1) By December 31 of each year, each municipality or municipal county shall certify to the Department of Transportation, using the certification process developed by the department:

(a) The name of any appointed city street superintendent;

(b) Such superintendent's class of license, if applicable; and

(c) The type of appointment:

(i) Employed;

(ii) Contract consultant; or

(iii) Contract interlocal agreement with another municipality, county, or municipal county.

(2) The Department of Transportation shall, in January of each year commencing in 1970, determine and certify to the State Treasurer the amount of each incentive payment to be made under sections 39-2511 to 39-2515. The

State Treasurer shall, on or before February 15, make the incentive payments in accordance with such certification.

Source: Laws 1969, c. 316, § 5, p. 1140; Laws 2017, LB339, § 168; Laws 2021, LB174, § 21.

39-2517 Allocation of funds for street purposes; factors used.

The following factors and weights shall be used in determining the amount to be allocated to each of the municipalities or municipal counties for street purposes each year:

(1) Total population of each incorporated municipality or the urbanized area of a municipal county, as determined by the most recent federal census figures certified by the Tax Commissioner as provided in section 77-3,119, fifty percent;

(2) Total motor vehicle registrations, other than prorated commercial vehicles, in each incorporated municipality or the urbanized area of a municipal county, as determined from the most recent information available from the Department of Motor Vehicles, thirty percent; and

(3) Total number of miles of traffic lanes of streets in each incorporated municipality or the urbanized area of a municipal county, as determined by the most recent inventory available within the Department of Transportation, twenty percent.

Source: Laws 1969, c. 316, § 7, p. 1141; Laws 1993, LB 726, § 10; Laws 1994, LB 1127, § 6; Laws 2001, LB 142, § 49; Laws 2017, LB339, § 169.

39-2518 Allocation of funds for street purposes; Department of Transportation; State Treasurer; duties.

The Department of Transportation shall compute the amount allocated to each municipality or municipal county under the factors listed in section 39-2517 and shall then compute the total allocation to each such municipality or municipal county and transmit such information to the local governing body and the State Treasurer, who shall disburse funds accordingly.

Source: Laws 1969, c. 316, § 8, p. 1141; Laws 1986, LB 729, § 1; Laws 2001, LB 142, § 50; Laws 2017, LB339, § 170.

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

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

(2)(a) The requirements of subsection (1) of this section also apply to sales and use taxes imposed on motor vehicles, trailers, and semitrailers pursuant to

sections 13-319, 77-27,142, and 77-6403, except that such provisions shall not apply in a municipality that has issued bonds (i) the proceeds of which were used for purposes listed in subsection (1) of this section and for which revenue other than sales and use taxes on motor vehicles, trailers, and semitrailers is pledged for payment or (ii) approved by a vote that required the use of sales and use taxes imposed on motor vehicles, trailers, and semitrailers for a specific purpose other than those listed in subsection (1) of this section, until all such bonds issued prior to January 1, 2006, have been paid or retired.

(b) The municipality shall determine (i) the amount of revenue other than sales and use tax revenue derived from motor vehicles, trailers, or semitrailers that is to be expended for the purposes listed in subsection (1) of this section and (ii) the amount of sales and use taxes expected to be collected from sales of motor vehicles, trailers, and semitrailers for that year. The municipality shall create and maintain such determination as a public record and certify the determination pursuant to sections 39-2120 and 39-2121.

Source: Laws 1969, c. 316, § 10, p. 1143; Laws 1971, LB 74, § 2; Laws 1997, LB 271, § 17; Laws 2006, LB 904, § 3; Laws 2019, LB82, § 16; Laws 2019, LB472, § 9.

ARTICLE 26
JUNKYARDS

Section
39-2602. Terms, defined.

39-2602 Terms, defined.

For purposes of sections 39-2601 to 39-2612, unless the context otherwise requires:

(1) Junk means old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste or junked, dismantled, or wrecked automobiles, or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material;

(2) Automobile graveyard means any establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts;

(3) Junkyard means an establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk or for the maintenance or operation of an automobile graveyard, and includes garbage dumps and sanitary fills;

(4) Highway Beautification Control System has the same meaning as in section 39-201.01;

(5) Scenic byway has the same meaning as in section 39-201.01;

(6) Main-traveled way means the traveled portion of an interstate or primary highway on which through traffic is carried and, in the case of a divided highway, the traveled portion of each of the separated roadways;

(7) Person means any natural person, partnership, limited liability company, association, corporation, or governmental subdivision; and

(8) Department means the Department of Transportation.

Source: Laws 1971, LB 398, § 2; Laws 1993, LB 121, § 214; Laws 1995, LB 264, § 25; Laws 2017, LB339, § 171.

ARTICLE 27

BUILD NEBRASKA ACT

Section
39-2702. Terms, defined.

39-2702 Terms, defined.

For purposes of the Build Nebraska Act:

(1) Department means the Department of Transportation;

(2) Fund means the State Highway Capital Improvement Fund; and

(3) Surface transportation project means (a) expansion or reconstruction of a road or highway which is part of the state highway system, (b) expansion or reconstruction of a bridge which is part of the state highway system, or (c) construction of a new road, highway, or bridge which, if built, would be a part of the state highway system.

Source: Laws 2011, LB84, § 2; Laws 2017, LB339, § 172.

ARTICLE 28

TRANSPORTATION INNOVATION ACT

Section
39-2801. Act, how cited.
39-2802. Terms, defined.
39-2806. Economic Opportunity Program; created.
39-2808. Purpose of sections.
39-2809. Design-build contract; progressive design-build contract; construction manager-general contract; authorized.
39-2810. Contracting agency; hire engineering or architectural consultant.
39-2811. Guidelines; contents.
39-2812. Process; provisions applicable.
39-2813. Request for qualifications for design-build proposals and progressive design-build proposals; publication; short list created.
39-2814. Request for proposals for design-build or progressive design-build contract; elements.
39-2815. Stipend.
39-2816. Submission of proposals; sealed; rank of design-builders and progressive design-builders; negotiation of contract.
39-2817. Selection of construction manager; construction manager-general contractor contract; sections applicable; request for qualifications; prequalification; publication; short list created.
39-2818. Request for proposals for construction manager-general contractor contract; elements.
39-2819. Submission of proposals; sealed; rank of construction managers; negotiation of contract.
39-2820. Contracting agency; cost estimate; conduct contract negotiations.
39-2821. Contracts; changes authorized.
39-2822. Department; authority for political subdivision projects.
39-2823. Insurance.
39-2824. Rules and regulations.
39-2825. Public-private partnership delivery method; authorized.

39-2801 Act, how cited.

Sections 39-2801 to 39-2825 shall be known and may be cited as the Transportation Innovation Act.

Source: Laws 2016, LB960, § 1; Laws 2022, LB1016, § 1.
Effective date July 21, 2022.

39-2802 Terms, defined.

