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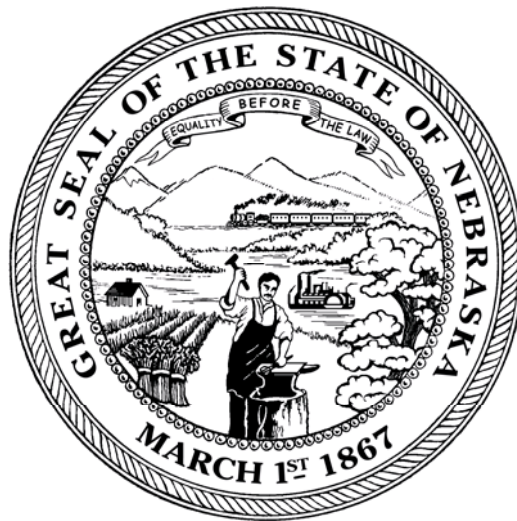
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REVISED STATUTES OF NEBRASKA

2008 CUMULATIVE SUPPLEMENT

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Revisor of Statutes

For the benefit of the
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CHAPTER 73

PUBLIC LETTINGS AND CONTRACTS

Article.

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ARTICLE 5

STATE CONTRACTS FOR SERVICES

Section

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73-508 Preapproval; required; when.

Except as provided in section 73-507, all proposals for sole source contracts for services in excess of fifty thousand dollars shall be preapproved by the materiel division except in emergencies. In case of an emergency, contract approval by the state agency director or his or her designee is required. A copy of the contract and agency justification of the emergency shall be provided to the Director of Administrative Services within three business days after contract approval. The state agency shall retain a copy of the justification with the contract in the agency files. The Director of Administrative Services shall maintain a complete record of such sole source contracts for services.

Source: Laws 2003, LB 626, § 8; Laws 2007, LB256, § 3.

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- 74-1334. Crossings; public; safety regulations; gates and alarms; closure; when.

(a) RAILROAD TRANSPORTATION SAFETY DISTRICT

74-1307 Bonds; issuance; sinking fund.

For carrying out the purposes and powers set forth in sections 74-1302, 74-1303, and 74-1305, including paying the cost thereof, the district may: (1) Borrow money and issue its negotiable general obligation bonds upon such terms and conditions as the board of directors may determine and without a vote of the electors; (2) issue warrants to contractors and others furnishing services or materials or in satisfaction of other obligations created under sections 74-1302, 74-1303, and 74-1305, such warrants to be issued in such

amounts and on such terms and conditions as the board shall determine, and to be redeemed and paid upon the sale of bonds or receipt of other funds available for such purpose; and (3) establish a sinking fund for the payment of such bonds as may be issued under this section.

Source: Laws 1971, LB 919, § 7; Laws 1985, LB 81, § 1; Laws 2005, LB 161, § 12.

74-1308 Officers; meetings; bond; records; inspection; treasurer; report; violations; penalty.

(1) The board of directors shall annually elect a president, vice president, secretary, and such other officers as may be necessary. The board shall cause to be kept accurate minutes of its meetings and accurate records and books of account, conforming to approved methods of bookkeeping, clearly setting out and reflecting the entire operation, management, and business of the district, which shall be kept at the principal place of business of the district. All books, papers, and vouchers shall be subject to public inspection at reasonable hours, and the district shall be subject to the Open Meetings Act.

(2) The treasurer of such district shall be the treasurer of the county of such district and shall annually make a detailed report in writing of all receipts and disbursements. The report shall contain a statement of (a) the funds on hand belonging to the district, (b) the amount, if any, in the hands of the county treasurer, (c) all money received during the preceding year from all sources, and (d) all items of disbursement during such year and the purposes for which the same have been paid out, including all compensation paid to officers of the district and all other expenses of administration. The report shall be verified under oath. A copy of the same shall be filed annually with the county clerk of the county.

(3) Such officers and employees as may be designated by the board of directors shall furnish bonds in such amounts as may be fixed by the board of directors. Such bonds shall be conditioned upon the faithful performance of the duties of each such officer or employee and the proper accounting for all funds or property coming into the hands of each such officer or employee. Such bonds shall (a) run to the district, (b) be signed by a surety or sureties to be approved by the county clerk of the county, and (c) be filed and recorded in the office of such county clerk.

(4) If any such treasurer fails or neglects to make out the report or file the same with the county clerk as required by subsection (2) of this section, if any officer of such district neglects or refuses to submit for inspection any records or papers of such district upon demand of any person interested, or if any person otherwise neglects to perform any duties imposed upon him or her by this section, he or she shall be guilty of a Class V misdemeanor.

Source: Laws 1971, LB 919, § 8; Laws 1981, LB 65, § 5; Laws 2004, LB 821, § 22.

Cross References

Open Meetings Act, see section 84-1407.

(d) **NEBRASKA HIGHWAY-RAIL GRADE CROSSING
SAFETY AND CONSOLIDATION ACT**

74-1334 Crossings; public; safety regulations; gates and alarms; closure; when.

(1) Wherever any railroad track crosses any public road in a cut, on a curve or side hill, in timber lands, near buildings, or near any obstruction of view from the road, the Department of Roads shall direct such precautions to be taken as it deems necessary for the safety of the traveling public. Each railroad carrier shall also provide and maintain such gates, crossings, signs, signals, alarm bells, and warning personnel as the department directs. The department may direct the placement of special signs where the physical conditions of any crossing warrant such action.

(2) Except as provided in subsection (3) of this section, any public railroad crossing without gates, signals, alarm bells, or warning personnel located within one-quarter mile from a public railroad crossing with gates, signals, alarm bells, or warning personnel shall be closed unless it is the only railroad crossing which provides access to property.

(3) An interested party may object to an action taken under subsection (2) of this section only if a written request is submitted to the Department of Roads by a professional engineer licensed to practice in the State of Nebraska. The engineer shall state in writing that the engineer is familiar with the requirements in this section and with all relevant aspects of the railroad crossing. The engineer shall also provide a detailed explanation of why subsection (2) of this section should not apply to the railroad crossing in question and a statement that the railroad crossing corridor has been examined by the engineer and the engineer believes that the railroad crossing will be safe as designed. Such a written request shall exempt a railroad crossing from being closed under subsection (2) of this section.

Source: Laws 1963, c. 425, art. IV, § 12, p. 1402; Laws 1994, LB 414, § 87; R.S.1943, (1996), § 75-412; Laws 1997, LB 255, § 6; Laws 2006, LB 79, § 1; Laws 2008, LB837, § 1.
Effective date July 18, 2008.

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74-1413 Nebraska Railway Council; created; members; qualifications; terms; vacancies; transition from Branch Rail Revitalization Council; per diem; expenses; immunity from liability; when.

(1) The Nebraska Railway Council is created as a body politic and corporate, not a state agency, but an independent instrumentality. The State of Nebraska shall not be responsible for the debts, contracts, general obligations, or liabilities of the council or its members or agents, including tort claims. The council shall consist of eight members to be appointed by the Governor with the approval of a majority of the Legislature as follows:

- (a) One light-density rail line shipper;
- (b) One railroad management employee;
- (c) One public service commissioner;

(d) Two members of the general public. One member from the general public shall be a person experienced in private or public finance, and the other member from the general public shall be a person experienced in marketing;

- (e) One railroad maintenance-of-way employee;
- (f) One representative from the Department of Economic Development; and
- (g) One representative from the Department of Agriculture.

The Director-State Engineer shall serve as an ex officio member of the council.

(2) The Governor shall appoint council members for four-year terms. In appointing the original council members, the Governor shall (a) appoint the light-density rail line shipper and one of the members of the general public for one-year terms, (b) appoint the railroad management employee and one of the members of the general public for two-year terms, (c) appoint the public service commissioner and the railroad maintenance-of-way employee for three-year terms, and (d) appoint the representatives from the Department of Agriculture and the Department of Economic Development for four-year terms. The Governor shall fill vacancies caused by any reason, except that an appointment to fill a vacancy shall be only for the remainder of the unexpired term. The Governor may remove any council member for just cause.

(3) The council members shall have an interest in and knowledge of railroads and railroad-related functions. A council member shall abstain from voting on any decision or policy of the council if the decision or policy will result in any financial benefit or detriment to him or her, any member of his or her family, or any business with which he or she is associated and the benefit or detriment is distinguishable from the effects of the actions on the public generally or a broad segment of the public.

(4) To assist the transition from the Branch Rail Revitalization Council to the Nebraska Railway Council, each member of the Branch Rail Revitalization Council serving on September 6, 1991, shall serve after such date as a member of the Nebraska Railway Council until a successor is nominated, approved, and acting as a member of the Nebraska Railway Council.

(5) Members of the council who are not employed by the State of Nebraska may receive a per diem of sixty dollars, not to exceed six thousand dollars in any one year, and all members of the council shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177. Such amounts shall be paid by the Department of Roads but not from the Roads Operations Cash Fund.

(6) There shall be no liability for damages on the part of and no cause of action in tort of any nature shall arise against the council or its agents or employees for any action taken by any of them in the performance of their powers and duties under the Light-Density Rail Line Assistance Act, unless the action is grossly negligent.

Source: Laws 1980, LB 507, § 13; Laws 1989, LB 509, § 1; Laws 1991, LB 783, § 12; Laws 1996, LB 463, § 19; Laws 2005, LB 78, § 1.

CHAPTER 75

PUBLIC SERVICE COMMISSION

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ARTICLE 1

ORGANIZATION AND COMPOSITION, REGULATORY SCOPE, AND PROCEDURE

Section	
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75-104 Commissioners; salary; commissioners and employees; expenses; when allowed.

(1) Until January 4, 2007, the annual salary of each commissioner shall be fifty thousand dollars. Commencing January 4, 2007, the annual salary of each commissioner shall be seventy-five thousand dollars.

(2) Each commissioner shall be entitled to receive from the state his or her mileage expenses incurred while traveling in the line of duty to and from his or her residence to the office of the Public Service Commission in Lincoln pursuant to the following conditions:

(a) The Public Service Commission has adopted and promulgated rules and regulations establishing guidelines for allowable reimbursement of such mileage expenses, except that such mileage rate shall not exceed the mileage rate established by the Department of Administrative Services pursuant to section 81-1176;

(b) The request for such reimbursement falls within such guidelines; and

(c) The total amounts authorized for such reimbursement of mileage expenses in any fiscal year does not cause the total expenses to exceed the total funds appropriated to the program established for commissioners' expenses. In addition thereto, the commissioners, executive director, clerks, and other employees of the commission shall be entitled to receive from the state their actual necessary traveling expenses, including the cost of transportation while traveling on the business of the commission, to be paid in the same manner as other requests for payment or reimbursement from the state. In computing the cost of transportation for the commissioners, executive director, clerks, and other employees, no mileage or other traveling expense shall be requested or allowed unless sections 81-1174 to 81-1177 are strictly complied with.

Source: Laws 1963, c. 425, art. I, § 4, p. 1355; Laws 1967, c. 477, § 1, p. 1473; Laws 1969, c. 603, § 1, p. 2464; Laws 1972, LB 1389, § 1; Laws 1975, LB 311, § 1; Laws 1980, LB 872, § 1; Laws 1984, LB 826, § 2; Laws 1986, LB 43, § 3; Laws 1988, LB 864, § 11; Laws 1990, LB 503, § 1; Laws 1994, LB 414, § 27; Laws 1994, LB 872, § 16; Laws 1995, LB 16, § 1; Laws 2000, LB 956, § 1; Laws 2006, LB 817, § 1.

75-109.01 Jurisdiction.

Except as otherwise specifically provided by law, the Public Service Commission shall have jurisdiction, as prescribed, over the following subjects:

- (1) Common carriers, generally, pursuant to sections 75-101 to 75-158;
- (2) Grain pursuant to the Grain Dealer Act and the Grain Warehouse Act and sections 89-1,104 to 89-1,108;
- (3) Manufactured homes and recreational vehicles pursuant to the Uniform Standard Code for Manufactured Homes and Recreational Vehicles;
- (4) Modular housing units pursuant to the Nebraska Uniform Standards for Modular Housing Units Act;
- (5) Motor carrier registration and safety pursuant to sections 75-301 to 75-322, 75-369.03, 75-370, and 75-371;
- (6) Pipeline carriers and rights-of-way pursuant to the State Natural Gas Regulation Act and sections 75-501 to 75-503;
- (7) Railroad carrier safety pursuant to sections 74-918, 74-919, 74-1323, and 75-401 to 75-430;
- (8) Telecommunications carriers pursuant to the Automatic Dialing-Announcing Devices Act, the Emergency Telephone Communications Systems Act, the Enhanced Wireless 911 Services Act, the Intrastate Pay-Per-Call Regulation Act, the Nebraska Telecommunications Regulation Act, the Nebraska Telecommunications Universal Service Fund Act, the Telecommunications Relay System Act, the Telephone Consumer Slamming Prevention Act, and sections 86-574 to 86-580;
- (9) Transmission lines and rights-of-way pursuant to sections 70-301 and 75-702 to 75-724;
- (10) Water service pursuant to the Water Service Regulation Act; and
- (11) Jurisdictional utilities governed by the State Natural Gas Regulation Act.

Natural Gas Regulation Act, the provisions of the State Natural Gas Regulation Act control.

Source: Laws 2002, LB 1105, § 482; Laws 2003, LB 790, § 63; Laws 2006, LB 1069, § 1; Laws 2006, LB 1249, § 12.

Cross References

Automatic Dialing-Announcing Devices Act, see section 86-236.
Emergency Telephone Communications Systems Act, see section 86-420.
Enhanced Wireless 911 Services Act, see section 86-442.
Grain Dealer Act, see section 75-901.
Grain Warehouse Act, see section 88-525.
Intrastate Pay-Per-Call Regulation Act, see section 86-258.
Nebraska Telecommunications Regulation Act, see section 86-101.
Nebraska Telecommunications Universal Service Fund Act, see section 86-316.
Nebraska Uniform Standards for Modular Housing Units Act, see section 71-1555.
State Natural Gas Regulation Act, see section 66-1801.
Telecommunications Relay System Act, see section 86-301.
Telephone Consumer Slamming Prevention Act, see section 86-201.
Uniform Standard Code for Manufactured Homes and Recreational Vehicles, see section 71-4601.
Water Service Regulation Act, see section 75-1001.

75-111 Commission; investigatory powers.

The commission shall investigate any and all cases of alleged neglect or violation of the laws of this state within the jurisdiction of the commission as enumerated in section 75-109.01 and take such action with reference to the neglect or violation as may be provided by law.

Source: Laws 1963, c. 425, art. I, § 11, p. 1357; Laws 1989, LB 78, § 1; Laws 1995, LB 424, § 3; Laws 2008, LB755, § 1.
Effective date March 20, 2008.

75-112 Commissioners and examiners; powers; certification of official acts.

(1) For purposes of carrying out the powers and duties of the commission related to the subjects under its jurisdiction enumerated in section 75-109.01, each commissioner and examiner of the commission may:

- (a) Administer oaths;
- (b) Compel the attendance of witnesses;
- (c) Examine any of the books, papers, documents, and records of any motor carrier or regulated motor carrier as defined in section 75-302 or common or contract carrier subject to the jurisdiction of the commission under section 75-109.01 or any jurisdictional utility or have such examination made by any person that the commission may employ for that purpose;
- (d) Compel the production of such books, papers, documents, and records; or
- (e) Examine under oath or otherwise any officer, director, agent, or employee of any such carrier or jurisdictional utility or any other person.