For purposes of the Transportation Innovation Act:

(1) Alternative technical concept means changes suggested by a qualified, eligible, short-listed design-builder to a contracting agency's basic configurations, project scope, design, or construction criteria;

(2) Best value-based selection process means a process of selecting a design-builder using price, schedule, and qualifications for evaluation factors;

(3) Construction manager means the legal entity which proposes to enter into a construction manager-general contractor contract pursuant to the act;

(4) Construction manager-general contractor contract means a contract which is subject to a qualification-based selection process between a contracting agency and a construction manager to furnish preconstruction services during the design development phase of the project and, if an agreement can be reached which is satisfactory to the contracting agency, construction services for the construction phase of the project;

(5) Construction services means activities associated with building the project;

(6) Contracting agency means the department, an eligible county, a city of the metropolitan class, or a city of the primary class using the powers provided under the Transportation Innovation Act;

(7) Department means the Department of Transportation;

(8) Design-build contract means a contract between a contracting agency and a design-builder which is subject to a best value-based selection process to furnish (a) architectural, engineering, and related design services and (b) labor, materials, supplies, equipment, and construction services;

(9) Design-builder means the legal entity which proposes to enter into a design-build contract;

(10) Eligible county means (a) a county or (b) a joint entity created by agreement under section 13-804 if a county is a party to the agreement;

(11) Multimodal transportation network means the interconnected system of highways, roads, streets, rail lines, river ports, and transit systems which facilitates the movement of people and freight to enhance Nebraska's economy;

(12) Preconstruction services means all nonconstruction-related services that a construction manager performs in relation to the design of the project before execution of a contract for construction services. Preconstruction services includes, but is not limited to, cost estimating, value engineering studies, constructability reviews, delivery schedule assessments, and life-cycle analysis;

(13) Private partner means any entity that is a partner in a public-private partnership other than the State of Nebraska, any agency of the State of Nebraska, the federal government, any agency of the federal government, any other state government, or any agency of any government at any level;

(14) Progressive design-build means a project-delivery process in which both the design and construction of a project are procured from a single entity that is selected through a qualification-based selection process at the earliest feasible stage of the project;

(15) Project performance criteria means the performance requirements of the project suitable to allow the design-builder to make a proposal. Performance requirements shall include, but are not limited to, the following, if required by the project: Capacity, durability, standards, ingress and egress requirements, description of the site, surveys, soil and environmental information concerning the site, material quality standards, design and milestone dates, site development requirements, compliance with applicable law, and other criteria for the intended use of the project;

(16) Proposal means an offer in response to a request for proposals (a) by a design-builder to enter into a design-build contract or (b) by a construction manager to enter into a construction manager-general contractor contract;

(17) Public-private partnership means a project delivery method for construction or financing of capital projects or procurement of services under a written public-private partnership agreement entered into pursuant to section 39-2825 between at least one private partner and the State of Nebraska or any agency of the state;

(18) Qualification-based selection process means a process of selecting a construction manager or progressive design-builder based on qualifications;

(19) Request for proposals means the documentation by which a contracting agency solicits proposals; and

(20) Request for qualifications means the documentation or publication by which a contracting agency solicits qualifications.

Source: Laws 2016, LB960, § 2; Laws 2017, LB339, § 173; Laws 2019, LB583, § 2; Laws 2022, LB1016, § 2.
Effective date July 21, 2022.

39-2806 Economic Opportunity Program; created.

The Economic Opportunity Program is created. The Department of Transportation shall administer the program in consultation with the Department of Economic Development using funds from the Transportation Infrastructure Bank Fund, except that no more than twenty million dollars shall be expended for this program. The purpose of the program is to finance transportation improvements to attract and support new businesses and business expansions by successfully connecting such businesses to Nebraska's multimodal transportation network and to increase employment, create high-quality jobs, increase business investment, and revitalize rural and other distressed areas of the state. The Department of Transportation shall develop the program, including the application process, criteria for providing funding, matching requirements, and provisions for recapturing funds awarded for projects with unmet obligations, in consultation with statewide associations representing municipal and county officials, economic developers, and the Department of Economic Development. No project shall be approved through the Economic Opportunity Program without an economic impact analysis proving positive economic impact. The details of the program shall be presented to the Appropriations Committee and

the Transportation and Telecommunications Committee of the Legislature on or before December 1, 2016.

Source: Laws 2016, LB960, § 6; Laws 2017, LB339, § 174.
Termination date June 30, 2033.

39-2808 Purpose of sections.

The purpose of sections 39-2808 to 39-2824 is to provide a contracting agency alternative methods of contracting for public projects. The alternative methods of contracting shall be available to a contracting agency for use on any project regardless of the funding source. Notwithstanding any other provision of state law to the contrary, the Transportation Innovation Act shall govern the design-build, progressive design-build, and construction manager-general contractor procurement processes.

Source: Laws 2016, LB960, § 8; Laws 2019, LB583, § 3; Laws 2022, LB1016, § 3.
Effective date July 21, 2022.

39-2809 Design-build contract; progressive design-build contract; construction manager-general contract; authorized.

A contracting agency, in accordance with sections 39-2808 to 39-2824, may solicit and execute a design-build contract, a progressive design-build contract, or a construction manager-general contractor contract for a public project, other than a project that is primarily resurfacing, rehabilitation, or restoration.

Source: Laws 2016, LB960, § 9; Laws 2019, LB583, § 4; Laws 2022, LB1016, § 4.
Effective date July 21, 2022.

39-2810 Contracting agency; hire engineering or architectural consultant.

A contracting agency may hire an engineering or architectural consultant to assist the contracting agency with the development of project performance criteria and requests for proposals, with evaluation of proposals, with evaluation of the construction to determine adherence to the project performance criteria, and with any additional services requested by the contracting agency to represent its interests in relation to a project. The procedures used to hire such person or organization shall comply with the Nebraska Consultants' Competitive Negotiation Act. The person or organization hired shall be ineligible to be included as a provider of other services in a proposal for the project for which he or she has been hired and shall not be employed by or have a financial or other interest in a design-builder or construction manager who will submit a proposal.

Source: Laws 2016, LB960, § 10; Laws 2019, LB583, § 5.

Cross References

Nebraska Consultants' Competitive Negotiation Act, see section 81-1702.

39-2811 Guidelines; contents.

The department shall adopt guidelines for entering into a design-build contract, a progressive design-build contract, or construction manager-general contractor contract. If an eligible county, a city of the metropolitan class, or a city of the primary class intends to proceed with a design-build contract, a

progressive design-build contract, or a construction manager-general contractor contract, the eligible county, city of the metropolitan class, or city of the primary class may adopt the guidelines published by the department. The department's guidelines shall include the following:

(1) Preparation and content of requests for qualifications;

(2) Preparation and content of requests for proposals;

(3) Qualification and short-listing of design-builders, progressive design-builders, and construction managers. The guidelines shall provide that the contracting agency will evaluate prospective design-builders, progressive design-builders, and construction managers based on the information submitted to the contracting agency in response to a request for qualifications and will select a short list of design-builders, progressive design-builders, or construction managers who shall be considered qualified and eligible to respond to the request for proposals;

(4) Preparation and submittal of proposals;

(5) Procedures and standards for evaluating proposals;

(6) Procedures for negotiations between the contracting agency and the design-builders, progressive design-builders, or construction managers submitting proposals prior to the acceptance of a proposal if any such negotiations are contemplated; and

(7) Procedures for the evaluation of construction under a design-build contract or a progressive design-build contract to determine adherence to the project performance criteria.

Source: Laws 2016, LB960, § 11; Laws 2019, LB583, § 6; Laws 2022, LB1016, § 5.
Effective date July 21, 2022.

39-2812 Process; provisions applicable.

(1) The process for selecting a design-builder and entering into a design-build contract shall be in accordance with sections 39-2813 to 39-2816.

(2) Except as otherwise specifically provided in the Transportation Innovation Act, the process for selecting a progressive design-builder and entering into a progressive design-build contract shall be in accordance with sections 39-2813 to 39-2816.

Source: Laws 2016, LB960, § 12; Laws 2022, LB1016, § 6.
Effective date July 21, 2022.

39-2813 Request for qualifications for design-build proposals and progressive design-build proposals; publication; short list created.

(1) A contracting agency shall prepare a request for qualifications for design-build and progressive design-build proposals and shall prequalify design-builders and progressive design-builders. The request for qualifications shall describe the project in sufficient detail to permit a design-builder or a progressive design-builder to respond. The request for qualifications shall identify the maximum number of design-builders or progressive design-builders the contracting agency will place on a short list as qualified and eligible to receive a request for proposals.

(2) A person or organization hired by the contracting agency under section 39-2810 shall be ineligible to compete for a design-build contract on the same project for which the person or organization was hired.

(3) The request for qualifications shall be (a) published in a newspaper of statewide circulation at least thirty days prior to the deadline for receiving the request for qualifications and (b) sent by first-class mail to any design-builder or progressive design-builder upon request.

(4) The contracting agency shall create a short list of qualified and eligible design-builders or progressive design-builders in accordance with the guidelines adopted pursuant to section 39-2811. The contracting agency shall select at least two prospective design-builders or progressive design-builders, except that if only one design-builder or progressive design-builder has responded to the request for qualifications, the contracting agency may, in its discretion, proceed or cancel the procurement. The request for proposals shall be sent only to the design-builders or progressive design-builders placed on the short list.

Source: Laws 2016, LB960, § 13; Laws 2019, LB583, § 7; Laws 2022, LB1016, § 7.
Effective date July 21, 2022.

39-2814 Request for proposals for design-build or progressive design-build contract; elements.

A contracting agency shall prepare a request for proposals for each design-build or progressive design-build contract. The request for proposals shall contain, at a minimum, the following elements:

(1) The guidelines adopted in accordance with section 39-2811. The identification of a publicly accessible location of the guidelines, either physical or electronic, shall be considered compliance with this subdivision;

(2) The proposed terms and conditions of the design-build or progressive design-build contract, including any terms and conditions which are subject to further negotiation;

(3) A project statement which contains information about the scope and nature of the project;

(4) If applicable, a statement regarding alternative technical concepts including the process and time period in which such concepts may be submitted, confidentiality of the concepts, and ownership of the rights to the intellectual property contained in such concepts;

(5) Project performance criteria;

(6) Budget parameters for the project;

(7) Any bonding and insurance required by law or as may be additionally required by the contracting agency;

(8) The criteria for evaluation of proposals and the relative weight of each criterion. For both design-build and progressive design-build contracts, the criteria shall include, but are not limited to, construction experience, design experience, and the financial, personnel, and equipment resources available for the project. For design-build contracts only, the criteria shall also include the cost of the work. For progressive design-build contracts only, the criteria shall also include consideration of the historic reasonableness of the progressive design-builder's costs and expenses when bidding and completing projects,

whether such projects were completed using the progressive design-build process or another bidding and contracting process. The relative weight to apply to any criterion shall be at the discretion of the contracting agency based on each project, except that for all design-build contracts, the cost of the work shall be given a relative weight of at least fifty percent;

(9) A requirement that the design-builder or progressive design-builder provide a written statement of the design-builder's or progressive design-builder's proposed approach to the design and construction of the project, which may include graphic materials illustrating the proposed approach to design and construction;

(10) A requirement that the design-builder or progressive design-builder agree to the following conditions:

(a) At the time of the design-build or progressive design-build proposal, the design-builder or progressive design-builder must furnish to the contracting agency a written statement identifying the architect or engineer who will perform the architectural or engineering work for the project. The architect or engineer engaged by the design-builder or progressive design-builder to perform the architectural or engineering work with respect to the project must have direct supervision of such work and may not be removed by the design-builder or progressive design-builder prior to the completion of the project without the written consent of the contracting agency;

(b) At the time of the design-build or progressive design-build proposal, the design-builder or progressive design-builder must furnish to the contracting agency a written statement identifying the general contractor who will provide the labor, material, supplies, equipment, and construction services. The general contractor identified by the design-builder or progressive design-builder may not be removed by the design-builder or progressive design-builder prior to completion of the project without the written consent of the contracting agency;

(c) A design-builder or progressive design-builder offering design-build or progressive design-build services with its own employees who are design professionals licensed to practice in Nebraska must (i) comply with the Engineers and Architects Regulation Act by procuring a certificate of authorization to practice architecture or engineering and (ii) submit proof of sufficient professional liability insurance in the amount required by the contracting agency; and

(d) The rendering of architectural or engineering services by a licensed architect or engineer employed by the design-builder or progressive design-builder must conform to the Engineers and Architects Regulation Act;

(11) The amount and terms of the stipend required pursuant to section 39-2815, if any; and

(12) Other information or requirements which the contracting agency, in its discretion, chooses to include in the request for proposals.

Source: Laws 2016, LB960, § 14; Laws 2019, LB583, § 8; Laws 2022, LB1016, § 8.
Effective date July 21, 2022.

Cross References

Engineers and Architects Regulation Act, see section 81-3401.

39-2815 Stipend.

The contracting agency shall pay a stipend to qualified design-builders that submit responsive proposals but are not selected. Payment of the stipend shall give the contracting agency ownership of the intellectual property contained in the proposals and alternative technical concepts. The amount of the stipend shall be at the discretion of the contracting agency as disclosed in the request for proposals.

Source: Laws 2016, LB960, § 15; Laws 2019, LB583, § 9.

39-2816 Submission of proposals; sealed; rank of design-builders and progressive design-builders; negotiation of contract.

(1) Design-builders and progressive design-builders shall submit proposals as required by the request for proposals. A contracting agency may meet with individual design-builders and progressive design-builders prior to the time of submitting the proposal and may have discussions concerning alternative technical concepts. If an alternative technical concept provides a solution that is equal to or better than the requirements in the request for proposals and the alternative technical concept is acceptable to the contracting agency, it may be incorporated as part of the proposal by the design-builder or progressive design-builder. Notwithstanding any other provision of state law to the contrary, alternative technical concepts shall be confidential and not disclosed to other design-builders, progressive design-builders, or members of the public from the time the proposals are submitted until such proposals are opened by the contracting agency.

(2) Proposals shall be sealed and shall not be opened until expiration of the time established for making the proposals as set forth in the request for proposals.

(3) Proposals may be withdrawn at any time prior to the opening of such proposals in which case no stipend shall be paid. The contracting agency shall have the right to reject any and all proposals at no cost to the contracting agency other than any stipend for design-builders who have submitted responsive proposals. The contracting agency may thereafter solicit new proposals using the same or different project performance criteria or may cancel the design-build or progressive design-build solicitation.

(4) The contracting agency shall rank the design-builders or progressive design-builders in order of best value pursuant to the criteria in the request for proposals. The contracting agency may meet with design-builders or progressive design-builders prior to ranking.

(5) The contracting agency may attempt to negotiate a design-build or progressive design-build contract with the highest ranked design-builder or progressive design-builder selected by the contracting agency and may enter into a design-build or progressive design-build contract after negotiations. If the contracting agency is unable to negotiate a satisfactory design-build or progressive design-build contract with the highest ranked design-builder or progressive design-builder, the contracting agency may terminate negotiations with that design-builder or progressive design-builder. The contracting agency may then undertake negotiations with the second highest ranked design-builder or progressive design-builder and may enter into a design-build or progressive design-build contract after negotiations. If the contracting agency is unable to negotiate a satisfactory contract with the second highest ranked design-builder or progressive design-builder, the contracting agency may undertake negotiations

with the third highest ranked design-builder or progressive design-builder, if any, and may enter into a design-build or progressive design-build contract after negotiations.

(6) If the contracting agency is unable to negotiate a satisfactory contract with any of the ranked design-builders or progressive design-builders, the contracting agency may either revise the request for proposals and solicit new proposals or cancel the design-build or progressive design-build process under sections 39-2808 to 39-2824.

Source: Laws 2016, LB960, § 16; Laws 2019, LB583, § 10; Laws 2022, LB1016, § 9.
Effective date July 21, 2022.

39-2817 Selection of construction manager; construction manager-general contractor contract; sections applicable; request for qualifications; prequalification; publication; short list created.

(1) The process for selecting a construction manager and entering into a construction manager-general contractor contract shall be in accordance with this section and sections 39-2818 to 39-2820.

(2) A contracting agency shall prepare a request for qualifications for construction manager-general contractor contract proposals and shall prequalify construction managers. The request for qualifications shall describe the project in sufficient detail to permit a construction manager to respond. The request for qualifications shall identify the maximum number of eligible construction managers the contracting agency will place on a short list as qualified and eligible to receive a request for proposals.