(2) Any person employed by the commission to examine such books, papers, documents, or records shall produce his or her authority, under the hand and seal of the commission, to make such examination.

(3) The commissioners may certify to all official acts of the commission.

Source: Laws 1963, c. 425, art. I, § 12, p. 1358; Laws 1989, LB 78, § 2; Laws 1994, LB 414, § 33; Laws 1995, LB 424, § 4; Laws 2003, LB 790, § 65; Laws 2004, LB 1004, § 1.

75-126 Unjust discrimination and practices prohibited; exceptions.

(1) Except as otherwise provided in this section, no common carrier shall:

(a) Charge, demand, collect, or receive from any person a greater or lesser compensation for any services rendered than it charges, demands, collects, or receives from any other person for doing a like or contemporaneous service unless required under section 86-465;

(b) Make or give any undue or unreasonable preference or advantage to any particular person;

(c) Subject any type of traffic to any undue or unreasonable prejudice, delay, or disadvantage in any respect whatsoever;

(d) Charge or receive any greater compensation in the aggregate for the transportation of a like kind of property or passengers for a shorter than for a longer distance over the same line or route, except as the commission may prescribe in special cases to prevent manifest injuries, except that no manifest injustice shall be imposed upon any person at intermediate points. This section shall not prevent the commission from making group or emergency rates;

(e) Demand, charge, or collect, by any device whatsoever, a lesser or greater compensation for any service rendered than that filed with or prescribed by the commission; or

(f) Change any rate, schedule, or classification in any manner whatsoever before application has been made to the commission and permission granted for that purpose, except as otherwise provided in section 86-155.

(2) This section shall not prohibit any common carrier from, and a common carrier shall not be subject to any fine, penalty, or forfeiture for, performing services free or at reduced rates to:

(a) The United States, the State of Nebraska, or any governmental subdivision thereof;

(b) The employees, both present and retired, of such common carrier;

(c) Any person when the object is to provide relief in case of any disaster;

(d) Any person who transports property for charitable purposes;

(e) Ministers and others giving their entire time to religious or charitable work; or

(f) Any person who is legally blind or visually handicapped.

Source: Laws 1963, c. 425, art. I, § 26, p. 1364; Laws 1967, c. 479, § 7, p. 1477; Laws 1982, LB 633, § 1; Laws 1994, LB 414, § 41; Laws 1995, LB 424, § 12; Laws 1998, LB 1056, § 7; Laws 2002, LB 1105, § 486; Laws 2008, LB755, § 2.
Effective date March 20, 2008.

75-130.01 Contested case; ex parte communication prohibited; applicability of section.

With respect to any matter of fact or law at issue in a contested case and notwithstanding any other provision of law, a member, staff, or agent of the Public Service Commission shall not during the pendency of any contested case heard before the commission have any ex parte communication with any party having an interest in the outcome of the contested case. For purposes of this section, the definitions in section 84-901 shall apply. Notwithstanding subdivision (4)(c) of section 84-901, this section applies to all communications by a

party in contested cases under the State Natural Gas Regulation Act, including, but not limited to, general rate filings under section 66-1838.

Source: Laws 1999, LB 514, § 1; Laws 2008, LB1072, § 3.
Effective date April 18, 2008.

Cross References

State Natural Gas Regulation Act, see section 66-1801.

75-133 Regulated parties; proceeding by commission upon own motion; hearing; order.

Whenever the commission has reason to believe that any motor carrier, regulated motor carrier, other common or contract carrier as described in section 75-109, competitive natural gas provider as defined in section 66-1848, or jurisdictional utility as defined in section 66-1802 is in neglect or violation of a statute or rule or regulation under the jurisdiction of the commission, the commission shall at once institute an investigation and fix a time and place for hearing thereon, upon its own motion, and shall make any order as it deems just and reasonable, including, but not limited to, an order revoking, suspending, or modifying the certificate of public convenience and necessity, permit, registration, license, or other authority granted by the commission or a cease and desist order.

Source: Laws 1963, c. 425, art. I, § 33, p. 1367; Laws 1994, LB 414, § 46; Laws 1995, LB 424, § 14; Laws 2002, LB 1105, § 489; Laws 2005, LB 247, § 1.

75-134 Commission order; requirements; when effective.

(1) A commission order entered after a hearing shall be written and shall recite (a) a discussion of the facts of a basic or underlying nature, (b) the ultimate facts, and (c) the commission's reasoning or other authority relied upon by the commission.

(2) Every order of the commission shall become effective ten days after the date of the mailing of a copy of the order to the parties of record except (a) when the commission prescribes a later effective date, (b) as otherwise provided in section 75-121 or 75-139, (c) for cease and desist orders issued pursuant to section 75-133 which shall become effective on the date of entry, or (d) for orders entered pursuant to section 75-319 which shall become effective on the date of entry.

(3) Except as otherwise provided in this section or for rate orders provided for in section 75-139, any appeal of a commission order shall not stay enforcement of such order unless otherwise ordered under subsection (3) of section 84-917.

Source: Laws 1963, c. 425, art. I, § 34, p. 1367; Laws 1967, c. 479, § 9, p. 1479; Laws 1976, LB 426, § 1; Laws 1991, LB 732, § 130; Laws 1994, LB 414, § 47; Laws 1995, LB 424, § 15; Laws 2000, LB 1285, § 3; Laws 2002, LB 1105, § 490; Laws 2002, LB 1211, § 9; Laws 2003, LB 187, § 19; Laws 2005, LB 247, § 2.

75-156 Civil penalty; procedure; order; appeal.

(1) In addition to other penalties and relief provided by law, the Public Service Commission may, upon a finding that the violation is proven by clear

and convincing evidence, assess a civil penalty of up to ten thousand dollars per day against any person, motor carrier, regulated motor carrier, common carrier, contract carrier, grain dealer, or grain warehouseman for each violation of (a) any provision of the laws of this state within the jurisdiction of the commission as enumerated in section 75-109.01, (b) any term, condition, or limitation of any certificate, permit, or authority issued by the commission pursuant to the laws of this state within the jurisdiction of the commission as enumerated in section 75-109.01, or (c) any rule, regulation, or order of the commission issued under authority delegated to the commission pursuant to the laws of this state within the jurisdiction of the commission as enumerated in section 75-109.01.

(2) In addition to other penalties and relief provided by law, the Public Service Commission may, upon a finding that the violation is proven by clear and convincing evidence, assess a civil penalty not less than one hundred dollars and not more than one thousand dollars against any jurisdictional utility for each violation of (a) any provision of the State Natural Gas Regulation Act, (b) any rule, regulation, order, or lawful requirement issued by the commission pursuant to the act, (c) any final judgment or decree made by any court upon appeal from any order of the commission, or (d) any term, condition, or limitation of any certificate issued by the commission issued under authority delegated to the commission pursuant to the act. The amount of the civil penalty assessed in each case shall be based on the severity of the violation charged. The commission may compromise or mitigate any penalty prior to hearing if all parties agree. In determining the amount of the penalty, the commission shall consider the appropriateness of the penalty in light of the gravity of the violation and the good faith of the violator in attempting to achieve compliance after notification of the violation is given.

(3) In addition to other penalties and relief provided by law, the Public Service Commission may, upon a finding that the violation is proven by clear and convincing evidence, assess a civil penalty of up to ten thousand dollars per day against any wireless carrier for each violation of the Enhanced Wireless 911 Services Act or any rule, regulation, or order of the commission issued under authority delegated to the commission pursuant to the act.

(4) In addition to other penalties and relief provided by law, the Public Service Commission may, upon a finding that the violation is proven by clear and convincing evidence, assess a civil penalty of up to one thousand dollars against any person for each violation of the Nebraska Uniform Standards for Modular Housing Units Act or the Uniform Standard Code for Manufactured Homes and Recreational Vehicles or any rule, regulation, or order of the commission issued under the authority delegated to the commission pursuant to either act. Each such violation shall constitute a separate violation with respect to each modular housing unit, manufactured home, or recreational vehicle, except that the maximum penalty shall not exceed one million dollars for any related series of violations occurring within one year from the date of the first violation.

(5) The civil penalty assessed under this section shall not exceed two million dollars per year for each violation except as provided in subsection (4) of this section. The amount of the civil penalty assessed in each case shall be based on the severity of the violation charged. The commission may compromise or mitigate any penalty prior to hearing if all parties agree. In determining the amount of the penalty, the commission shall consider the appropriateness of

the penalty in light of the gravity of the violation and the good faith of the violator in attempting to achieve compliance after notification of the violation is given.

(6) Upon notice and hearing in accordance with this section and section 75-157, the commission may enter an order assessing a civil penalty of up to one hundred dollars against any person, firm, partnership, limited liability company, corporation, cooperative, or association for failure to file an annual report or, beginning January 1, 2004, pay the fee as required by section 75-116 and as prescribed by commission rules and regulations or for failure to register as required by section 86-125 and as prescribed by commission rules and regulations. Each day during which the violation continues after the commission has issued an order finding that a violation has occurred constitutes a separate offense. Any party aggrieved by an order of the commission under this section may appeal. The appeal shall be in accordance with the Administrative Procedure Act.

(7) When any person or party is accused of any violation listed in this section, the commission shall notify such person or party in writing (a) setting forth the date, facts, and nature of each act or omission upon which each charge of a violation is based, (b) specifically identifying the particular statute, certificate, permit, rule, regulation, or order purportedly violated, (c) that a hearing will be held and the time, date, and place of the hearing, (d) that in addition to the civil penalty, the commission may enforce additional penalties and relief as provided by law, and (e) that upon failure to pay any civil penalty determined by the commission, the penalty may be collected by civil action in the district court of Lancaster County.

Source: Laws 1995, LB 424, § 18; Laws 1996, LB 1218, § 41; Laws 2000, LB 1285, § 9; Laws 2002, LB 1105, § 493; Laws 2002, LB 1211, § 10; Laws 2003, LB 187, § 22; Laws 2003, LB 735, § 1; Laws 2003, LB 790, § 73; Laws 2005, LB 319, § 3; Laws 2008, LB755, § 3.

Effective date March 20, 2008.

Cross References

- Administrative Procedure Act, see section 84-920.
- Enhanced Wireless 911 Services Act, see section 86-442.
- Nebraska Uniform Standards for Modular Housing Units Act, see section 71-1555.
- State Natural Gas Regulation Act, see section 66-1801.
- Uniform Standard Code for Manufactured Homes and Recreational Vehicles, see section 71-4601.

ARTICLE 3

MOTOR CARRIERS

(a) INTRASTATE MOTOR CARRIERS

- Section
- 75-302. Terms, defined.
- 75-303.01. Department of Health and Human Services; authorized agency; contracts for transportation authorized.
- 75-303.02. Contracts for transportation; requirements; reimbursement.
- 75-303.03. Department of Health and Human Services; reimburse transportation costs; conditions.
- 75-305. Fees; amount; when due; disposition.
- 75-307. Insurance and bond requirements; subrogation.
- 75-307.01. Repealed. Laws 2007, LB 358, § 19.

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75-307.02. Repealed. Laws 2007, LB 358, § 19.

75-307.03. Repealed. Laws 2007, LB 358, § 19.

(d) INTERSTATE MOTOR CARRIERS

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75-363. Federal motor carrier safety regulations; provisions adopted; exceptions.

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75-371. Insurance, bond, certificate, and permit requirements; violations; penalty.

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75-382. Repealed. Laws 2006, LB 1007, § 23.

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75-384. Repealed. Laws 2006, LB 1069, § 7.

(j) DIVISION OF MOTOR CARRIER SERVICES

75-386. Division of Motor Carrier Services; duties.

(k) MOTOR CARRIER TRANSPORTATION CONTRACTS

75-391. Motor carrier transportation contracts; exculpatory provisions prohibited.

(l) UNIFIED CARRIER REGISTRATION PLAN AND AGREEMENT

75-392. Terms, defined.

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75-394. Registration under unified carrier registration plan and agreement; when required; fees; authorization to accept registration.

75-395. Termination of prior registration systems and requirements.

75-396. Rules and regulations.

75-397. Forms and electronic systems to allow filings.

75-398. Violations; penalty.

75-399. Sections not applicable to intrastate commerce.

(a) INTRASTATE MOTOR CARRIERS

75-302 Terms, defined.

For purposes of sections 75-301 to 75-322 and in all rules and regulations adopted and promulgated by the commission pursuant to such sections, unless the context otherwise requires:

(1) Carrier enforcement division means the carrier enforcement division of the Nebraska State Patrol or the Nebraska State Patrol;

(2) Certificate means a certificate of public convenience and necessity issued under Chapter 75, article 3, to common carriers by motor vehicle;

(3) Civil penalty means any monetary penalty assessed by the commission or carrier enforcement division due to a violation of Chapter 75, article 3, or section 75-126 as such section applies to any person or carrier specified in Chapter 75, article 3; any term, condition, or limitation of any certificate or permit issued pursuant to Chapter 75, article 3; or any rule, regulation, or order of the commission, the Division of Motor Carrier Services, or the carrier enforcement division issued pursuant to Chapter 75, article 3;

(4) Commission means the Public Service Commission;

(5) Common carrier means any person who or which undertakes to transport passengers or household goods for the general public in intrastate commerce by motor vehicle for hire, whether over regular or irregular routes, upon the highways of this state;

(6) Contract carrier means any motor carrier which transports passengers or household goods for hire other than as a common carrier designed to meet the distinct needs of each individual customer or a specifically designated class of customers without any limitation as to the number of customers it can serve within the class;

(7) Division of Motor Carrier Services means the Division of Motor Carrier Services of the Department of Motor Vehicles;

(8) Escort services means an attendant or caregiver accompanying a minor or persons who are physically, mentally, or developmentally disabled and unable to travel or wait without assistance or supervision;

(9) Highway means the roads, highways, streets, and ways in this state;

(10) Household goods means personal effects and property used or to be used in a dwelling, when a part of the equipment or supply of such dwelling, and similar property as the commission may provide by regulation if the transportation of such effects or property, is:

(a) Arranged and paid for by the householder, including transportation of property from a factory or store when the property is purchased by the householder with the intent to use in his or her dwelling; or

(b) Arranged and paid for by another party;

(11) Intrastate commerce means commerce between any place in this state and any other place in this state and not in part through any other state;

(12) Motor carrier means any person other than a regulated motor carrier who or which owns, controls, manages, operates, or causes to be operated any motor vehicle used to transport passengers or property over any public highway in this state;

(13) Motor vehicle means any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used upon the highways in the transportation of passengers or property but does not include any vehicle, locomotive, or car operated exclusively on a rail or rails;

(14) Permit means a permit issued under Chapter 75, article 3, to contract carriers by motor vehicle;

(15) Person means any individual, firm, partnership, limited liability company, corporation, company, association, or joint-stock association and includes any trustee, receiver, assignee, or personal representative thereof;

(16) Private carrier means any motor carrier which owns, controls, manages, operates, or causes to be operated a motor vehicle to transport passengers or property to or from its facility, plant, or place of business or to deliver to purchasers its products, supplies, or raw materials (a) when such transportation is within the scope of and furthers a primary business of the carrier other than transportation and (b) when not for hire. Nothing in sections 75-301 to 75-322 shall apply to private carriers; and

(17) Regulated motor carrier means any person who or which owns, controls, manages, operates, or causes to be operated any motor vehicle used to transport passengers, other than those excepted under section 75-303, or household goods over any public highway in this state.