(3) The request for qualifications shall be (a) published in a newspaper of statewide circulation at least thirty days prior to the deadline for receiving the request for qualifications and (b) sent by first-class mail to any construction manager upon request.

(4) The contracting agency shall create a short list of qualified and eligible construction managers in accordance with the guidelines adopted pursuant to section 39-2811. The contracting agency shall select at least two construction managers, except that if only one construction manager has responded to the request for qualifications, the contracting agency may, in its discretion, proceed or cancel the procurement. The request for proposals shall be sent only to the construction managers placed on the short list.

Source: Laws 2016, LB960, § 17; Laws 2019, LB583, § 11.

39-2818 Request for proposals for construction manager-general contractor contract; elements.

A contracting agency shall prepare a request for proposals for each construction manager-general contractor contract. The request for proposals shall contain, at a minimum, the following elements:

(1) The guidelines adopted in accordance with section 39-2811. The identification of a publicly accessible location of the guidelines, either physical or electronic, shall be considered compliance with this subdivision;

(2) The proposed terms and conditions of the contract, including any terms and conditions which are subject to further negotiation;

(3) Any bonding and insurance required by law or as may be additionally required by the contracting agency;

(4) General information about the project which will assist the contracting agency in its selection of the construction manager, including a project statement which contains information about the scope and nature of the project, the project site, the schedule, and the estimated budget;

(5) The criteria for evaluation of proposals and the relative weight of each criterion;

(6) A statement that the construction manager shall not be allowed to sublet, assign, or otherwise dispose of any portion of the contract without consent of the contracting agency. In no case shall the contracting agency allow the construction manager to sublet more than seventy percent of the work, excluding specialty items; and

(7) Other information or requirements which the contracting agency, in its discretion, chooses to include in the request for proposals.

Source: Laws 2016, LB960, § 18; Laws 2019, LB583, § 12.

39-2819 Submission of proposals; sealed; rank of construction managers; negotiation of contract.

(1) Construction managers shall submit proposals as required by the request for proposals.

(2) Proposals shall be sealed and shall not be opened until expiration of the time established for making the proposals as set forth in the request for proposals.

(3) Proposals may be withdrawn at any time prior to signing a contract for preconstruction services. The contracting agency shall have the right to reject any and all proposals at no cost to the contracting agency. The contracting agency may thereafter solicit new proposals or may cancel the construction manager-general contractor procurement process.

(4) The contracting agency shall rank the construction managers in accordance with the qualification-based selection process and pursuant to the criteria in the request for proposals. The contracting agency may meet with construction managers prior to the ranking.

(5) The contracting agency may attempt to negotiate a contract for preconstruction services with the highest ranked construction manager and may enter into a contract for preconstruction services after negotiations. If the contracting agency is unable to negotiate a satisfactory contract for preconstruction services with the highest ranked construction manager, the contracting agency may terminate negotiations with that construction manager. The contracting agency may then undertake negotiations with the second highest ranked construction manager and may enter into a contract for preconstruction services after negotiations. If the contracting agency is unable to negotiate a satisfactory contract with the second highest ranked construction manager, the contracting agency may undertake negotiations with the third highest ranked construction manager, if any, and may enter into a contract for preconstruction services after negotiations.

(6) If the contracting agency is unable to negotiate a satisfactory contract for preconstruction services with any of the ranked construction managers, the contracting agency may either revise the request for proposals and solicit new

proposals or cancel the construction manager-general contractor contract process under sections 39-2808 to 39-2824.

Source: Laws 2016, LB960, § 19; Laws 2019, LB583, § 13.

39-2820 Contracting agency; cost estimate; conduct contract negotiations.

(1) Before the construction manager begins any construction services, a contracting agency shall:

(a) Conduct an independent cost estimate for the project; and

(b) Conduct contract negotiations with the construction manager to develop a construction manager-general contractor contract for construction services.

(2) If the construction manager and the contracting agency are unable to negotiate a contract, the contracting agency may use other contract procurement processes. Persons or organizations who submitted proposals but were unable to negotiate a contract with the contracting agency shall be eligible to compete in the other contract procurement processes.

Source: Laws 2016, LB960, § 20; Laws 2019, LB583, § 14.

39-2821 Contracts; changes authorized.

A design-build contract, a progressive design-build contract, and a construction manager-general contractor contract may be conditioned upon later refinements in scope and price and may permit the contracting agency in agreement with the design-builder, progressive design-builder, or construction manager to make changes in the project without invalidating the contract.

Source: Laws 2016, LB960, § 21; Laws 2019, LB583, § 15; Laws 2022, LB1016, § 10.
Effective date July 21, 2022.

39-2822 Department; authority for political subdivision projects.

The department may enter into agreements under sections 39-2808 to 39-2824 to let, design, and construct projects for political subdivisions when any of the funding for such projects is provided by or through the department. In such instances, the department may enter into contracts with the design-builder, progressive design-builder, or construction manager. The provisions of the Political Subdivisions Construction Alternatives Act shall not apply to projects let, designed, and constructed under the supervision of the department pursuant to agreements with political subdivisions under sections 39-2808 to 39-2824.

Source: Laws 2016, LB960, § 22; Laws 2019, LB583, § 16; Laws 2022, LB1016, § 11.
Effective date July 21, 2022.

Cross References

Political Subdivisions Construction Alternatives Act, see section 13-2901.

39-2823 Insurance.

Nothing in sections 39-2808 to 39-2824 shall limit or reduce statutory or regulatory requirements regarding insurance.

Source: Laws 2016, LB960, § 23; Laws 2019, LB583, § 17.

39-2824 Rules and regulations.

The department may adopt and promulgate rules and regulations to carry out the Transportation Innovation Act. An eligible county, a city of the metropolitan class, or a city of the primary class may adopt a resolution or an ordinance establishing rules to carry out the act.

Source: Laws 2016, LB960, § 24; Laws 2019, LB583, § 18.

39-2825 Public-private partnership delivery method; authorized.

(1) A public-private partnership delivery method may be used for projects under the Transportation Innovation Act as provided in this section and rules and regulations adopted and promulgated pursuant to this section only to the extent allowed under the Constitution of Nebraska. State contracts using this method shall be awarded by competitive negotiation.

(2) A contracting agency utilizing a public-private partnership shall continue to be responsible for oversight of any function that is delegated to or otherwise performed by a private partner.

(3) On or before July 1, 2023, the Director-State Engineer shall adopt and promulgate rules and regulations setting forth criteria to be used in determining when a public-private partnership is to be used for a particular project. The rules and regulations shall reflect the intent of the Legislature to promote and encourage the use of public-private partnerships in the State of Nebraska. The Director-State Engineer shall consult with design-builders, progressive design-builders, construction managers, other contractors and design professionals, including engineers and architects, and other appropriate professionals during the development of the rules and regulations.

(4) A request for proposals for a project utilizing a public-private partnership shall include at a minimum:

(a) The parameters of the proposed public-private partnership agreement;

(b) The duties and responsibilities to be performed by the private partner or private partners;

(c) The methods of oversight to be employed by the contracting agency;

(d) The duties and responsibilities that are to be performed by the contracting agency and any other parties to the contract;

(e) The evaluation factors and the relative weight of each factor to be used in the scoring of awards;

(f) Plans for financing and operating the project and the revenues, service payments, bond financings, and appropriations of public funds needed for the qualifying project;

(g) Comprehensive documentation of the experience, capabilities, capitalization and financial condition, and other relevant qualifications of the private entity submitting the proposal;

(h) The ability of a private partner or private partners to quickly respond to the needs presented in the request for proposals and the importance of economic development opportunities represented by the project. In evaluating proposals, preference shall be given to a plan that includes the involvement of small businesses as subcontractors, to the extent that small businesses can provide services in a competitive manner, unless any preference interferes with the qualification for federal or other funds; and

(i) Other information required by the contracting agency to evaluate the proposals submitted and the overall proposed public-private partnership.

(5) A private entity desiring to be a private partner shall demonstrate to the satisfaction of the contracting agency that it is capable of performing any duty, responsibility, or function it may be authorized or directed to perform as a term or condition of the public-private partnership agreement.

(6) A request for proposals may be canceled, or all proposals may be rejected, if it is determined in writing that such action is taken in the best interest of the State of Nebraska and approved by the purchasing officer.

(7) Upon execution of a public-private partnership agreement, the contracting agency shall ensure that the contract clearly identifies that a public-private partnership is being utilized.

(8) The department shall:

(a) Adhere to the rules and regulations adopted and promulgated under this section when utilizing a public-private partnership for financing capital projects; and

(b) Electronically report annually to the Appropriations Committee of the Legislature and the Transportation and Telecommunications Committee of the Legislature regarding private-public partnerships which have been considered or are approved pursuant to this section.

Source: Laws 2022, LB1016, § 12.
Effective date July 21, 2022.

CHAPTER 42
HOUSEHOLDS AND FAMILIES

ARTICLE 3
DIVORCE, ALIMONY, AND CHILD SUPPORT

(d) DOMESTIC RELATIONS ACTIONS

(d) DOMESTIC RELATIONS ACTIONS

42-364 Action involving child support, child custody, parenting time, visitation, or other access; parenting plan; legal custody and physical custody determination; rights of parents; child support; termination of parental rights; court; duties; modification proceedings; use of school records as evidence.

(1)(a) In an action under Chapter 42 involving child support, child custody, parenting time, visitation, or other access, the parties and their counsel, if represented, shall develop a parenting plan as provided in the Parenting Act. If the parties and counsel do not develop a parenting plan, the complaint shall so indicate as provided in section 42-353 and the case shall be referred to mediation or specialized alternative dispute resolution as provided in the Parenting Act. For good cause shown and (i) when both parents agree and such parental agreement is bona fide and not asserted to avoid the purposes of the Parenting Act, or (ii) when mediation or specialized alternative dispute resolution is not possible without undue delay or hardship to either parent, the mediation or specialized alternative dispute resolution requirement may be waived by the court. In such a case where waiver of the mediation or specialized alternative dispute resolution is sought, the court shall hold an evidentiary hearing and the burden of proof for the party or parties seeking waiver is by clear and convincing evidence.

(b) The decree in an action involving the custody of a minor child shall include the determination of legal custody and physical custody based upon the

best interests of the child, as defined in the Parenting Act, and child support. Such determinations shall be made by incorporation into the decree of (i) a parenting plan developed by the parties, if approved by the court, or (ii) a parenting plan developed by the court based upon evidence produced after a hearing in open court if no parenting plan is developed by the parties or the plan developed by the parties is not approved by the court. The decree shall conform to the Parenting Act.

(c) The social security number of each parent and the minor child shall be furnished to the clerk of the district court but shall not be disclosed or considered a public record.

(2) In determining legal custody or physical custody, the court shall not give preference to either parent based on the sex or disability of the parent and, except as provided in section 43-2933, no presumption shall exist that either parent is more fit or suitable than the other. Custody shall be determined on the basis of the best interests of the child, as defined in the Parenting Act. Unless parental rights are terminated, both parents shall continue to have the rights stated in section 42-381.

(3) Custody of a minor child may be placed with both parents on a joint legal custody or joint physical custody basis, or both, (a) when both parents agree to such an arrangement in the parenting plan and the court determines that such an arrangement is in the best interests of the child or (b) if the court specifically finds, after a hearing in open court, that joint physical custody or joint legal custody, or both, is in the best interests of the minor child regardless of any parental agreement or consent.

(4) In determining the amount of child support to be paid by a parent, the court shall consider the earning capacity of each parent and the guidelines provided by the Supreme Court pursuant to section 42-364.16 for the establishment of child support obligations. Upon application, hearing, and presentation of evidence of an abusive disregard of the use of child support money or cash medical support paid by one party to the other, the court may require the party receiving such payment to file a verified report with the court, as often as the court requires, stating the manner in which child support money or cash medical support is used. Child support money or cash medical support paid to the party having physical custody of the minor child shall be the property of such party except as provided in section 43-512.07. The clerk of the district court shall maintain a record of all decrees and orders in which the payment of child support, cash medical support, or spousal support has been ordered, whether ordered by a district court, county court, separate juvenile court, or county court sitting as a juvenile court. Orders for child support or cash medical support in cases in which a party has applied for services under Title IV-D of the federal Social Security Act, as amended, shall be reviewed as provided in sections 43-512.12 to 43-512.18.

(5) Whenever termination of parental rights is placed in issue the court shall transfer jurisdiction to a juvenile court established pursuant to the Nebraska Juvenile Code unless a showing is made that the county court or district court is a more appropriate forum. In making such determination, the court may consider such factors as cost to the parties, undue delay, congestion of trial dockets, and relative resources available for investigative and supervisory assistance. A determination that the county court or district court is a more appropriate forum shall not be a final order for the purpose of enabling an

appeal. If no such transfer is made, the court shall conduct the termination of parental rights proceeding as provided in the Nebraska Juvenile Code.

(6) Modification proceedings relating to support, custody, parenting time, visitation, other access, or removal of children from the jurisdiction of the court shall be commenced by filing a complaint to modify. Modification of a parenting plan is governed by the Parenting Act. Proceedings to modify a parenting plan shall be commenced by filing a complaint to modify. Such actions shall be referred to mediation or specialized alternative dispute resolution as provided in the Parenting Act. For good cause shown and (a) when both parents agree and such parental agreement is bona fide and not asserted to avoid the purposes of the Parenting Act, or (b) when mediation or specialized alternative dispute resolution is not possible without undue delay or hardship to either parent, the mediation or specialized alternative dispute resolution requirement may be waived by the court. In such a case where waiver of the mediation or specialized alternative dispute resolution is sought, the court shall hold an evidentiary hearing and the burden of proof for the party or parties seeking waiver is by clear and convincing evidence. Service of process and other procedure shall comply with the requirements for a dissolution action.

(7) In any proceeding under this section relating to custody of a child of school age, certified copies of school records relating to attendance and academic progress of such child are admissible in evidence.

(8) For purposes of this section, disability has the same meaning as in 42 U.S.C. 12102, as such section existed on January 1, 2018.

Source: Laws 1983, LB 138, § 1; Laws 1985, LB 612, § 1; Laws 1985, Second Spec. Sess., LB 7, § 16; Laws 1991, LB 457, § 3; Laws 1991, LB 715, § 1; Laws 1993, LB 629, § 21; Laws 1994, LB 490, § 1; Laws 1996, LB 1296, § 15; Laws 1997, LB 752, § 96; Laws 2004, LB 1207, § 25; Laws 2006, LB 1113, § 35; Laws 2007, LB554, § 32; Laws 2008, LB1014, § 32; Laws 2009, LB288, § 5; Laws 2010, LB901, § 1; Laws 2013, LB561, § 5; Laws 2018, LB193, § 76; Laws 2018, LB845, § 17.

Cross References

Nebraska Juvenile Code, see section 43-2,129.
Parenting Act, see section 43-2920.
Violation of custody, penalty, see section 28-316.

42-364.18 Individuals with disabilities; legislative findings.

The Legislature finds that individuals with disabilities, as defined in section 42-364, continue to face unfair, preconceived, and unnecessary societal biases as well as antiquated attitudes regarding their ability to successfully parent their children.

Source: Laws 2018, LB845, § 16.

42-369 Support or alimony; presumption; items includable; payments; disbursement; enforcement; health care coverage.