Source: Laws 1963, c. 425, art. III, § 2, p. 1375; Laws 1969, c. 606, § 1, p. 2467; Laws 1972, LB 1370, § 1; Laws 1989, LB 78, § 18; Laws 1990, LB 980, § 25; Laws 1993, LB 121, § 464; Laws 1993, LB 412, § 2; Laws 1995, LB 424, § 22; Laws 1996, LB 1218, § 43; Laws 1999, LB 594, § 66; Laws 2006, LB 1069, § 3; Laws 2007, LB358, § 12.

75-303.01 Department of Health and Human Services; authorized agency; contracts for transportation authorized.

The Department of Health and Human Services or any agency organized under the Nebraska Community Aging Services Act may contract for transportation for its clients with a contractor which does not hold a certificate or which is not otherwise exempt under section 75-303 only if:

(1) The proposed contractor is the individual who will personally drive the vehicle in question;

(2) The only compensation to the contractor for the transportation is paid by the department at a rate no greater than that provided for reimbursement of state employees pursuant to section 81-1176 for the costs incurred in the transportation; and

(3)(a) There is no regulated motor carrier serving the area in which the client needs transportation, (b) the regulated motor carrier serving the area is incapable of providing the specific service in question by its own written statement or as determined by the commission upon application of the regulated motor carrier or the department, or (c) the regulated carrier cannot or will not provide such service at the rate specified in subsection (2) of section 75-303.02.

Source: Laws 1993, LB 412, § 4; Laws 1995, LB 424, § 24; Laws 1996, LB 1044, § 791; Laws 1999, LB 594, § 68; Laws 2007, LB296, § 697.

Cross References

Nebraska Community Aging Services Act, see section 81-2201.

75-303.02 Contracts for transportation; requirements; reimbursement.

(1) The commission, in consultation with the Department of Health and Human Services, shall adopt and promulgate rules and regulations governing minimum liability insurance requirements, equipment standards, driver qualification requirements, and the issuance and filing of notice for any contractor

utilized by the department or any agency organized under the Nebraska Community Aging Services Act pursuant to section 75-303.01.

(2) The department or any agency organized under the Nebraska Community Aging Services Act shall reimburse common and contract carriers for transportation of passengers at a rate not to exceed the rate of reimbursement pursuant to section 81-1176 multiplied by three. The maximum reimbursement rate provided for in this subsection shall not apply when the carrier (a) transports such person wholly within the corporate limits of the city or village where the transportation of the person originated or (b) transports a disabled person as defined by the federal Americans with Disabilities Act of 1990 in a vehicle that is compliant with the regulations providing for the transportation of such disabled person.

Source: Laws 1993, LB 412, § 5; Laws 1995, LB 424, § 25; Laws 1996, LB 1044, § 792; Laws 1999, LB 594, § 69; Laws 2007, LB296, § 698.

Cross References

Nebraska Community Aging Services Act, see section 81-2201.

75-303.03 Department of Health and Human Services; reimburse transportation costs; conditions.

(1) The Department of Health and Human Services may reimburse an individual for the costs incurred by such individual in the transportation of a person eligible to receive transportation services through the department if:

- (a) The individual is under contract with the department and provides transportation to the eligible person; and
- (b) The eligible person has chosen the individual to provide the transportation.

(2) The department shall reimburse for the costs incurred in the transportation at a rate no greater than that provided for reimbursement of state employees pursuant to section 81-1176.

(3) Transportation provided to an eligible person by an individual pursuant to this section does not constitute transportation for hire.

(4) The department may adopt and promulgate rules and regulations to implement this section.

Source: Laws 2006, LB 1069, § 2; Laws 2007, LB296, § 699.

75-305 Fees; amount; when due; disposition.

Every regulated motor carrier subject to sections 75-301 to 75-322 shall pay an annual fee not exceeding the sum of eighty dollars for each motor vehicle operated, which fee shall be fixed by the commission and shall not exceed the amount actually necessary to sustain the administration and enforcement of such sections. When the applicant has registered his or her motor vehicles under section 60-3,198, such fee shall be payable on whichever shall be the lesser of (1) the proportion of his or her fleet so registered or (2) the number of motor vehicles owned by him or her and actually used in intrajurisdiction business within this state, except that such annual fee for any truck-trailer or tractor-trailer combination shall be one hundred twenty dollars. In the case of a truck-trailer or tractor-trailer combination, only one license plate shall be

required for such combination. Such annual fees shall be due and payable on or before January 1 and shall be delinquent on March 1 of each year after such permit or certificate has been issued. If the initial certificate or permit is issued to a motor carrier on or after July 1, the fee shall be fifty percent of the annual fee. Such fees shall be paid to and collected by the commission and remitted to the State Treasurer within thirty days of receipt for credit to the General Fund.

Source: Laws 1963, c. 425, art. III, § 5, p. 1378; Laws 1969, c. 606, § 4, p. 2470; Laws 1982, LB 928, § 58; Laws 1989, LB 78, § 21; Laws 1993, LB 412, § 7; Laws 1995, LB 424, § 28; Laws 1996, LB 1218, § 46; Laws 2003, LB 187, § 23; Laws 2003, LB 563, § 40; Laws 2005, LB 274, § 270.

75-307 Insurance and bond requirements; subrogation.

(1) Certificated intrastate motor carriers, including common and contract carriers, shall comply with reasonable rules and regulations prescribed by the commission governing the filing with the commission, the approval of the filings, and the maintenance of proof at such carrier's principal place of business of surety bonds, policies of insurance, qualifications as a self-insurer, or other securities or agreements, in such reasonable amount as required by the commission, conditioned to pay, within the amount of such surety bonds, policies of insurance, qualifications as a self-insurer, or other securities or agreements, any final judgment recovered against such motor carrier for bodily injuries to or the death of any person resulting from the negligent operation, maintenance, or use of motor vehicles under such certificate or permit or for loss or damage to property of others. No certificate or permit shall be issued to a common or contract carrier or remain in force unless such carrier complies with this section and the rules and regulations prescribed by the commission pursuant to this section.

(2) The commission may, in its discretion and under its rules and regulations, require any certificated carrier to file a surety bond, policies of insurance, qualifications as a self-insurer, or other securities or agreements, in a sum to be determined by the commission, to be conditioned upon such carrier making compensation to shippers or consignees for all property belonging to shippers or consignees and coming into the possession of such carrier in connection with its transportation service. Any carrier which may be required by law to compensate a shipper or consignee for any loss, damage, or default for which a connecting motor common carrier is legally responsible shall be subrogated to the rights of such shipper or consignee under any such bond, policies of insurance, or other securities or agreements to the extent of the sum so paid.

(3) In carrying out this section, the commission may classify motor carriers and regulated motor carriers taking into consideration the hazards of the operations of such carriers and the value of the household goods carried. Nothing contained in this section shall be construed to authorize the commission to compel motor carriers other than common carriers of household goods to carry cargo insurance.

Source: Laws 1963, c. 425, art. III, § 7, p. 1379; Laws 1989, LB 78, § 23; Laws 1990, LB 980, § 26; Laws 1995, LB 424, § 30; Laws 2007, LB358, § 13.

75-307.01 Repealed. Laws 2007, LB 358, § 19.

75-307.02 Repealed. Laws 2007, LB 358, § 19.

75-307.03 Repealed. Laws 2007, LB 358, § 19.

(d) INTERSTATE MOTOR CARRIERS

75-352 Repealed. Laws 2007, LB 358, § 19.

(e) SAFETY REGULATIONS

75-362 Federal regulations; terms, defined.

For purposes of sections 75-362 to 75-369.07, unless the context otherwise requires:

(1) Accident means:

(a) Except as provided in subdivision (b) of this subdivision, an occurrence involving a commercial motor vehicle operating on a highway in interstate or intrastate commerce which results in:

(i) A fatality;

(ii) Bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or

(iii) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicles to be transported away from the scene by a tow truck or other motor vehicle.

(b) The term accident does not include:

(i) An occurrence involving only boarding and alighting from a stationary motor vehicle; or

(ii) An occurrence involving only the loading or unloading of cargo;

(2) Bulk packaging means a packaging, other than a vessel or a barge, including a transport vehicle or freight container, in which hazardous materials are loaded with no intermediate form of containment and which has:

(a) A maximum capacity greater than one hundred nineteen gallons as a receptacle for a liquid;

(b) A maximum net mass greater than eight hundred eighty-two pounds and a maximum capacity greater than one hundred nineteen gallons as a receptacle for a solid; or

(c) A water capacity greater than one thousand pounds as a receptacle for a gas as defined in 49 C.F.R. 173.115;

(3) Cargo tank means a bulk packaging that:

(a) Is a tank intended primarily for the carriage of liquids or gases and includes appurtenances, reinforcements, fittings, and closures;

(b) Is permanently attached to or forms a part of a motor vehicle or is not permanently attached to a motor vehicle but which, by reason of its size, construction, or attachment to a motor vehicle, is loaded or unloaded without being removed from the motor vehicle; and

(c) Is not fabricated under a specification for cylinders, intermediate bulk containers, multi-unit tank-car tanks, portable tanks, or tank cars;

(4) Cargo tank motor vehicle means a motor vehicle with one or more cargo tanks permanently attached to or forming an integral part of the motor vehicle;

(5) Commercial enterprise means any business activity relating to or based upon the production, distribution, or consumption of goods or services;

(6) Commercial motor vehicle means any self-propelled or towed motor vehicle used on a highway in interstate commerce or intrastate commerce to transport passengers or property when the vehicle:

(a) Has a gross vehicle weight rating or gross combination weight rating or gross vehicle weight or gross combination weight of ten thousand one pounds or more, whichever is greater;

(b) Is designed or used to transport more than eight passengers, including the driver, for compensation;

(c) Is designed or used to transport more than fifteen passengers, including the driver, and is not used to transport passengers for compensation; or

(d) Is used in transporting material found to be hazardous and such material is transported in a quantity requiring placarding pursuant to section 75-364;

(7) Compliance review means an onsite examination of motor carrier operations, such as drivers' hours of service, maintenance and inspection, driver qualification, commercial driver's license requirements, financial responsibility, accidents, hazardous materials, and other safety and transportation records to determine whether a motor carrier meets the safety fitness standard. A compliance review may be conducted in response to a request to change a safety rating, to investigate potential violations of safety regulations by motor carriers, or to investigate complaints or other evidence of safety violations. The compliance review may result in the initiation of an enforcement action with penalties;

(8) Disabling damage means damage which precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs.

(a) Inclusions: Damage to motor vehicles that could have been driven but would have been further damaged if so driven.

(b) Exclusions:

(i) Damage which can be remedied temporarily at the scene of the accident without special tools or parts;

(ii) Tire disablement without other damage even if no spare tire is available;

(iii) Headlight or taillight damage; and

(iv) Damage to turnsignals, horn, or windshield wipers which makes them inoperative;

(9) Driver means any person who operates any commercial motor vehicle;

(10) Elevated temperature material means a material which, when offered for transportation or transported in a bulk packaging:

(a) Is in a liquid phase and at a temperature at or above two hundred twelve degrees Fahrenheit;

(b) Is in a liquid phase with a flash point at or above one hundred degrees Fahrenheit that is intentionally heated and offered for transportation or transported at or above its flash point; or

(c) Is in a solid phase and at a temperature at or above four hundred sixty-four degrees Fahrenheit;

(11) Employee means any individual, other than an employer, who is employed by an employer and who in the course of his or her employment directly affects commercial motor vehicle safety. Such term includes a driver of a commercial motor vehicle, including an independent contractor while in the course of operating a commercial motor vehicle, a mechanic, and a freight handler. Such term does not include an employee of the United States, any state, any political subdivision of a state, or any agency established under a compact between states and approved by the Congress of the United States who is acting within the course of such employment;

(12) Employer means any person engaged in a business affecting commerce who owns or leases a commercial motor vehicle in connection with that business or assigns employees to operate it. Such term does not include the United States, any state, any political subdivision of a state, or an agency established under a compact between states approved by the Congress of the United States;

(13) Exempt motor carrier means a person engaged in transportation exempt from economic regulation under 49 U.S.C. 13506. An exempt motor carrier is subject to the safety regulations adopted in sections 75-362 to 75-369.07;

(14) Farm vehicle driver means a person who drives only a commercial motor vehicle that is controlled and operated by a farmer as a private motor carrier of property;

(15) Farmer means any person who operates a farm or is directly involved in the cultivation of land, crops, or livestock which:

(a) Are owned by that person; or

(b) Are under the direct control of that person;

(16) Fatality means any injury which results in the death of a person at the time of the motor vehicle accident or within thirty days after the accident;

(17) For-hire motor carrier means a person engaged in the transportation of goods or passengers for compensation;

(18) Gross combination weight means the sum of the empty weight of a motor vehicle plus the total weight of any load carried thereon and the empty weight of the towed unit or units plus the total weight of any load carried on such towed unit or units;

(19) Gross combination weight rating means the value specified by the manufacturer as the loaded weight of a combination (articulated) motor vehicle. In the absence of a value specified by the manufacturer, gross combination weight rating will be determined by adding either the gross vehicle weight rating or gross vehicle weight of the motor vehicle plus the gross vehicle weight rating or gross vehicle weight of the towed unit or units;

(20) Gross vehicle weight means the sum of the empty weight of a motor vehicle plus the total weight of any load carried thereon;

(21) Gross vehicle weight rating means the value specified by the manufacturer as the loaded weight of a single motor vehicle. In the absence of such value specified by the manufacturer or the absence of any marking of such value on the vehicle, the gross vehicle weight rating shall be determined from the sum of the axle weight ratings of the vehicle or the sum of the tire weight ratings as

marked on the sidewall of the tires, whichever is greater. In the absence of any tire sidewall marking, the tire weight ratings shall be determined for the specified tires from any of the publications of any of the organizations listed in 49 C.F.R. 571.119;

(22) Hazardous material means a substance or material that the Secretary of the United States Department of Transportation has determined is capable of posing an unreasonable risk to health, safety, and property when transported in commerce and has designated as hazardous under 49 U.S.C. 5103. The term includes hazardous substances, hazardous wastes, marine pollutants, elevated temperature materials, materials designated as hazardous in the Hazardous Materials Table, 49 C.F.R. 172.101, and materials that meet the defining criteria for hazard classes and divisions in 49 C.F.R. part 173;

(23) Hazardous substance means a material, including its mixtures and solutions, that is listed in 49 C.F.R. 172.101, Appendix A, List Of Hazardous Substances and Reportable Quantities, and is in a quantity, in one package, which equals or exceeds the reportable quantity listed in 49 C.F.R. 172.101, Appendix A. This definition does not apply to petroleum products that are lubricants or fuels or to mixtures or solutions of hazardous substances if in a concentration less than that shown in the table in 49 C.F.R. 171.8 under the definition of hazardous substance based on the reportable quantity specified for the materials listed in 49 C.F.R. 172.101, Appendix A;

(24) Hazardous waste means any material that is subject to the hazardous waste manifest requirements of the United States Environmental Protection Agency specified in 40 C.F.R. 262;

(25) Highway means the entire width between the boundary limits of any street, road, avenue, boulevard, or way which is publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel;

(26) Interstate commerce means trade, traffic, or transportation provided in the furtherance of a commercial enterprise in the United States:

(a) Between a place in a state and a place outside of such state, including a place outside of the United States;

(b) Between two places in a state through another state or a place outside of the United States; or

(c) Between two places in a state as part of trade, traffic, or transportation originating or terminating outside the state or the United States;

(27) Intrastate commerce means any trade, traffic, or transportation provided in the furtherance of a commercial enterprise between any place in the State of Nebraska and any other place in Nebraska and not through any other state;

(28) Marine pollutant means a material which is listed in the Hazardous Materials Table, 49 C.F.R. 172.101, Appendix B, as a marine pollutant (see 49 C.F.R. 171.4 for applicability to marine pollutants) and, when in a solution or mixture of one or more marine pollutants, is packaged in a concentration which equals or exceeds:

(a) Ten percent by weight of the solution or mixture for materials listed in 49 C.F.R. 172.101, Appendix B; or

(b) One percent by weight of the solution or mixture for materials that are identified as severe marine pollutants in the Hazardous Materials Table, 49 C.F.R. 172.101, Appendix B;

(29) Motor carrier means a for-hire motor carrier or a private motor carrier. The term includes a motor carrier's agents, officers, and representatives as well as employees responsible for hiring, supervising, training, assigning, or dispatching of drivers and employees concerned with the installation, inspection, and maintenance of motor vehicle equipment or accessories. This definition includes the terms employer and exempt motor carrier;

(30) Motor vehicle means any vehicle, truck, truck-tractor, trailer, or semi-trailer propelled or drawn by mechanical power except (a) farm tractors, (b) vehicles which run only on rails or tracks, and (c) road and general-purpose construction and maintenance machinery which by design and function is obviously not intended for use on a public highway, including, but not limited to, motor scrapers, earthmoving equipment, backhoes, trenchers, motor graders, compactors, tractors, bulldozers, bucket loaders, ditchdigging apparatus, asphalt spreaders, leveling graders, power shovels, and crawler tractors;

(31) Nonbulk packaging means a packaging which has:

(a) A maximum capacity of one hundred nineteen gallons or less as a receptacle for a liquid;

(b) A maximum net mass of eight hundred eighty-two pounds or less and a maximum capacity of one hundred nineteen gallons or less as a receptacle for a solid; or

(c) A water capacity of one thousand pounds or less as a receptacle for a gas as defined in 49 C.F.R. 173.115;

(32) Out-of-service order means a declaration by an authorized enforcement officer of a federal, state, Canadian, Mexican, or local jurisdiction that a driver, a commercial motor vehicle, or a motor carrier operation is out of service pursuant to 49 C.F.R. 386.72, 392.5, 395.13, or 396.9, or compatible laws or the North American Uniform Out-of-Service Criteria;

(33) Packaging means a receptacle and any other components or materials necessary for the receptacle to perform its containment function in conformance with the minimum packing requirements of Title 49 of the Code of Federal Regulations. For radioactive materials packaging, see 49 C.F.R. 173.403;

(34) Person means any individual, partnership, association, corporation, business trust, or any other organized group of individuals;

(35) Principal place of business means the single location designated by the motor carrier, normally its headquarters, for purposes of identification. The motor carrier must make records required by the regulations referred to in sections 75-363 to 75-369.07 and this section available for inspection at this location within forty-eight hours, Saturdays, Sundays, and state or federal holidays excluded, after a request has been made by an officer of the Nebraska State Patrol;

(36) Private motor carrier means a person who provides transportation of property or passengers by commercial motor vehicle and is not a for-hire motor carrier;

(37) Safety audit means an examination of a motor carrier's operations to provide educational and technical assistance on drivers' hours of service, maintenance and inspection, driver qualification, commercial driver's license requirements, financial responsibility, accidents, hazardous materials, and other safety and transportation records to determine whether a motor carrier meets the safety fitness standard. The purpose of a safety audit is to gather

critical safety data needed to make an assessment of the carrier's safety performance and basic safety management controls. Safety audits do not result in safety ratings; and

(38) Tank means a container, consisting of a shell and heads, that forms a pressure-tight vessel having openings designed to accept pressure-tight fittings or closures, but excludes any appurtenances, reinforcements, fittings, or closures.

Source: Laws 2006, LB 1007, § 14.

75-363 Federal motor carrier safety regulations; provisions adopted; exceptions.

(1) The parts, subparts, and sections of Title 49 of the Code of Federal Regulations listed below, as modified in this section, or any other parts, subparts, and sections referred to by such parts, subparts, and sections, in existence and effective as of January 1, 2008, are adopted as Nebraska law.

(2) Except as otherwise provided in this section, the regulations shall be applicable to:

(a) All motor carriers, drivers, and vehicles to which the federal regulations apply; and

(b) All motor carriers transporting persons or property in intrastate commerce to include:

(i) All vehicles of such motor carriers with a gross vehicle weight rating, gross combination weight rating, gross vehicle weight, or gross combination weight over ten thousand pounds;

(ii) All vehicles of such motor carriers designed or used to transport more than eight passengers, including the driver, for compensation, or designed or used to transport more than fifteen passengers, including the driver, and not used to transport passengers for compensation;

(iii) All vehicles of such motor carriers transporting hazardous materials required to be placarded pursuant to section 75-364; and

(iv) All drivers of such motor carriers if the drivers are operating a commercial motor vehicle as defined in section 60-465 which requires a commercial driver's license.

(3) The Legislature hereby adopts, as modified in this section, the following parts of Title 49 of the Code of Federal Regulations:

(a) Part 382—Controlled Substances And Alcohol Use And Testing;

(b) Part 385—Safety Fitness Procedures;

(c) Part 387—Minimum Levels of Financial Responsibility for Motor Carriers;

(d) Part 390—Federal Motor Carrier Safety Regulations; General;

(e) Part 391—Qualifications Of Drivers And Longer Combination Vehicle (LCV) Driver Instructors;

(f) Part 392—Driving Of Commercial Motor Vehicles;

(g) Part 393—Parts And Accessories Necessary For Safe Operation;

(h) Part 395—Hours Of Service Of Drivers;

(i) Part 396—Inspection, Repair, And Maintenance;

(j) Part 397—Transportation Of Hazardous Materials; Driving And Parking Rules; and

(k) Part 398—Transportation Of Migrant Workers.

(4) The provisions of subpart E—Physical Qualifications And Examinations of 49 C.F.R. part 391—Qualifications Of Drivers And Longer Combination Vehicle (LCV) Driver Instructors shall not apply to any driver subject to this section who: (a) Operates a commercial motor vehicle exclusively in intrastate commerce; and (b) holds, or has held, a commercial driver's license issued by this state prior to July 30, 1996.

(5) The regulations adopted in subsection (3) of this section shall not apply to farm trucks registered pursuant to section 60-3,146 with a gross weight of sixteen tons or less or to fertilizer and agricultural chemical application and distribution equipment transported in units with a capacity of three thousand five hundred gallons or less if the equipment is not required to be placarded pursuant to section 75-364. The following parts and sections of 49 C.F.R. chapter III shall not apply to drivers of farm trucks registered pursuant to section 60-3,146 and operated solely in intrastate commerce:

(a) All of part 391;

(b) Section 395.8 of part 395; and

(c) Section 396.11 of part 396.

(6) For purposes of this section, intrastate motor carriers shall not include any motor carrier or driver excepted from 49 C.F.R. chapter III by section 390.3(f) of part 390 or any nonprofit entity, operating solely in intrastate commerce, organized for the purpose of furnishing electric service.

(7) Part 395—Hours Of Service Of Drivers shall apply to motor carriers and drivers who engage in intrastate commerce as defined in section 75-362, except that no motor carrier who engages in intrastate commerce shall permit or require any driver used by it to drive nor shall any driver drive:

(a) More than twelve hours following eight consecutive hours off duty; or

(b) For any period after having been on duty sixteen hours following eight consecutive hours off duty.

No motor carrier who engages in intrastate commerce shall permit or require a driver of a commercial motor vehicle, regardless of the number of motor carriers using the driver's services, to drive, nor shall any driver of a commercial motor vehicle drive, for any period after:

(i) Having been on duty seventy hours in any seven consecutive days if the employing motor carrier does not operate every day of the week; or

(ii) Having been on duty eighty hours in any period of eight consecutive days if the employing motor carrier operates motor vehicles every day of the week.

(8) Part 395—Hours Of Service Of Drivers, as adopted in subsections (3) and (7) of this section, shall not apply to drivers transporting agricultural commodities or farm supplies for agricultural purposes when the transportation of such commodities or supplies occurs within a one-hundred-air-mile radius of the source of the commodities or the distribution point for the supplies when such transportation occurs during the period beginning on February 15 up to and including December 15 of each calendar year.

(9) 49 C.F.R. 390.21—Marking Of Commercial Motor Vehicles shall not apply to farm trucks and farm truck-tractors registered pursuant to section 60-3,146 and operated solely in intrastate commerce.

(10) 49 C.F.R. 392.9a—Operating Authority shall not apply to Nebraska motor carriers operating commercial motor vehicles solely in intrastate commerce.

(11) No motor carrier shall permit or require a driver of a commercial motor vehicle to violate, and no driver of a commercial motor vehicle shall violate, any out-of-service order.

Source: Laws 1986, LB 301, § 1; Laws 1987, LB 224, § 23; Laws 1988, LB 884, § 1; Laws 1989, LB 285, § 140; Laws 1990, LB 980, § 29; Laws 1991, LB 854, § 3; Laws 1993, LB 410, § 1; Laws 1994, LB 1061, § 5; Laws 1995, LB 461, § 1; Laws 1996, LB 938, § 4; Laws 1997, LB 722, § 1; Laws 1998, LB 1056, § 8; Laws 1999, LB 161, § 1; Laws 1999, LB 704, § 49; Laws 2000, LB 1361, § 11; Laws 2001, LB 375, § 1; Laws 2002, LB 499, § 5; Laws 2003, LB 480, § 2; Laws 2004, LB 878, § 1; Laws 2005, LB 83, § 1; Laws 2005, LB 274, § 271; Laws 2006, LB 1007, § 13; Laws 2007, LB239, § 8; Laws 2008, LB756, § 28; Laws 2008, LB845, § 1.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB756, section 28, with LB845, section 1, to reflect all amendments.

Note: Changes made by LB756 became operative March 20, 2008. Changes made by LB845 became effective July 18, 2008.

Cross References

Violation of section, penalty, see section 75-367.

75-364 Additional federal motor carrier regulations; provisions adopted; exceptions.

(1) The parts, subparts, and sections of Title 49 of the Code of Federal Regulations listed below, or any other parts, subparts, and sections referred to by such parts, subparts, and sections, in existence and effective as of January 1, 2008, are adopted as part of Nebraska law and, except as provided in subsections (2) and (3) of this section, shall be applicable to all motor carriers whether engaged in interstate or intrastate commerce, drivers of such motor carriers, and vehicles of such motor carriers:

(a) Part 107—Hazardous Materials Program Procedures, subpart F — Registration Of Cargo Tank And Cargo Tank Motor Vehicle Manufacturers, Assemblers, Repairers, Inspectors, Testers, and Design Certifying Engineers;

(b) Part 107—Hazardous Materials Program Procedures, subpart G — Registration Of Persons Who Offer Or Transport Hazardous Materials;

(c) Part 171—General Information, Regulations, And Definitions;

(d) Part 172—Hazardous Materials Table, Special Provisions, Hazardous Materials Communications, Emergency Response Information, and Training Requirements;

(e) Part 173—Shippers—General Requirements For Shipments And Packagings;

(f) Part 177—Carriage By Public Highway;

(g) Part 178—Specifications For Packagings; and

(h) Part 180—Continuing Qualification And Maintenance Of Packagings.

(2) Agricultural operations exceptions:

(a) The transportation of an agricultural product other than a Class 2 material (Compressed Gases) as defined in 49 C.F.R. 171.8, over roads, other than the National System of Interstate and Defense Highways, between fields of the same farm, is excepted from subsection (1) of this section when:

(i) The agricultural product is transported by a farmer who is an intrastate private motor carrier; and

(ii) The movement of the agricultural product conforms to all other laws in effect on or before July 1, 1998, and 49 C.F.R. 173.24, 173.24a, and 173.24b;

(b) The transportation of an agricultural product to or from a farm, within one hundred fifty miles of the farm, is excepted from the requirements in 49 C.F.R. part 172, subparts G (emergency response information) and H (training), and from the specific packaging requirements of subsection (1) of this section when:

(i) The agricultural product is transported by a farmer who is an intrastate private motor carrier;

(ii) The total amount of agricultural product being transported on a single vehicle does not exceed:

(A) Sixteen thousand ninety-four pounds of ammonium nitrate fertilizer properly classed as Division 5.1, PGIII, in a bulk packaging; or

(B) Five hundred two gallons for liquids or gases, or five thousand seventy pounds for solids, of any other agricultural product;

(iii) The packaging conforms to the requirements of state law and is specifically authorized for transportation of the agricultural product by state law and such state law has been in effect on or before July 1, 1998; and

(iv) Each person having any responsibility for transporting the agricultural product or preparing the agricultural product for shipment has been instructed in the applicable requirements of the parts, subparts, and sections of Title 49 of the Code of Federal Regulations adopted in this section; and

(c) Formulated liquid agricultural products in specification packagings of fifty-eight-gallon capacity or less, with closures manifolded to a closed mixing system and equipped with positive dry disconnect devices, may be transported by a private motor carrier between a final distribution point and an ultimate point of application or for loading aboard an airplane for aerial application.

(3) Exceptions for nonspecification packagings used in intrastate transportation:

(a) Nonspecification cargo tanks for petroleum products: Notwithstanding requirements for specification packagings in 49 C.F.R. part 173, subpart F, and 49 C.F.R. parts 178 and 180, a nonspecification metal tank permanently secured to a transport vehicle and protected against leakage or damage in the event of a turnover, having a capacity of less than three thousand five hundred gallons, may be used by an intrastate motor carrier for transportation of a flammable liquid petroleum product in accordance with subdivision (c) of this subsection;

(b) Permanently secured nonbulk tanks for petroleum products: Notwithstanding requirements for specification packagings in 49 C.F.R. part 173, subpart F, and 49 C.F.R. parts 178 and 180, a nonspecification metal tank permanently secured to a transport vehicle and protected against leakage or

damage in the event of a turnover, having a capacity of less than one hundred nineteen gallons, may be used by an intrastate motor carrier for transportation of a flammable liquid petroleum product in accordance with subdivision (c) of this subsection; and

(c) Additional requirements: A packaging used pursuant to subdivision (a) or (b) of this subsection must:

(i) Be operated by an intrastate motor carrier and in use as a packaging for hazardous material before July 1, 1998;

(ii) Be operated in conformance with the requirements of the State of Nebraska;

(iii) Be specifically authorized by state law in effect before July 1, 1998, for use as a packaging for the hazardous material being transported and by 49 C.F.R. 173.24, 173.24a, and 173.24b;

(iv) Be offered for transportation and transported in conformance with all other applicable requirements of the hazardous material regulations;

(v) Not be used to transport a flammable cryogenic liquid, hazardous substance, hazardous waste, or marine pollutant as defined in 49 C.F.R. 171.8; and

(vi) On and after July 1, 2000, for a tank authorized under subdivision (a) or (b) of this subsection, conform to all requirements in 49 C.F.R. part 180, except for 49 C.F.R. 180.405(g), in the same manner as required for a United States Department of Transportation specification MC306 cargo tank motor vehicle.