(1) All orders, decrees, or judgments for temporary or permanent support payments, including child, spousal, or medical support, and all orders, decrees, or judgments for alimony or modification of support payments or alimony shall direct the payment of such sums to be made commencing on the first day of each month for the use of the persons for whom the support payments or

alimony have been awarded. Such payments shall be made to the clerk of the district court (a) when the order, decree, or judgment is for spousal support, alimony, or maintenance support and the order, decree, or judgment does not also provide for child support, and (b) when the payment constitutes child care or day care expenses, unless payments under subdivision (1)(a) or (1)(b) of this section are ordered to be made directly to the obligee. All other support order payments shall be made to the State Disbursement Unit. In all cases in which income withholding has been implemented pursuant to the Income Withholding for Child Support Act or sections 42-364.01 to 42-364.14, support order payments shall be made to the State Disbursement Unit. The court may order such payment to be in cash or guaranteed funds.

(2)(a) If the party against whom an order, decree, or judgment for child support is entered or the custodial party has health care coverage available to him or her through an employer, organization, or other health care coverage entity which may extend to cover any children affected by the order, decree, or judgment and the health care coverage is accessible to the children and is available to the responsible party at reasonable cost, the court shall require health care coverage to be provided. Health care coverage is accessible if the covered children can obtain services from a plan provider with reasonable effort by the custodial party. When the administrative agency, court, or other tribunal determines that the only health care coverage option available through the noncustodial party is a plan that limits service coverage to providers within a defined geographic area, the administrative agency, court, or other tribunal shall determine whether the child lives within the plan's service area. If the child does not live within the plan's service area, the administrative agency, court, or other tribunal shall determine whether the plan has a reciprocal agreement that permits the child to receive coverage at no greater cost than if the child resided in the plan's service area. The administrative agency, court, or other tribunal shall also determine if primary care is available within thirty minutes or thirty miles of the child's residence. For the purpose of determining the accessibility of health care coverage, the administrative agency, court, or other tribunal may determine and include in an order that longer travel times are permissible if residents, in part or all of the service area, customarily travel distances farther than thirty minutes or thirty miles. If primary care services are not available within these constraints, the health care coverage is presumed inaccessible. If health care coverage is not available or is inaccessible and one or more of the parties are receiving Title IV-D services, then cash medical support shall be ordered. Cash medical support or the cost of health care coverage is considered reasonable in cost if the cost to the party responsible for providing medical support does not exceed the amount set forth in child support guidelines established by the Supreme Court by court rule pursuant to section 42-364.16.

(b) For purposes of this section:

(i) Health care coverage has the same meaning as in section 44-3,144; and

(ii) Cash medical support means an amount ordered to be paid toward the cost of health care coverage provided by a public entity or by another parent through employment or otherwise or for other medical costs not covered by insurance or other health care coverage.

(3) A support order, decree, or judgment may include the providing of necessary shelter, food, clothing, care, medical support as defined in section

43-512, medical attention, expenses of confinement, education expenses, funeral expenses, and any other expense the court may deem reasonable and necessary.

(4) Orders, decrees, and judgments for temporary or permanent support or alimony shall be filed with the clerk of the district court and have the force and effect of judgments when entered. The clerk and the State Disbursement Unit shall disburse all payments received as directed by the court and as provided in sections 42-358.02 and 43-512.07. Records shall be kept of all funds received and disbursed by the clerk and the unit and shall be open to inspection by the parties and their attorneys.

(5) Unless otherwise specified by the court, an equal and proportionate share of any child support awarded shall be presumed to be payable on behalf of each child subject to the order, decree, or judgment for purposes of an assignment under section 43-512.07.

Source: Laws 1972, LB 820, § 23; Laws 1983, LB 371, § 11; Laws 1991, LB 457, § 4; Laws 1993, LB 435, § 1; Laws 2000, LB 972, § 15; Laws 2007, LB554, § 35; Laws 2009, LB288, § 6; Laws 2018, LB702, § 1; Laws 2022, LB922, § 8.
Operative date July 21, 2022.

Cross References

Income Withholding for Child Support Act, see section 43-1701.

42-372.02 Decree; assignment of real estate; affidavit and certificate; filing.

(1) When a decree of dissolution of marriage assigns real estate to either party, the party to whom the real estate is assigned may (a) prepare and file with the clerk of the district court an affidavit identifying the real estate by legal description and affirmatively identifying the person entitled to the real estate and (b) prepare for signature and seal by the clerk one or more certificates in a form substantially similar to the following:

CERTIFICATE OF DISSOLUTION OF MARRIAGE

. . . . . , Clerk of the District Court of . . . . . County, Nebraska, certifies that in Case No. . . . . , in such Court, entitled . . . . . vs. . . . . , the Court entered its decree of dissolution of marriage in which the interest of . . . . . in the following described real estate in . . . . . County, Nebraska:

. . . . . .

. . . . . .

. . . . . .

. . . . . .

has been assigned to . . . . . .

Dated: . . . . . .

(SEAL) Clerk of the District Court

. . . . . County, Nebraska.

(2) A certificate may include more than one parcel of real estate, but there shall be separate certificates for each party to whom real estate is assigned and separate certificates for each county in which real estate is located. The certificate or certificates shall be delivered by the clerk to the person applying for the same, and such person shall be responsible for recording the certificate or certificates with the register of deeds in the appropriate county or counties as provided in section 76-248.01.

Source: Laws 2005, LB 361, § 23; Laws 2018, LB193, § 77.

42-377 Legitimacy of children.

Children born to the parties, or to either spouse, in a marriage relationship which may be dissolved or annulled pursuant to sections 42-347 to 42-381 shall be legitimate unless otherwise decreed by the court, and in every case the legitimacy of all children conceived before the commencement of the suit shall be presumed until the contrary is shown.

Source: Laws 1972, LB 820, § 31; Laws 1997, LB 229, § 21; Laws 2019, LB427, § 1.

ARTICLE 9

DOMESTIC VIOLENCE

(a) PROTECTION FROM DOMESTIC ABUSE ACT

(a) PROTECTION FROM DOMESTIC ABUSE ACT

42-903 Terms, defined.

For purposes of the Protection from Domestic Abuse Act, unless the context otherwise requires:

(1) Abuse means the occurrence of one or more of the following acts between family or household members:

(a) Attempting to cause or intentionally and knowingly causing bodily injury with or without a dangerous instrument;

(b) Placing, by means of credible threat, another person in fear of bodily injury. For purposes of this subdivision, credible threat means a verbal or written threat, including a threat performed through the use of an electronic communication device, or a threat implied by a pattern of conduct or a combination of verbal, written, or electronically communicated statements and conduct that is made by a person with the apparent ability to carry out the threat so as to cause the person who is the target of the threat to reasonably fear for his or her safety or the safety of his or her family. It is not necessary to

prove that the person making the threat had the intent to actually carry out the threat. The present incarceration of the person making the threat shall not prevent the threat from being deemed a credible threat under this section; or

(c) Engaging in sexual contact or sexual penetration without consent as defined in section 28-318;

(2) Department means the Department of Health and Human Services;

(3) Family or household members includes spouses or former spouses, children, persons who are presently residing together or who have resided together in the past, persons who have a child in common whether or not they have been married or have lived together at any time, other persons related by consanguinity or affinity, and persons who are presently involved in a dating relationship with each other or who have been involved in a dating relationship with each other. For purposes of this subdivision, dating relationship means frequent, intimate associations primarily characterized by the expectation of affectional or sexual involvement, but does not include a casual relationship or an ordinary association between persons in a business or social context; and

(4) Law enforcement agency means the police department or town marshal in incorporated municipalities, the office of the sheriff in unincorporated areas, and the Nebraska State Patrol.

Source: Laws 1978, LB 623, § 3; Laws 1986, LB 448, § 1; Laws 1989, LB 330, § 5; Laws 1992, LB 1098, § 6; Laws 1993, LB 299, § 4; Laws 1996, LB 1044, § 103; Laws 1998, LB 218, § 18; Laws 2004, LB 613, § 12; Laws 2012, LB310, § 2; Laws 2017, LB289, § 13.

42-924 Protection order; when authorized; term; renewal; violation; penalty; construction of sections.