(4) For purposes of this section:

(a) Agricultural product means a hazardous material, other than a hazardous waste, whose end use directly supports the production of an agricultural commodity, including, but not limited to, a fertilizer, pesticide, soil amendment, or fuel. An agricultural product is limited to a material in Class 3 (Flammable Liquids), Class 8 (Corrosives), or Class 9 (Miscellaneous), Division 2.1 (Flammable Gas), Division 2.2 (Nonflammable Gas), Division 5.1 (Oxidizers), or Division 6.1 (Poisons), or an ORM-D material (Consumer Commodity), as defined in 49 C.F.R. 171.8;

(b) Bulk package means a packaging, including a transport vehicle or freight container, in which hazardous materials are loaded with no other intermediate form of containment and which has:

(i) A maximum capacity greater than one hundred nineteen gallons as a receptacle for a liquid;

(ii) A maximum net mass greater than eight hundred eighty-two pounds and a maximum capacity greater than one hundred nineteen gallons as a receptacle for a solid; or

(iii) A water capacity greater than one thousand pounds as a receptacle for a gas, pursuant to standards set forth in 49 C.F.R. 173.115;

(c) Farmer means a person engaged in the production or raising of crops, poultry, or livestock; and

(d) Private motor carrier means a person or persons engaged in the transportation of persons or product while in commerce, but not for hire.

Source: Laws 1986, LB 301, § 2; Laws 1987, LB 538, § 1; Laws 1988, LB 884, § 2; Laws 1990, LB 980, § 30; Laws 1991, LB 854, § 4; Laws 1993, LB 410, § 2; Laws 1994, LB 1061, § 6; Laws 1995, LB 461, § 2; Laws 1996, LB 938, § 5; Laws 1997, LB 722, § 2;

Laws 1998, LB 1056, § 9; Laws 1999, LB 161, § 2; Laws 2000, LB 1361, § 12; Laws 2001, LB 375, § 2; Laws 2002, LB 499, § 6; Laws 2003, LB 480, § 3; Laws 2004, LB 878, § 2; Laws 2005, LB 83, § 2; Laws 2006, LB 1007, § 15; Laws 2007, LB239, § 9; Laws 2008, LB756, § 29.

Operative date March 20, 2008.

75-368 Nebraska State Patrol; carrier enforcement division; adopt rules and regulations; prior rules and regulations; effect.

(1) The Nebraska State Patrol or the carrier enforcement division may adopt and promulgate rules and regulations as are necessary to carry out and enforce sections 75-362 to 75-369.07.

(2) The rules and regulations utilized by the Public Service Commission to administer any function or duty transferred to the Division of Motor Carrier Services on January 1, 1997, shall be administered as if adopted by the Division of Motor Carrier Services and shall remain effective until repealed, amended, modified, or reenacted by the Division of Motor Carrier Services.

Source: Laws 1986, LB 301, § 6; Laws 1996, LB 1218, § 61; Laws 2003, LB 480, § 5; Laws 2006, LB 1007, § 16.

75-369 Nebraska State Patrol; provide declaration of safety regulations; distribution; acknowledgment of applicant.

The Nebraska State Patrol shall provide each county treasurer and the Department of Motor Vehicles with copies of a declaration which states that the motor carrier safety regulations in sections 75-362 to 75-369.07 have been enacted into state law. The declaration shall be distributed by the county treasurers and the Department of Motor Vehicles to each applicant for registration of commercial motor vehicles subject to sections 75-363 and 75-364. The applicant shall sign the registration form to acknowledge that the applicant has read the declaration and is aware that the motor carrier safety regulations are part of state law. Nothing in this section shall be construed to impose any liability upon any county treasurer or the Department of Motor Vehicles or any employee thereof as a result of any act or failure to act under this section.

Source: Laws 1986, LB 301, § 7; Laws 2003, LB 480, § 6; Laws 2006, LB 1007, § 17.

75-369.01 Nebraska State Patrol carrier enforcement division; safety audit or compliance review.

Any officer of the Nebraska State Patrol carrier enforcement division may conduct a safety audit or compliance review of a motor carrier.

Source: Laws 1994, LB 358, § 1; Laws 2006, LB 1007, § 18.

75-369.02 Safety rating; factors; notice.

Following a compliance review of an intrastate motor carrier by an officer of the Nebraska State Patrol carrier enforcement division, the Nebraska State Patrol shall issue a safety rating of that motor carrier. The safety rating shall be based upon factors prescribed in 49 C.F.R. part 385—Safety Fitness Procedures adopted in section 75-363, portions of 49 C.F.R. chapter I adopted in section 75-364, and insurance requirements for intrastate motor carriers set forth by

the Public Service Commission pursuant to section 75-307. The motor carrier shall be notified by the Nebraska State Patrol of such safety rating by certified or registered mail.

Source: Laws 1994, LB 358, § 2; Laws 2006, LB 1007, § 19.

75-369.03 Violations; civil penalty; referral to federal agency or Public Service Commission; when.

(1) The Superintendent of Law Enforcement and Public Safety may issue an order imposing a civil penalty against a motor carrier transporting persons or property in interstate commerce for a violation of sections 75-348 to 75-358 or 75-392 to 75-399 or against a motor carrier transporting persons or property in intrastate commerce for a violation or violations of section 75-363 or 75-364 based upon an inspection conducted pursuant to section 75-366 in an amount which shall not exceed five hundred dollars for any single violation in any proceeding or series of related proceedings against any person or motor carrier as defined in 49 C.F.R. part 390.5 as adopted in section 75-363.

(2) The superintendent shall issue an order imposing a civil penalty in an amount not to exceed ten thousand dollars against a motor carrier transporting persons or property in interstate commerce for a violation of subsection (3) of section 60-4,162 based upon a conviction of such a violation.

(3) The superintendent shall issue an order imposing a civil penalty against a driver operating a commercial motor vehicle, as defined in section 60-465, that requires a commercial driver's license, in violation of an out-of-service order. The civil penalty shall be in an amount not less than two thousand five hundred dollars but not more than five thousand dollars for a first violation and not less than five thousand one dollars but not more than seven thousand five hundred dollars for a second or subsequent violation.

(4) The superintendent shall issue an order imposing a civil penalty against a motor carrier who knowingly allows, requires, permits, or authorizes the operation of a commercial motor vehicle, as defined in section 60-465, that requires a commercial driver's license, in violation of an out-of-service order. The civil penalty shall be not less than two thousand seven hundred fifty dollars but not more than twenty-five thousand dollars per violation.

(5) Upon the discovery of any violation by a motor carrier transporting persons or property in interstate commerce of section 75-307, 75-363, or 75-364 or sections 75-392 to 75-399 based upon an inspection conducted pursuant to section 75-366, the superintendent shall immediately refer such violation to the appropriate federal agency for disposition, and upon the discovery of any violation by a motor carrier transporting persons or property in intrastate commerce of section 75-307 based upon such inspection, the superintendent shall refer such violation to the Public Service Commission for disposition.

Source: Laws 1994, LB 358, § 3; Laws 1996, LB 1218, § 62; Laws 2002, LB 499, § 7; Laws 2006, LB 1007, § 20; Laws 2007, LB358, § 14; Laws 2008, LB845, § 2.
Effective date July 18, 2008.

75-369.06 Unpaid civil penalties; collection.

Civil penalties assessed pursuant to section 75-369.03 and unpaid shall constitute a debt to the State of Nebraska which may be collected in the form of a lien foreclosure or recovered in a proper form of action in the name of the State of Nebraska in the district court of Lancaster County. Any civil penalty collected shall be remitted on a monthly basis to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 1994, LB 358, § 6; Laws 2008, LB845, § 3.
Effective date July 18, 2008.

(f) ENFORCEMENT

75-370 Insurance, bond, certificate, and permit requirements; enforcement; duties.

Enforcement of sections 75-307 and 75-309 shall be carried out by the carrier enforcement division of the Nebraska State Patrol or the Nebraska State Patrol pursuant to the rules and regulations adopted and promulgated by the commission to enforce such sections. Any violation of such sections by any regulated motor carrier, motor carrier, or private carrier shall be referred to the commission for disposition under section 75-156, and the commission may take any other action provided by section 75-133.

Source: Laws 1990, LB 980, § 32; Laws 1994, LB 414, § 80; Laws 1995, LB 424, § 49; Laws 1996, LB 1218, § 63; Laws 2006, LB 1069, § 4; Laws 2007, LB358, § 15.

75-371 Insurance, bond, certificate, and permit requirements; violations; penalty.

Any person, private carrier, common carrier, or contract carrier which operates any motor vehicle in violation of section 75-307 or any rule, regulation, or order of the commission pertaining to such section shall be guilty of a Class IV misdemeanor. Each day of such violation shall constitute a separate offense.

Source: Laws 1990, LB 980, § 33; Laws 1994, LB 414, § 81; Laws 1995, LB 424, § 50; Laws 1996, LB 1218, § 64; Laws 2006, LB 1069, § 5; Laws 2007, LB358, § 16.

(h) RESTRICTIONS ON HOURS ON DUTY

75-381 Repealed. Laws 2006, LB 1007, § 23.

75-382 Repealed. Laws 2006, LB 1007, § 23.

(i) TRANSPORT OF HAZARDOUS MATERIAL

75-383 Repealed. Laws 2006, LB 1069, § 7.

75-384 Repealed. Laws 2006, LB 1069, § 7.

(j) DIVISION OF MOTOR CARRIER SERVICES

75-386 Division of Motor Carrier Services; duties.

The Division of Motor Carrier Services shall:

- (1) Foster, promote, and preserve the motor carrier industry of the State of Nebraska;
- (2) Protect and promote the public health and welfare of the citizens of the state by ensuring that the motor carrier industry is operated in an efficient and safe manner;
- (3) Promote and provide for efficient and uniform governmental oversight of the motor carrier industry;
- (4) Promote financial responsibility on the part of motor carriers operating in and through the State of Nebraska;
- (5) Administer all provisions of the International Fuel Tax Agreement Act, the International Registration Plan Act, and the single state insurance registration system pursuant to sections 75-348 to 75-358 or 75-392 to 75-399;
- (6) Provide for the issuance of certificates of title to apportioned registered motor vehicles as provided for by subsection (6) of section 60-144; and
- (7) Carry out such other duties and responsibilities as directed by the Legislature.

Source: Laws 1996, LB 1218, § 2; Laws 2003, LB 563, § 41; Laws 2005, LB 276, § 110; Laws 2005, LB 284, § 4; Laws 2007, LB358, § 17.

Cross References

International Fuel Tax Agreement Act, see section 66-1401.
International Registration Plan Act, see section 60-349.

(k) MOTOR CARRIER TRANSPORTATION CONTRACTS

75-391 Motor carrier transportation contracts; exculpatory provisions prohibited.

(1) A provision, a clause, a covenant, or an agreement contained in, collateral to, or affecting a motor carrier transportation contract that purports to indemnify, defend, or hold harmless or has the effect of indemnifying, defending, or holding harmless the motor carrier transportation contract's promisee from or against any liability for loss or damage resulting from the negligence or intentional acts or omissions of the motor carrier transportation contract's promisee or any agents, employees, servants, or independent contractors who are directly responsible to the motor carrier transportation contract's promisee, is against the public policy of this state and is unenforceable.

(2) Nothing contained in this section affects a provision, a clause, a covenant, or an agreement in which a motor carrier indemnifies or holds harmless a motor carrier transportation contract's promisee against liability for damages to the extent that the damages were caused by and resulting from the negligence of the motor carrier or its agents, employees, servants, or independent contractors who are directly responsible to the motor carrier.

(3) As used in this section:

(a) Motor carrier means any person who or which owns, controls, manages, operates, or causes to be operated any motor vehicle used to transport goods over any public highway in this state, whether in intrastate or interstate commerce;

(b) Motor carrier transportation contract means a contract, agreement, or understanding covering:

(i) The transportation of property for compensation or hire by a motor carrier;

(ii) The entrance on property by a motor carrier for the purpose of loading, unloading, or transporting property for compensation or for hire; or

(iii) A service incidental to activity described in subdivision (i) or (ii) of this subdivision, including, but not limited to, storage of property.

A motor carrier transportation contract does not include provisions of the Uniform Intermodal Interchange and Facilities Access Agreement administered by the Intermodal Association of North America or any other provision, clause, covenant, or agreement providing for the interchange, use, or possession of intermodal chassis, containers, or other intermodal equipment; and

(c) Promisee means the party to a motor carrier transportation contract who or which is not a motor carrier or, if the promisee is a motor carrier, is not the motor carrier actually doing the transporting.

Source: Laws 2006, LB 1007, § 21.

(l) UNIFIED CARRIER REGISTRATION PLAN AND AGREEMENT

75-392 Terms, defined.

For purposes of sections 75-392 to 75-399:

(1) Director means the Director of Motor Vehicles;

(2) Division means the Division of Motor Carrier Services of the Department of Motor Vehicles; and

(3) Unified carrier registration plan and agreement means the plan and agreement established and authorized pursuant to 49 U.S.C. 14504, as such section existed on January 1, 2007.

Source: Laws 2007, LB358, § 1.

75-393 Unified Carrier Registration System; establishment; enforcement; director; powers.

(1) On and after the date the United States Secretary of Transportation establishes the Unified Carrier Registration System in accordance with the Unified Carrier Registration Act of 2005, 49 U.S.C. 13908, as such act existed on January 1, 2007, the director may designate a date to begin enforcement of such act in this state.

(2) The director may participate in the unified carrier registration plan and agreement and may file on behalf of this state the plan required by such plan and agreement.

Source: Laws 2007, LB358, § 2.

75-394 Registration under unified carrier registration plan and agreement; when required; fees; authorization to accept registration.

(1) On and after the date designated by the director pursuant to section 75-393, no foreign or domestic motor carrier, private carrier, leasing company, broker, or freight forwarder shall operate any motor vehicle on a highway of this state or in interstate commerce without first being registered in this state

or another jurisdiction pursuant to the unified carrier registration plan and agreement and having paid all fees required under the unified carrier registration plan and agreement for such registration. A motor carrier, private carrier, leasing company, broker, or freight forwarder with its principal place of business in this state shall register in this state with and pay its required registration fees to the division. The division shall remit the fees to the State Treasurer for credit to the General Fund.

(2) On and after the date designated by the director pursuant to section 75-393, the division may accept the registration of and fees required from a foreign or domestic motor carrier, private carrier, leasing company, broker, or freight forwarder that maintains an office in this state but does not have its principal place of business in the United States or that maintains an office in this state but has its principal place of business in another jurisdiction that does not participate in the unified carrier registration plan and agreement. The division shall remit the fees to the State Treasurer for credit to the General Fund.

Source: Laws 2007, LB358, § 3.

75-395 Termination of prior registration systems and requirements.

The single state insurance registration system, the previous registration system for common, contract, and private carriers, and sections 75-348 to 75-358 shall terminate on the date designated by the director pursuant to section 75-393.

Source: Laws 2007, LB358, § 4.

75-396 Rules and regulations.

On and after the date designated by the director pursuant to section 75-393 the director may adopt and promulgate rules and regulations to carry out the unified carrier registration plan and agreement.

Source: Laws 2007, LB358, § 5.

75-397 Forms and electronic systems to allow filings.

On and after the date designated by the director pursuant to section 75-393, the director may prescribe the appropriate forms and implement the appropriate electronic systems to allow filings with the division pursuant to the unified carrier registration plan and agreement.

Source: Laws 2007, LB358, § 6.

75-398 Violations; penalty.

On and after the date designated by the director pursuant to section 75-393, any foreign or domestic motor carrier, private carrier, leasing company, broker, or freight forwarder operating any motor vehicle in violation of sections 75-392 to 75-399, any rule or regulation adopted and promulgated pursuant to such sections, or any order of the division issued pursuant to such sections is guilty of a Class IV misdemeanor and shall also be subject to section 75-369.03. Each day of the violation constitutes a separate offense.

Source: Laws 2007, LB358, § 7.

75-399 Sections not applicable to intrastate commerce.

Sections 75-392 to 75-399 do not apply to a foreign or domestic motor carrier, private carrier, leasing company, broker, or freight forwarder, including a transporter of waste or recyclable materials, engaged exclusively in intrastate commerce.

Source: Laws 2007, LB358, § 8.

ARTICLE 9 GRAIN DEALER ACT

Section	
75-902.	Terms, defined.
75-903.	Grain dealer; licensure; requirements; fee.
75-903.02.	Criminal history record information check; fingerprinting; when.
75-905.	Recourse to grain dealer's security; when.

75-902 Terms, defined.

For purposes of the Grain Dealer Act, unless the context otherwise requires:

- (1) Commission means the Public Service Commission;
- (2) Direct delivery grain has the same meaning as in section 88-526;
- (3) Direct delivery obligation has the same meaning as in section 88-526;
- (4) Grain includes, but is not limited to, all unprocessed beans, whole corn, milo and other sorghum, wheat, rye, barley, oats, millet, safflower seed and processed plant pellets, alfalfa pellets, and any other bulk pelleted agricultural storable commodity, except grain which has been processed or packaged for distribution as seed;
- (5)(a) Grain dealer means any person, partnership, limited liability company, corporation, or association that (i) buys grain from the owner or producer of the grain within this state for purposes of selling such grain, (ii) transports grain into this state for purposes of selling such grain, or (iii) acts as an employee or agent of a buyer or seller for purposes of collective bargaining in the marketing of grain.
- (b) Grain dealer does not include (i) a custom feeder of livestock or poultry or (ii) a warehouse licensee under the Grain Warehouse Act or a warehouse licensee under the United States Warehouse Act of a warehouse located in Nebraska if the warehouse licensee does not buy, sell, or transport grain other than grain that is received at its licensed warehouse facilities;
- (6) In-store transfer has the same meaning as in section 88-526;
- (7) Post-direct delivery storage position has the same meaning as in section 88-526; and
- (8) Producer means the owner, tenant, or operator of land in this state who has an interest in and receives all or part of the proceeds from the sale of grain produced on that land.

Source: Laws 1985, LB 389, § 4; Laws 1987, LB 507, § 2; Laws 1996, LB 1123, § 1; Laws 2003, LB 735, § 3; Laws 2005, LB 439, § 1.

Cross References

Grain Warehouse Act, see section 88-525.

75-903 Grain dealer; licensure; requirements; fee.

All grain dealers doing business in this state shall be licensed by the commission. If the applicant is an individual, the application shall include the applicant's social security number. To procure and maintain a license, each grain dealer shall:

(1) Pay an annual fee of sixty dollars which shall be due on or before the date established by the commission for each license and a registration fee not to exceed forty dollars per year for each vehicle used by such licensee to transport grain. Such fees shall be paid to the State Treasurer and credited to the General Fund;

(2) Equip each vehicle used by the licensee for grain transportation with a commercial license plate registered with the Department of Motor Vehicles, except that a licensee who resides in another state shall license such vehicles according to the laws of his or her state of residence;

(3) Affix a grain dealer plate issued by the commission to each vehicle used by the licensee;

(4) File security which may be a bond issued by a corporate surety company and payable to the commission, an irrevocable letter of credit, or a certificate of deposit, subject to the approval of the commission, for the benefit of any producer or owner within this state who files a valid claim arising from a sale to or purchase from a grain dealer. The security shall be in the amount of thirty-five thousand dollars or seven percent of grain purchases or exchanges by the grain dealer in the grain dealer's preceding fiscal year, whichever is greater, not to exceed three hundred thousand dollars. Amounts used in the calculation of the security shall include all direct delivery grain purchases and exchanges valued on the date delivery is made. Amounts used in the calculation of the security shall not include any transactions in which direct delivery grain is exchanged for a post-direct delivery storage position and the post-direct delivery storage position is created by an in-store transfer on the same date as the delivery of the direct delivery grain. Such security shall be furnished on the condition that the licensee will pay for any grain purchased upon demand, not later than thirty days after the date of the last shipment of any contract. The liability of the surety shall cover purchases and sales made or arranged by the grain dealer during the time the bond is in force. A grain dealer's bond filed with the commission shall be in continuous force and effect until canceled by the surety. The liability of the surety on any bond required by this section shall not accumulate for each successive license period during which the bond is in force; and

(5) File a reviewed or audited fiscal year-end financial statement prepared either by an independent certified public accountant or by an independent public accountant who holds a permit granted by the Nebraska State Board of Public Accountancy. If licensing as an individual, the financial statement shall be prepared in accordance with Other Comprehensive Basis of Accountancy, as filed with the board, for a personal financial statement, using historical cost and accrual basis of accounting. If licensing as a partnership, corporation, or limited liability company, the financial statement shall be prepared in accordance with accounting principles generally accepted. The financial statement shall include: (a) A statement of income showing profit or loss; (b) a balance sheet; (c) a statement of cash flow; (d) a statement of proprietor's capital or retained earnings; (e) the volume and dollar value of the grain purchases the licensee made in Nebraska during the fiscal year; (f) the volume and dollar

value of transactions in which direct delivery grain is exchanged for a post-direct delivery storage position and the post-direct delivery storage position is not created by an in-store transfer on the same date as the delivery of the direct delivery grain; and (g) the accountant's certification, assurances, opinions, and comments and the notes with respect to the financial statement. If the volume and dollar value of the grain purchases is not reported, the grain dealer shall file the maximum grain dealer security as required by the Grain Dealer Act.

If an applicant for a grain dealer license is a wholly owned subsidiary of a parent company and such a financial statement is not prepared for the subsidiary, the parent company shall submit its reviewed or audited fiscal year-end financial statement and shall execute an unconditional guarantee agreement as prescribed by the commission.

Source: Laws 1985, LB 389, § 5; Laws 1987, LB 507, § 3; Laws 1996, LB 1123, § 2; Laws 1997, LB 752, § 201; Laws 2003, LB 187, § 24; Laws 2003, LB 735, § 4; Laws 2005, LB 52, § 1; Laws 2005, LB 439, § 2.

75-903.02 Criminal history record information check; fingerprinting; when.

For each application filed under section 75-903 after January 1, 2004, one of the following primary parties shall be subject to fingerprinting and a check of his or her criminal history record information maintained by the Federal Bureau of Investigation through the Nebraska State Patrol: (1) If the applicant is not an individual, the chief executive officer, president, or general manager; or (2) if the applicant is an individual, the individual. If the primary party has been subject to a check of his or her criminal history record information pursuant to this section on a prior application, he or she is not subject to another such check upon a subsequent application. If a primary party has been subject to a check of his or her criminal history record information pursuant to another law, the commission may waive such requirement under this section. A primary party shall furnish to the Nebraska State Patrol a full set of fingerprints to enable a criminal background investigation to be conducted. The primary party shall request that the Nebraska State Patrol submit the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The primary party shall pay the actual cost, if any, of the fingerprinting and check of his or her criminal history record information. The primary party shall authorize release of the national criminal history record check to the commission. The criminal history record information check shall be completed within ninety days after the date the application for a license is received in the commission's office, and if not, the application shall be returned to the applicant. The commission shall deny a grain dealer license to any applicant whose primary party has been convicted of a felony financial crime.

Source: Laws 2003, LB 735, § 5; Laws 2005, LB 52, § 2.

75-905 Recourse to grain dealer's security; when.

(1) No seller shall have recourse to the grain dealer's security unless the seller:

(a) Demands payment from the grain dealer within thirty days after the date of the last shipment of any contract;

(b) Negotiates any negotiable instrument issued as payment for grain by the grain dealer within thirty days after its issuance; and

(c) Notifies the commission within thirty days after any apparent loss to be covered under the terms of the grain dealer's security.

(2) The grain dealer's security shall provide security for direct delivery grain until any post-direct delivery storage position is created for a period not to exceed thirty days after the date of the last shipment of the contract.

Source: Laws 1985, LB 389, § 7; Laws 1986, LB 1007, § 4; Laws 1996, LB 1123, § 3; Laws 2005, LB 52, § 3; Laws 2005, LB 439, § 3.

ARTICLE 10

WATER SERVICE REGULATION

Section

75-1011. Violation; civil penalty.

75-1012. Enforcement of act.

75-1011 Violation; civil penalty.

Notwithstanding section 75-156, any private water company that violates any provision of the Water Service Regulation Act or any rule, regulation, or order of the commission shall be subject to a civil penalty of not less than fifty dollars nor more than one thousand dollars for each act of violation and for each day of violation to be recovered as provided in section 75-1012.

Source: Laws 1994, LB 1002, § 11; Laws 2008, LB755, § 4.
Effective date March 20, 2008.

75-1012 Enforcement of act.

(1) Notwithstanding section 75-156, whenever it appears that a private water company has violated, is violating, or is threatening to violate any provision of the Water Service Regulation Act or any rule, regulation, or order of the commission, the commission may institute a civil suit in the district court of Lancaster County for (a) injunctive relief to restrain the private water company from continuing the violation or threat of violation, (b) the assessment and recovery of a civil penalty as provided in section 75-1011, or (c) both injunctive relief and civil penalty.

(2) On application for injunctive relief and a finding that a private water company is violating or threatening to violate any provisions of the act or any rule, regulation, or order of the commission, the district court shall grant the injunctive relief as the facts may warrant.

(3) At the request of the commission, the county attorney shall institute and pursue a suit in the name of the state for injunctive relief or to recover the civil penalty, or both, as authorized in subsection (1) of this section.

Source: Laws 1994, LB 1002, § 12; Laws 2008, LB755, § 5.
Effective date March 20, 2008.

REAL PROPERTY

**CHAPTER 76
REAL PROPERTY**

Article.

- 2. Conveyances.
 - (d) Formalities of Execution. 76-214.
 - (f) Recording. 76-238 to 76-250.
 - (g) Curative Acts. 76-261 to 76-265.
 - (i) Marketable Title. 76-288.
- 5. Abstracters.
 - (e) Abstracters Act. 76-547.
- 7. Eminent Domain. 76-701 to 76-710.04.
- 8. Condominium Law.
 - (a) Condominium Property Act. 76-802.
 - (c) Nebraska Condominium Act.
 - Protection of Condominium Purchasers. 76-883.
- 9. Documentary Stamp Tax. 76-901, 76-903.
- 10. Trust Deeds. 76-1004 to 76-1012.
- 13. Retirement Communities and Subdivisions. 76-1304.
- 14. Landlord and Tenant.
 - (b) Mobile Home Landlord and Tenant Act. 76-14,102.
- 17. Nebraska Time-Share Act. 76-1708 to 76-1734.
- 19. Farm Homestead Protection Act. 76-1907 to 76-1910.
- 22. Real Property Appraiser Act. 76-2201 to 76-2250.
- 24. Agency Relationships. 76-2422.
- 26. Uniform Environmental Covenants Act. 76-2601 to 76-2613.
- 27. Nebraska Foreclosure Protection Act. 76-2701 to 76-2728.
- 28. Nebraska Security Instrument Satisfaction Act. 76-2801 to 76-2807.
- 29. Manufactured Homes and Mobile Homes. 76-2901.

**ARTICLE 2
CONVEYANCES**

(d) FORMALITIES OF EXECUTION

- | | |
|--------------------|---|
| Section
76-214. | Deed, memorandum of contract, or land contract; recorded; tax statement required; access. |
|--------------------|---|

(f) RECORDING

- | | |
|------------|---|
| 76-238. | Deeds and other instruments; recording; when effective as notice; possession of real estate; not effective as notice; when. |
| 76-239. | Deed of trust, mortgage, or real estate sale contract; record; effect as notice; when expires; extension; exceptions. |
| 76-248.01. | Certificate of dissolution of marriage. |
| 76-250. | Wills; judgment in partition; decree in equity; certificate of dissolution of marriage; recording; how indexed. |

(g) CURATIVE ACTS

- | | |
|---------|-----------------------------------|
| 76-261. | Repealed. Laws 2004, LB 155, § 8. |
| 76-262. | Repealed. Laws 2004, LB 155, § 8. |
| 76-263. | Repealed. Laws 2004, LB 155, § 8. |
| 76-265. | Repealed. Laws 2004, LB 155, § 8. |

(i) MARKETABLE TITLE

- | | |
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| 76-288. | Marketable record title; unbroken chain of title of record twenty-two years or longer; exceptions. |
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(d) FORMALITIES OF EXECUTION

76-214 Deed, memorandum of contract, or land contract; recorded; tax statement required; access.

(1) Every grantee who has a deed to real estate recorded and every purchaser of real estate who has a memorandum of contract or land contract recorded shall, at the time such deed, memorandum of contract, or land contract is presented for recording, file with the register of deeds a completed statement as prescribed by the Tax Commissioner. For all deeds and all memoranda of contract and land contracts recorded on and after January 1, 2001, the statement shall not require the social security number of the grantee or purchaser or the federal employer identification number of the grantee or purchaser. This statement may require the recitation of any information contained in the deed, memorandum of contract, or land contract, the total consideration paid, the amount of the total consideration attributable to factors other than the purchase of the real estate itself, and other factors which may influence the transaction. This statement shall be signed and filed by the grantee, the purchaser, or his or her authorized agent. The register of deeds shall forward the statement to the county assessor. If the grantee or purchaser fails to furnish the prescribed statement, the register of deeds shall not record the deed, memorandum of contract, or land contract. The register of deeds shall indicate on the statement the book and page or computer system reference where the deed, memorandum of contract, or land contract is recorded and shall immediately forward the statement to the county assessor. The county assessor shall process the statement according to the instructions of the Property Tax Administrator and shall, pursuant to the rules and regulations of the Tax Commissioner, forward the statement to the Tax Commissioner.