(1)(a) Any victim of domestic abuse may file a petition and affidavit for a protection order as provided in this section. Upon the filing of such a petition and affidavit in support thereof, the court may issue a protection order without bond granting the following relief:

(i) Enjoining the respondent from imposing any restraint upon the petitioner or upon the liberty of the petitioner;

(ii) Enjoining the respondent from threatening, assaulting, molesting, attacking, or otherwise disturbing the peace of the petitioner;

(iii) Enjoining the respondent from telephoning, contacting, or otherwise communicating with the petitioner;

(iv) Removing and excluding the respondent from the residence of the petitioner, regardless of the ownership of the residence;

(v) Ordering the respondent to stay away from any place specified by the court;

(vi) Awarding the petitioner temporary custody of any minor children not to exceed ninety days;

(vii) Enjoining the respondent from possessing or purchasing a firearm as defined in section 28-1201; or

(viii) Ordering such other relief deemed necessary to provide for the safety and welfare of the petitioner and any designated family or household member.

(b) The petition for a protection order shall state the events and dates or approximate dates of acts constituting the alleged domestic abuse, including the most recent and most severe incident or incidents.

(c) The protection order shall specify to whom relief under this section was granted.

(2) Petitions for protection orders shall be filed with the clerk of the district court, and the proceeding may be heard by the county court or the district court as provided in section 25-2740. A petition for a protection order may not be withdrawn except upon order of the court.

(3)(a) A protection order shall specify that it is effective for a period of one year and, if the order grants temporary custody, the number of days of custody granted to the petitioner unless otherwise modified by the court.

(b)(i) Any victim of domestic abuse may file a petition and affidavit to renew a protection order. Such petition and affidavit for renewal shall be filed any time within forty-five days before the expiration of the previous protection order, including the date the order expires.

(ii) A protection order may be renewed on the basis of the petitioner's affidavit stating that there has been no material change in relevant circumstances since entry of the order and stating the reason for the requested renewal if:

(A) The petitioner seeks no modification of the order; and

(B)(I) The respondent has been properly served with notice of the petition for renewal and notice of hearing and fails to appear at the hearing; or

(II) The respondent indicates that he or she does not contest the renewal.

(iii) Such renewed order shall specify that it is effective for a period of one year to commence on the first calendar day following the expiration of the previous order or on the calendar day the court grants the renewal if such day is subsequent to the first calendar day after expiration of the previous order and, if the court grants temporary custody, the number of days of custody granted to the petitioner unless otherwise modified by the court.

(4) Any person, except the petitioner, who knowingly violates a protection order issued pursuant to this section or section 42-931 after service or notice as described in subsection (2) of section 42-926 shall be guilty of a Class I misdemeanor, except that any person convicted of violating such order who has a prior conviction for violating a protection order shall be guilty of a Class IV felony.

(5) If there is any conflict between sections 42-924 to 42-926 and any other provision of law, sections 42-924 to 42-926 shall govern.

Source: Laws 1978, LB 623, § 24; Laws 1984, LB 276, § 3; Laws 1989, LB 330, § 7; Laws 1992, LB 1098, § 7; Laws 1993, LB 299, § 5; Laws 1997, LB 229, § 34; Laws 1998, LB 218, § 20; Laws 2002, LB 82, § 17; Laws 2012, LB310, § 3; Laws 2017, LB289, § 14; Laws 2019, LB532, § 3.

42-924.02 Protection order; forms provided; State Court Administrator; duties.

The clerk of the district court shall make available standard petition and affidavit forms for all types of protection orders provided by law with instruc-

tions for completion to be used by a petitioner. Affidavit forms shall request all relevant information, including, but not limited to: A description of the most recent incident that was the basis for the application for a protection order and the date or approximate date of the incident and, if there was more than one incident, the most severe incident and the date or approximate date of such incident. The clerk and his or her employees shall not provide assistance in completing the forms. The State Court Administrator shall adopt and promulgate the standard petition and affidavit forms provided for in this section as well as the standard temporary ex parte and final protection order forms and provide a copy of such forms to all clerks of the district courts in this state. These standard temporary ex parte and final protection order forms shall be the only such forms used in this state.

Source: Laws 1989, LB 330, § 13; Laws 1997, LB 393, § 2; Laws 1998, LB 218, § 22; Laws 2019, LB532, § 4.

42-925 Ex parte protection order; duration; notice requirements; hearing; notice; referral to referee; notice regarding firearm or ammunition.

(1) An order issued under section 42-924 may be issued ex parte to the respondent if it reasonably appears from the specific facts included in the affidavit that the petitioner will be in immediate danger of abuse before the matter can be heard on notice. If an order is issued ex parte, such order is a temporary order and the court shall forthwith cause notice of the petition and order to be given to the respondent. The court shall also cause a form to request a show-cause hearing to be served upon the respondent. If the respondent wishes to appear and show cause why the order should not remain in effect, he or she shall affix his or her current address, telephone number, and signature to the form and return it to the clerk of the district court within ten business days after service upon him or her. Upon receipt of a timely request for a show-cause hearing, the request of the petitioner, or upon the court's own motion, the court shall immediately schedule a show-cause hearing to be held within thirty days after the receipt of the request for a show-cause hearing and shall notify the petitioner and respondent of the hearing date. The petition and affidavit shall be deemed to have been offered into evidence at any show-cause hearing. The petition and affidavit shall be admitted into evidence unless specifically excluded by the court. If the respondent appears at the hearing and shows cause why such order should not remain in effect, the court shall rescind the temporary order.

(2) A temporary ex parte order shall be affirmed and deemed the final protection order and service of the temporary ex parte order shall be notice of the final protection order if the respondent has been properly served with the temporary ex parte order and:

(a) The respondent fails to request a show-cause hearing within ten business days after service upon him or her and no hearing was requested by the petitioner or upon the court's own motion;

(b) The respondent has been properly served with notice of any hearing requested by the respondent, the petitioner, or upon the court's own motion and fails to appear at such hearing; or

(c) The respondent has been properly served with notice of any hearing requested by the respondent, the petitioner, or upon the court's own motion and the protection order was not dismissed at the hearing.

(3) If an order under section 42-924 is not issued ex parte, the court shall immediately schedule an evidentiary hearing to be held within fourteen days after the filing of the petition, and the court shall cause notice of the hearing to be given to the petitioner and the respondent. Any notice provided to the respondent shall include notification that a court may treat a petition for a domestic abuse protection order as a petition for a harassment protection order or a sexual assault protection order if it appears from the facts that such other protection order is more appropriate and that the respondent shall have an opportunity to show cause as to why such protection order should not be entered. If the respondent does not appear at the hearing and show cause why such order should not be issued, the court shall issue a final protection order.

(4) The court may by rule or order refer or assign all matters regarding orders issued under section 42-924 to a referee for findings and recommendations.

(5) An order issued under section 42-924 shall remain in effect for the period provided in subsection (3) of section 42-924, unless dismissed or modified by the court prior to such date. If the order grants temporary custody, such custody shall not exceed the number of days specified by the court unless the respondent shows cause why the order should not remain in effect.

(6) The court shall also cause the notice created under section 29-2291 to be served upon the respondent notifying the respondent that it may be unlawful under federal law for a person who is subject to a protection order to possess or receive any firearm or ammunition.

(7) A court may treat a petition for a domestic abuse protection order as a petition for a harassment protection order or a sexual assault protection order if it appears from the facts in the petition, affidavit, and evidence presented at a show-cause hearing that such other protection order is more appropriate and if:

(a) The court makes specific findings that such other order is more appropriate; or

(b) The petitioner has requested the court to so treat the petition.

Source: Laws 1978, LB 623, § 25; Laws 1989, LB 330, § 8; Laws 1998, LB 218, § 23; Laws 2008, LB1014, § 36; Laws 2012, LB310, § 4; Laws 2017, LB289, § 15; Laws 2019, LB532, § 5.

42-926 Protection order; copies; distribution; sheriff; duties; dismissal or modification; clerk of court; duties; notice requirements.

(1) Upon the issuance of a temporary ex parte or final protection order under section 42-925, the clerk of the court shall forthwith provide the petitioner, without charge, with two certified copies of such order. The clerk of the court shall also forthwith provide the local police department or local law enforcement agency and the local sheriff's office, without charge, with one copy each of such order and one copy each of the sheriff's return thereon. The clerk of the court shall also forthwith provide a copy of the protection order to the sheriff's office in the county where the respondent may be personally served together with instructions for service. Upon receipt of the order and instructions for service, such sheriff's office shall forthwith serve the protection order upon the respondent and file its return thereon with the clerk of the court which issued the protection order within fourteen days of the issuance of the protection

order. If any protection order is dismissed or modified by the court, the clerk of the court shall forthwith provide the local police department or local law enforcement agency and the local sheriff's office, without charge, with one copy each of the order of dismissal or modification. If the respondent has notice as described in subsection (2) of this section, further service under this subsection is unnecessary.

(2) If the respondent was present at a hearing convened pursuant to section 42-925 and the protection order was not dismissed, the respondent shall be deemed to have notice by the court at such hearing that the protection order will be granted and remain in effect and further service of notice described in subsection (1) of this section is not required for purposes of prosecution under subsection (4) of section 42-924.

(3) When provided by the petitioner, the court shall make confidential numeric victim identification information, including social security numbers and dates of birth, available to appropriate criminal justice agencies engaged in protection order enforcement efforts. Such agencies shall maintain the confidentiality of this information, except for entry into state and federal databases for protection order enforcement.

Source: Laws 1978, LB 623, § 26; Laws 1989, LB 330, § 9; Laws 1998, LB 218, § 24; Laws 2012, LB310, § 5; Laws 2019, LB532, § 6.

ARTICLE 12

ADDRESS CONFIDENTIALITY ACT

Section
42-1202. Findings.
42-1203. Terms, defined.
42-1204. Substitute address; application to Secretary of State; approval; certification; renewal; prohibited acts; violation; penalty.
42-1207. Early voting; authorized.
42-1209. Program participants; application assistance.

42-1202 Findings.

The Legislature finds that persons attempting to escape from actual or threatened abuse, sexual assault, kidnapping, or stalking frequently establish new addresses in order to prevent their assailants or probable assailants from finding them. The purposes of the Address Confidentiality Act are to enable state and local agencies to respond to requests for public records without disclosing the location of a victim of abuse, sexual assault, kidnapping, or stalking, to enable interagency cooperation with the office of the Secretary of State in providing address confidentiality for victims of abuse, sexual assault, kidnapping, or stalking, and to enable state and local agencies to accept a program participant's use of an address designated by the Secretary of State as a substitute mailing address.

Source: Laws 2003, LB 228, § 2; Laws 2022, LB691, § 1.
Effective date July 21, 2022.

42-1203 Terms, defined.

For purposes of the Address Confidentiality Act:

(1) Abuse means causing or attempting to cause physical harm, placing another person in fear of physical harm, or causing another person to engage

involuntarily in sexual activity by force, threat of force, or duress, when committed by (a) a person against his or her spouse, (b) a person against his or her former spouse, (c) a person residing with the victim if such person and the victim are or were in a dating relationship, (d) a person who formerly resided with the victim if such person and the victim are or were in a dating relationship, (e) a person against a parent of his or her children, whether or not such person and the victim have been married or resided together at any time, (f) a person against a person with whom he or she is in a dating relationship, (g) a person against a person with whom he or she formerly was in a dating relationship, or (h) a person related to the victim by consanguinity or affinity;

(2) Address means a residential street address, school address, or work address of an individual as specified on the individual's application to be a program participant;

(3) Dating relationship means an intimate or sexual relationship;

(4) Kidnapping has the same meaning as in section 28-313;

(5) Program participant means a person certified as a program participant under section 42-1204;

(6) Sexual assault has the same meaning as in section 28-319, 28-319.01, 28-320, 28-320.01, or 28-386;

(7) Stalking has the same meaning as in sections 28-311.02 to 28-311.05; and

(8) Trafficking victim has the same meaning as in section 28-830.

Source: Laws 2003, LB 228, § 3; Laws 2006, LB 1199, § 31; Laws 2017, LB280, § 1; Laws 2022, LB691, § 2.
Effective date July 21, 2022.

42-1204 Substitute address; application to Secretary of State; approval; certification; renewal; prohibited acts; violation; penalty.

(1) An adult, a parent or guardian acting on behalf of a minor, or a guardian acting on behalf of an incapacitated person as defined in section 30-2601 may apply to the Secretary of State to have an address designated by the Secretary of State serve as the substitute address of such adult, minor, or incapacitated person. The Secretary of State shall approve an application if it is filed in the manner and on the form prescribed by the Secretary of State and if it contains:

(a) A sworn statement by the applicant that the applicant has good reason to believe (i) that the applicant, or the minor or incapacitated person on whose behalf the application is made, is a victim of abuse, sexual assault, kidnapping, stalking, or trafficking and (ii) that the applicant fears for his or her safety, his or her children's safety, or the safety of the minor or incapacitated person on whose behalf the application is made;

(b) A designation of the Secretary of State as agent for purposes of service of process and receipt of mail;

(c) The mailing address and the telephone number or numbers where the applicant can be contacted by the Secretary of State;

(d) The new address or addresses that the applicant requests not be disclosed for the reason that disclosure will increase the risk of abuse, sexual assault, kidnapping, stalking, or trafficking; and

(e) The signature of the applicant and of any individual or representative of any office designated in writing under section 42-1209 who assisted in the

preparation of the application and the date on which the applicant signed the application.

(2) Applications shall be filed in the office of the Secretary of State.

(3) Upon filing a properly completed application, the Secretary of State shall certify the applicant as a program participant. Such certification shall be valid for four years following the date of filing unless the certification is withdrawn or invalidated before that date. The Secretary of State may by rule and regulation establish a renewal procedure.

(4) A person who falsely attests in an application that disclosure of the applicant's address would endanger the applicant, the applicant's children, or the minor or incapacitated person on whose behalf the application is made, or who knowingly provides false or incorrect information upon making an application, is guilty of a Class II misdemeanor.

Source: Laws 2003, LB 228, § 4; Laws 2017, LB280, § 2; Laws 2022, LB691, § 3.
Effective date July 21, 2022.

42-1207 Early voting; authorized.

(1) A program participant who is otherwise qualified to vote may apply to vote early under sections 32-938 to 32-951. The county clerk or election commissioner shall transmit the ballot for early voting to the program participant at the address designated by the program participant in his or her application as an early voter. Neither the name nor the address of a program participant or a registered voter with a court order issued as described under section 32-331 shall be included in any list of registered voters available to the public.

(2) The county clerk or election commissioner shall not make a program participant's address contained in voter registration records available for public inspection or copying except under the following circumstances:

(a) If requested by a law enforcement agency, to the law enforcement agency; or

(b) If directed by a court order, to a person identified in the order.

Source: Laws 2003, LB 228, § 7; Laws 2005, LB 98, § 33; Laws 2022, LB843, § 50.
Effective date July 21, 2022.

42-1209 Program participants; application assistance.

The Secretary of State shall designate state and local agencies and nonprofit entities that provide counseling and shelter services to victims of abuse, sexual assault, kidnapping, stalking, or trafficking to assist persons applying to be program participants. Any assistance or counseling rendered by the office of the Secretary of State or its designees to such applicants shall not be deemed legal advice or the practice of law.

Source: Laws 2003, LB 228, § 9; Laws 2017, LB280, § 3; Laws 2022, LB691, § 4.
Effective date July 21, 2022.

ARTICLE 13
FAMILY MEMBER VISITATION

Section

42-1301 Transferred to section 30-701.

42-1302 Transferred to section 30-702.

42-1303 Transferred to section 30-704.

42-1304 Transferred to section 30-705.