(2) Any person shall have access to the statements at the office of the Tax Commissioner or county assessor if the statements are available and have not been disposed of pursuant to the records retention and disposition schedule as approved by the State Records Administrator.

Source: Laws 1917, c. 224, § 1, p. 549; C.S.1922, § 5662; C.S.1929, § 76-268; R.S.1943, § 76-214; Laws 1965, c. 456, § 1, p. 1450; Laws 1965, c. 457, § 1, p. 1451; Laws 1981, LB 28, § 1; Laws 1981, LB 179, § 1; Laws 1984, LB 679, § 13; Laws 1985, LB 273, § 37; Laws 1986, LB 1027, § 200; Laws 1994, LB 902, § 13; Laws 1994, LB 1275, § 6; Laws 1995, LB 490, § 26; Laws 1995, LB 527, § 1; Laws 2000, LB 968, § 21; Laws 2007, LB334, § 12; Laws 2008, LB965, § 1.

Operative date January 1, 2009.

Cross References

Violation of section, penalty, see section 76-215.

(f) RECORDING

76-238 Deeds and other instruments; recording; when effective as notice; possession of real estate; not effective as notice; when.

(1) All deeds, mortgages, and other instruments of writing which are required to be or which under the laws of this state may be recorded, shall take effect

and be in force from and after the time of delivering such instruments to the register of deeds for recording, and not before, as to all creditors and subsequent purchasers in good faith without notice. All such instruments are void as to all creditors and subsequent purchasers without notice whose deeds, mortgages, or other instruments are recorded prior to such instruments. However, such instruments are valid between the parties to the instrument.

(2) For purposes of this section, possession of agricultural real estate or residential real estate by a party related to the owner of record of the real estate within the third degree of consanguinity or affinity shall not serve as notice to a creditor or subsequent purchaser in any case in which such party is claiming rights in such real estate pursuant to a lease (a) entered into on or after July 16, 2004; (b) purporting to extend beyond a term of one year; and (c) which has not satisfied the requirements of section 76-211, unless the creditor or subsequent purchaser, in advance of recording a deed, mortgage, or other instrument, has received a written copy of such lease.

(3) For purposes of this section:

(a) Agricultural products includes grain and feed crops; forages and sod crops; and animal production, including breeding, feeding, or grazing of cattle, horses, swine, sheep, goats, bees, or poultry;

(b) Agricultural real estate means land which is primarily used for the production of agricultural products, including waste land lying in or adjacent to and in common ownership with land used for the production of agricultural products;

(c) Related within the third degree of consanguinity or affinity includes parents, grandparents, great-grandparents, children, grandchildren, great-grandchildren, brothers, sisters, uncles, aunts, nephews, nieces, and spouses of the same and any partnership, limited liability company, or corporation in which all of the partners, members, or shareholders are related within the third degree of consanguinity or affinity; and

(d) Residential real estate means real estate containing not more than four units designed for use for residential purposes. A condominium unit that is otherwise residential real estate remains so even though the condominium development contains more than four dwelling units or units for nonresidential purposes.

Source: R.S.1866, c. 43, § 16, p. 283; Laws 1887, c. 30, § 16, p. 369; R.S.1913, § 6213; C.S.1922, § 5612; C.S.1929, § 76-218; Laws 1941, c. 154, § 1, p. 599; C.S.Supp.,1941, § 76-218; R.S.1943, § 76-238; Laws 2004, LB 155, § 6.

76-239 Deed of trust, mortgage, or real estate sale contract; record; effect as notice; when expires; extension; exceptions.

(1) After the expiration of ten years from the date of maturity of any debt or other obligation secured by a deed of trust, mortgage, or real estate sale contract as stated in or ascertainable from the record of such deed of trust, mortgage, or contract and, in cases where the date of such maturity cannot be ascertained from such record, after the expiration of thirty years from the date of such deed of trust, mortgage, or contract, the record of any deed of trust, mortgage, or real estate contract that has been recorded shall cease to be notice of the existence and lien of such deed of trust, mortgage, or contract as to

subsequent encumbrancers and purchasers for value whose deeds, deeds of trust, mortgages, or other instruments shall be thereafter executed and recorded. Such deed of trust, mortgage, or contract shall be conclusively presumed to have been fully paid and discharged and the record thereof shall thereupon cease to be or constitute notice of the existence or lien thereof and shall be wholly void and thereafter shall not be construed to be any part of the public records in the office of the register of deeds as against subsequent purchasers and encumbrancers for value.

(2) Prior to the termination of the record and notice pursuant to subsection (1) of this section, the owner and holder of the deed of trust, mortgage, or contract may file for record with the register of deeds an affidavit to the effect that the deed of trust, mortgage, or contract is unpaid and is still a valid and subsisting lien. Upon the filing of such affidavit the record of the deed of trust, mortgage, or contract shall continue to exist and be valid as notice of the existence of such deed of trust, mortgage, or contract and of any lien thereof, for an additional period of ten years from the date of the filing of such affidavit. The owner and holder of such deed of trust, mortgage, or contract may alternatively file for record with the register of deeds a duly executed written extension agreement thereof in which event the record of the deed of trust, mortgage, or contract shall continue to exist and be valid as notice of the existence of such deed of trust, mortgage, or contract and of any lien thereof, for an additional period of ten years from the maturity of the deed of trust, mortgage, or contract debt as shown by the recorded extension agreement.

(3) Such periods of notice may be successively extended for additional periods. However, this section shall not be construed as to extend the time within which an action on any deed of trust, mortgage, or contract may be instituted, or in any manner to alter or amend the time within which any action on a deed of trust, mortgage, or contract may be brought under the general laws of this state. This section also shall not apply to mortgages or deeds of trust and instruments supplementary or amendatory thereto covering real estate as well as personal property, such property constituting a portion of property used in carrying on the business of a public utility or a gas or oil pipeline system, and executed to secure the payment of money. The lien of mortgages or deeds of trust and supplements and amendments thereto shall continue in force and effect as to any interest of the mortgagor in the real estate described therein, together with personal property, without the necessity of such renewal affidavit or extension agreement being made and filed, and notwithstanding that the same may have been on file for the period of time set out in this section. The mortgage or deed of trust or instruments supplementary or amendatory thereto shall disclose that the mortgagor or grantor therein is then carrying on the business of a public utility or a gas or oil pipeline system or the mortgagor or grantor has filed an affidavit to that effect for record with the register of deeds.

(4) It is the intent of the Legislature that the changes made by Laws 2005, LB 97, shall not affect or alter the status of any deed of trust, mortgage, or real estate sales contract rendered void prior to September 4, 2005.

Source: Laws 1941, c. 154, § 2, p. 600; C.S.Supp., 1941, § 76-279; R.S. 1943, § 76-239; Laws 1957, c. 138, § 2, p. 461; Laws 2005, LB 97, § 1.

76-248.01 Certificate of dissolution of marriage.

A certificate of dissolution of marriage executed by the clerk of the district court under section 42-372.02 may be recorded in the office of the register of deeds of the county or counties where the real estate is located. A certificate of dissolution of marriage shall not be used in lieu of a deed or other conveyance of real estate to carry out the terms of the dissolution decree or as evidence of title.

Source: Laws 2005, LB 361, § 24.

76-250 Wills; judgment in partition; decree in equity; certificate of dissolution of marriage; recording; how indexed.

On recording any will, exemplification, decree, or certificate of dissolution of marriage, the register of deeds shall index the same in the indices of deeds, and as nearly as may be as deeds are indexed, placing the name of the deviser, petitioner, or plaintiff, with the grantors, and the devisee, respondent, or defendant with the grantees.

Source: R.S.1866, c. 43, § 27, p. 286; Laws 1887, c. 30, § 20, p. 370; R.S.1913, § 6222; C.S.1922, § 5621; C.S.1929, § 76-227; R.S. 1943, § 76-250; Laws 2005, LB 361, § 35.

(g) CURATIVE ACTS

76-261 Repealed. Laws 2004, LB 155, § 8.

76-262 Repealed. Laws 2004, LB 155, § 8.

76-263 Repealed. Laws 2004, LB 155, § 8.

76-265 Repealed. Laws 2004, LB 155, § 8.

(i) MARKETABLE TITLE

76-288 Marketable record title; unbroken chain of title of record twenty-two years or longer; exceptions.

Any person having the legal capacity to own real estate in this state, who has an unbroken chain of title to any interest in real estate by such person and his or her immediate or remote grantors under a deed of conveyance which has been recorded for a period of twenty-two years or longer, and is in possession of such real estate, shall be deemed to have a marketable record title to such interest, subject only to such claims thereto and defects of title as are not extinguished or barred by the application of the Uniform Environmental Covenants Act and sections 25-207, 25-213, 40-104, and 76-288 to 76-298, instruments which have been recorded less than twenty-two years, and any encumbrances of record not barred by the statute of limitations.

Source: Laws 1947, c. 243, § 1, p. 762; Laws 2005, LB 298, § 15.

Cross References

Uniform Environmental Covenants Act, see section 76-2601.

ARTICLE 5
ABSTRACTERS

(e) ABSTRACTERS ACT

Section
76-547. Certificates; term; renewal; requirements; fees.

(e) ABSTRACTERS ACT

76-547 Certificates; term; renewal; requirements; fees.

(1) All certificates of authority issued pursuant to section 76-545 shall expire on April 1 of each year irrespective of when issued. Such certificates shall be renewed, as provided in this section, for a one-year period upon payment of a renewal fee of not less than twenty-five dollars or more than two hundred dollars. The board shall establish such fee based on the administrative costs of the board.

(2) All certificates of registration, including duplicate certificates of registration, issued pursuant to section 76-543 shall expire on April 1 of each even-numbered year irrespective of when issued. Such certificates shall be renewed, as provided in this section, for a two-year period upon payment of a renewal fee of not less than twenty dollars or more than two hundred dollars. The board shall establish such fee based on the administrative costs of the board. The board shall not renew the certificate of registration or duplicate certificate of registration for any registered abstractor who has failed to complete the professional development requirements set forth in section 76-544, unless the registered abstractor has shown good cause why he or she was unable to comply with such requirements. If the board determines that good cause was shown for not completing the professional development requirements, the board shall permit the registered abstractor to make up all outstanding hours of professional development within six months of the renewal of such certificates. If the hours are not completed in six months, such certificates shall be revoked.

(3) Thirty to sixty days prior to the expiration date of the certificates, the board shall cause a notice of expiration and application for renewal, including a statement for the fee for each certificate, to be mailed to each of the holders of such certificates. The notice and application shall be in a form prepared by the board.

Source: Laws 1965, c. 453, § 15, p. 1442; Laws 1973, LB 330, § 4; R.S.1943, (1981), § 76-523; Laws 1985, LB 47, § 17; Laws 2002, LB 1071, § 7; Laws 2005, LB 640, § 1.

ARTICLE 7
EMINENT DOMAIN

Section
76-701. Terms, defined.
76-706. Appointment of appraisers; qualifications; notice to condemnee.
76-710.04. Economic development purpose; restriction on use of eminent domain.

76-701 Terms, defined.

For purposes of sections 76-701 to 76-726:

(1) Condemner means any legal entity that by law has been granted the right to exercise the power of eminent domain and includes the state and any governmental or political subdivision thereof;

(2) Condemnee means any person, partnership, limited liability company, corporation, or association owning or having an encumbrance on any interest in property that is sought to be acquired by a condemner or in possession of or occupying any such property;

(3) Property means any such interest in real or personal property as the condemner is empowered by law to acquire for public use; and

(4) County judge means the county judge of the county where condemnation proceedings provided by such sections are had.

Source: Laws 1951, c. 101, § 1, p. 452; Laws 1993, LB 121, § 478; Laws 2006, LB 924, § 1.

76-706 Appointment of appraisers; qualifications; notice to condemnee.

Upon filing of a petition under either section 76-704 or 76-705, the county judge or clerk magistrate, within three days by order entered of record, shall appoint three disinterested freeholders of the county, not interested in a like question, to serve as appraisers. One appraiser so appointed shall be a credentialed real property appraiser, except that if the county judge finds that no credentialed real property appraiser is a disinterested freeholder of the county, this requirement shall not apply. The county judge or clerk magistrate shall direct the sheriff to summon the appraisers so selected to convene at the office of the county judge at a time specified in the summons for the purpose of qualifying as appraisers and thereafter proceed to appraise the property sought to be condemned and to ascertain and determine the damages sustained by the condemnee. Notice of intention to acquire the property and of the time and place of meeting of the board of appraisers to have the damages assessed shall be served upon the condemnee at least ten days prior to the meeting of the board of appraisers. Service of such notice shall be made in the manner provided for service of a summons in a civil action.

Source: Laws 1951, c. 101, § 6, p. 453; Laws 1976, LB 775, § 1; Laws 1983, LB 447, § 87; Laws 1987, LB 601, § 3; Laws 1990, LB 1153, § 58; Laws 1991, LB 203, § 4; Laws 1994, LB 1107, § 4; Laws 2006, LB 778, § 8.

76-710.04 Economic development purpose; restriction on use of eminent domain.

(1) A condemner may not take property through the use of eminent domain under sections 76-704 to 76-724 if the taking is primarily for an economic development purpose.

(2) For purposes of this section, economic development purpose means taking property for subsequent use by a commercial for-profit enterprise or to increase tax revenue, tax base, employment, or general economic conditions.

(3) This section does not affect the use of eminent domain for:

(a) Public projects or private projects that make all or a major portion of the property available for use by the general public or for use as a right-of-way, aqueduct, pipeline, or similar use;

(b) Removing harmful uses of property if such uses constitute an immediate threat to public health and safety;

(c) Leasing property to a private person who occupies an incidental part of public property or a public facility, such as a retail establishment on the ground floor of a public building;

(d) Acquiring abandoned property;

(e) Clearing defective property title;

(f) Taking private property for use by a utility or railroad; and

(g) Taking private property based upon a finding of blighted or substandard conditions under the Community Development Law if the private property is not agricultural land or horticultural land as defined in section 77-1359.

Source: Laws 2006, LB 924, § 2.

Cross References

Community Development Law, see section 18-2101.

ARTICLE 8

CONDOMINIUM LAW

(a) CONDOMINIUM PROPERTY ACT

Section

76-802. Terms, defined.

(c) NEBRASKA CONDOMINIUM ACT

PROTECTION OF CONDOMINIUM PURCHASERS

76-883. Delivery of public-offering statement; purchaser's rights.

(a) CONDOMINIUM PROPERTY ACT

76-802 Terms, defined.

For purposes of the Condominium Property Act, unless the context otherwise requires:

(1) Condominium property regime shall mean a project whereby four or more apartments are separately offered or proposed to be offered for sale;

(2) Apartment shall mean an enclosed space consisting of one or more rooms occupying all or part of a floor in a building of one or more floors or stories regardless of whether it is designed for residence, for office, for the operation of any industry or business, or for any other type of independent use, if it has a direct exit to a thoroughfare or to a given common space leading to a thoroughfare;

(3) Co-owner shall mean a person, firm, corporation, partnership, limited liability company, association, trust, or other legal entity, or any combination thereof, which owns an apartment within the building;

(4) Association of co-owners shall mean all the co-owners as defined in subdivision (3) of this section, but a majority as defined in subdivision (8) of this section shall, except as otherwise provided in the act, constitute a quorum for the adoption of decisions;

(5) Board of administrators shall mean the governing board of the regime, consisting of not less than three members selected by and from the co-owners;

(6) General common elements shall mean and include:

(a) The land or leasehold interest in land on which the building stands;

(b) The foundations, main walls, roofs, halls, lobbies, stairways, and entrances and exit or communication ways;

(c) The basements, roofs, yards, and gardens except as otherwise provided or stipulated;

(d) The premises for the lodging of janitors or persons in charge of the building except as otherwise provided or stipulated;

(e) The compartments or installations of central services such as power, light, gas, cold and hot water, refrigeration, reservoirs, water tanks and pumps, and the like;

(f) The elevators, garbage incinerators, and, in general, all devices or installations existing for common use; and

(g) All other elements of the building rationally of common use or necessary to its existence, upkeep, and safety;

(7) Limited common elements shall mean and include those common elements which are agreed upon by all the co-owners to be reserved for the use of a certain number of apartments to the exclusion of the other apartments, such as special corridors, stairways and elevators, sanitary services common to the apartments of a particular floor, and the like;

(8) Majority of co-owners shall mean more than fifty percent of the basic value of the property as a whole, in accordance with the percentages computed in accordance with the provisions of section 76-806;

(9) Master deed shall mean the deed establishing the condominium property regime;

(10) Person shall mean an individual, firm, corporation, partnership, limited liability company, association, trust, or other legal entity or any combination thereof;

(11) Property shall mean and include the land, leasehold interests in land, any building, all improvements and structures thereon, and all easements, rights, and appurtenances belonging thereto or any of them alone;

(12) To record shall mean to record in accordance with sections 76-237 to 76-257 or other applicable recording statutes;

(13) Common expense shall mean and include:

(a) All sums lawfully assessed against the apartment owner;

(b) Expense of administration, maintenance, repair, or replacement of common elements; and

(c) Expenses agreed upon as common expenses by the association of co-owners; and

(14) All pronouns used in the Condominium Property Act shall include the male, female, and neuter genders and include the singular or plural numbers, as the case may be.

For condominiums created in this state before January 1, 1984, the definitions in section 76-827 shall apply to the extent necessary in construing the provisions of sections 76-827, 76-829 to 76-831, 76-840, 76-841, 76-869, 76-874, 76-876, 76-884, and 76-891.01, and subdivisions (a)(1) through (a)(6) and

(a)(11) through (a)(16) of section 76-860 which apply to events and circumstances which occur after January 1, 1984.

Source: Laws 1963, c. 429, § 2, p. 1435; Laws 1974, LB 730, § 1; Laws 1983, LB 433, § 72; Laws 1993, LB 121, § 479; Laws 1993, LB 478, § 1; Laws 2005, LB 361, § 36.

(c) NEBRASKA CONDOMINIUM ACT
 PROTECTION OF CONDOMINIUM PURCHASERS

76-883 Delivery of public-offering statement; purchaser's rights.

(a) A person required to deliver a public-offering statement pursuant to subsection (c) of section 76-879 shall provide a purchaser of a unit with a copy of the public-offering statement and all amendments thereto before conveyance of that unit and not later than the date of any contract of sale. Unless a purchaser is given the public-offering statement more than fifteen days before execution of a contract for the purchase of a unit, the purchaser, before conveyance, may cancel the contract within fifteen days after first receiving the public-offering statement.

(b) After receiving the public-offering statement and all amendments, a purchaser has the right to have an independent inspection of the building's structure and mechanical systems conducted at the purchaser's expense.

(c) If a purchaser elects to cancel a contract pursuant to subsection (a) of this section, he or she may do so by hand-delivering notice thereof to the offeror or by mailing notice thereof by mail postage prepaid to the offeror or to his or her agent for service of process. Cancellation is without penalty, and all payments made by the purchaser before cancellation shall be refunded promptly.

(d) If a person required to deliver a public-offering statement pursuant to subsection (c) of section 76-879 fails to provide a purchaser to whom a unit is conveyed with that public-offering statement and all amendments thereto as required by subsection (a) of this section, the purchaser is entitled to receive damages and other relief from that person.

Source: Laws 1983, LB 433, § 59; Laws 1984, LB 1105, § 17; Laws 1993, LB 478, § 16; Laws 2006, LB 924, § 3.

ARTICLE 9
 DOCUMENTARY STAMP TAX

Section

76-901. Tax on grantor; rate.

76-903. Design; collection of tax; refund; procedure; disbursement.

76-901 Tax on grantor; rate.

There is hereby imposed a tax on the grantor executing the deed as defined in section 76-203 upon the transfer of a beneficial interest in or legal title to real estate at the rate of two dollars and twenty-five cents for each one thousand dollars value or fraction thereof. For purposes of sections 76-901 to 76-908, value means (1) in the case of any deed, not a gift, the amount of the full actual consideration thereof, paid or to be paid, including the amount of any lien or liens assumed, and (2) in the case of a gift or any deed with nominal consideration or without stated consideration, the current market value of the

property transferred. Such tax shall be evidenced by stamps to be attached to the deed. All deeds purporting to transfer legal title or beneficial interest shall be presumed taxable unless it clearly appears on the face of the deed or sufficient documentary proof is presented to the register of deeds that the instrument is exempt under section 76-902.

Source: Laws 1965, c. 463, § 1, p. 1472; Laws 1969, c. 618, § 1, p. 2505; Laws 1983, LB 194, § 1; Laws 1985, LB 236, § 1; Laws 1992, LB 1192, § 9; Laws 2005, LB 40, § 6.

76-903 Design; collection of tax; refund; procedure; disbursement.

The Tax Commissioner shall design such stamps in such denominations as in his or her judgment will be the most advantageous to all persons concerned. When any deed subject to the tax imposed by section 76-901 is offered for recordation, the register of deeds shall ascertain and compute the amount of the tax due thereon and shall collect such amount as a prerequisite to acceptance of the deed for recordation. If a dispute arises concerning the taxability of the transfer, the register of deeds shall not record the deed until the disputed tax is paid. If a disputed tax has been paid, the taxpayer may file for a refund pursuant to section 76-908. The taxpayer may also seek a declaratory ruling pursuant to rules and regulations adopted and promulgated by the Department of Revenue. From each two dollars and twenty-five cents of tax collected pursuant to section 76-901, the register of deeds shall retain fifty cents to be placed in the county general fund and shall remit the balance to the State Treasurer who shall credit one dollar and twenty cents of such amount to the Affordable Housing Trust Fund, twenty-five cents of such amount to the Homeless Shelter Assistance Trust Fund, and thirty cents of such amount to the Behavioral Health Services Fund.

Source: Laws 1965, c. 463, § 3, p. 1473; Laws 1969, c. 618, § 2, p. 2505; Laws 1983, LB 194, § 3; Laws 1985, LB 236, § 2; Laws 1992, LB 1192, § 10; Laws 1997, LB 864, § 16; Laws 2001, LB 516, § 6; Laws 2001, Spec. Sess., LB 3, § 5; Laws 2005, LB 40, § 7.

ARTICLE 10

TRUST DEEDS

Section

- 76-1004. Successor trustee; appointment by beneficiary; effect; substitution of trustee; notice; recording; form.
- 76-1006. Sale of trust property; notice of default.
- 76-1007. Sale of trust property; notice; contents; time; place of sale.
- 76-1008. Notice of default and sale; request for copies; mailing of notice; publication of notice of default; when.
- 76-1009. Sale of trust property; public auction; bids; postponement of sale.
- 76-1010. Sale of trust property; bid; payment; delivery of deed; recitals; effect; rights of trustor; terminated, when.
- 76-1012. Trust deed; default; reinstatement; recorded notice of default; cancellation; costs and expenses.

76-1004 Successor trustee; appointment by beneficiary; effect; substitution of trustee; notice; recording; form.

(1) The beneficiary may appoint a successor trustee at any time by filing for record in the office of the register of deeds of each county in which the trust

property or some part thereof is situated a substitution of trustee. From the time the substitution is filed for record, the new trustee shall succeed to all the power, duties, authority, and title of the trustee named in the deed of trust and of any successor trustee.

(2) The substitution shall identify the trust deed by stating the names of the original parties thereto, the date of recordation, the full legal description of the realty affected, and the book and page or computer system reference where the trust deed is recorded, shall state the name of the new trustee, and shall be executed and acknowledged by all of the beneficiaries under the trust deed or their successors in interest.

(3) The recorded substitution shall also contain or have attached to it an affidavit that a copy of the substitution has, by regular United States mail with postage prepaid, been mailed to the last-known address of the trustee being replaced or an affidavit of personal service of a copy thereof or of publication of notice thereof, which notice shall be published one time in a newspaper having general circulation in any county in which the trust property or some part thereof is situated.

(4) Any affidavit contained in or attached to the substitution shall constitute prima facie evidence of the facts required to be stated and conclusive evidence of such facts as to bona fide purchasers and encumbrancers for value of the trust property or of any beneficial interest in the trust deed.

(5) On and after April 3, 1997, no recorded substitution filed for record shall be required to contain or have attached to it an affidavit pursuant to subsection (3) of this section, and any recorded substitution filed for record without containing or having attached to it an affidavit pursuant to such subsection prior to April 3, 1997, shall not be deemed incomplete or defective because such affidavit was not contained therein or attached.

(6) A substitution of trustee shall be sufficient if made in substantially the following form:

Substitution of Trustee

(insert name and address of new trustee)

is hereby appointed successor trustee under the trust deed executed by as trustor, in which is named beneficiary and as trustee, and filed for record, 20, and recorded in book, page (or computer system reference), Records of County, Nebraska. The trust property affected is legally described as follows:

.....
.....
.....
.....

Signature

Source: Laws 1965, c. 451, § 4, p. 1424; Laws 1984, LB 679, § 18; Laws 1989, LB 334, § 1; Laws 1993, LB 547, § 1; Laws 1995, LB 288, § 2; Laws 1997, LB 284, § 1; Laws 2004, LB 813, § 28.

76-1006 Sale of trust property; notice of default.

The power of sale conferred in the Nebraska Trust Deeds Act upon the trustee shall not be exercised until:

(1) The trustee or the attorney for the trustee shall first file for record in the office of the register of deeds of each county wherein the trust property or some part or parcel thereof is situated a notice of default identifying the trust deed by stating the name of the trustor named therein and giving the book and page or computer system reference where the same is recorded and a description of the trust property, containing a statement that a breach of an obligation for which the trust property was conveyed as security has occurred, and setting forth the nature of such breach and of his or her election to sell or cause to be sold such property to satisfy the obligation;

(2) If the trust property is used in farming operations carried on by the trustor, not in any incorporated city or village, the notice of default also sets forth:

(a) A statement that the default may be cured within two months of the filing for record of the notice of default and the obligation and trust deed may be thereby reinstated as provided in section 76-1012;

(b) A statement of the amount of the entire unpaid principal sum secured by the trust deed, the amount of interest accrued thereon to and including the date the notice of default is signed by the trustee or the trustee's attorney, and the dollar amount of the per diem interest accruing from and after such date; and

(c) A statement of the amount of the unpaid principal which would not then be due had no default occurred; and

(3) After the lapse of not less than one month, or two months if the notice of default is subject to subdivision (2) of this section, the trustee or the attorney for the trustee shall give notice of sale as provided in section 76-1007.

Source: Laws 1965, c. 451, § 6, p. 1426; Laws 1971, LB 645, § 1; Laws 1984, LB 679, § 20; Laws 1986, Third Spec. Sess., LB 3, § 17; Laws 2004, LB 999, § 44; Laws 2006, LB 876, § 52.

76-1007 Sale of trust property; notice; contents; time; place of sale.

(1) The trustee or the attorney for the trustee shall give written notice of the time and place of sale particularly describing the property to be sold by publication of such notice, at least five times, once a week for five consecutive weeks, the last publication to be at least ten days but not more than thirty days prior to the sale, in some newspaper having a general circulation in each county in which the property to be sold, or some part thereof, is situated.

(2) The sale shall be held at the time and place designated in the notice of sale which shall be between the hours of nine a.m. and five p.m. and at the premises or at the courthouse of the county in which the property to be sold, or some part thereof, is situated.

(3) The notice of sale shall be sufficient if made in substantially the following form:

Notice of Trustee's Sale

The following described property will be sold at public auction to the highest bidder at the door of the county courthouse in, County of, Nebraska, on, 20.... .

(Name of Trustee)

Source: Laws 1965, c. 451, § 7, p. 1426; Laws 2004, LB 813, § 29; Laws 2006, LB 876, § 53.

76-1008 Notice of default and sale; request for copies; mailing of notice; publication of notice of default; when.

(1) Any person desiring a copy of any notice of default and of any notice of sale under any trust deed may, at any time subsequent to the filing for record of the trust deed and prior to the filing for record of a notice of default thereunder, file for record in the office of the register of deeds of any county in which any part or parcel of the trust property is situated a duly acknowledged request for a copy of any such notice of default and notice of sale. The request shall set forth the name and address of the person or persons requesting copies of such notices and shall identify the trust deed by stating the names of the original parties thereto, the date of filing for record thereof, and the book and page or computer system reference where the same is recorded and shall be in substantially the following form:

Request is hereby made that a copy of any notice of default and a copy of notice of sale under the trust deed filed for record, 20...., and recorded in book, page, (or computer system reference) Records of County, Nebraska, executed by as trustor, in which is named as beneficiary and as trustee, be mailed to(insert name).....at(insert address).....

Signature

(2) Not later than ten days after recordation of such notice of default, the trustee or beneficiary or the attorney for the trustee or beneficiary shall mail, by registered or certified mail with postage prepaid, a copy of such notice with the recording date shown thereon, addressed to each person whose name and address is set forth in a request therefor which has been recorded prior to the filing for record of the notice of default, directed to the address designated in such request. At least twenty days before the date of sale, the trustee or the attorney for the trustee shall mail, by registered or certified mail with postage prepaid, a copy of the notice of the time and place of sale, addressed to each person whose name and address is set forth in a request therefor which has been recorded prior to the filing for record of the notice of default, directed to the address designated in such request.

(3) Each trust deed shall contain a request that a copy of any notice of default and a copy of any notice of sale thereunder shall be mailed to each person who is a party thereto at the address of such person set forth therein, and a copy of any notice of default and of any notice of sale shall be mailed to each such person at the same time and in the same manner required as though a separate request therefor had been filed by each of such persons as provided in this section.

(4) If no address of the trustor is set forth in the trust deed and if no request for notice by such trustor has been recorded as provided in this section, a copy of the notice of default shall be published at least three times, once a week for three consecutive weeks, in a newspaper of general circulation in each county in which the trust property or some part thereof is situated, such publication to

commence not later than ten days after the filing for record of the notice of default.

(5) No request for a copy of any notice filed for record pursuant to this section nor any statement or allegation in any such request nor any record thereof shall affect the title to trust property or be deemed notice to any person that any person requesting copies of notice of default or of notice of sale has or claims any right, title, or interest in or lien or claim upon the trust property.

Source: Laws 1965, c. 451, § 8, p. 1427; Laws 1984, LB 679, § 21; Laws 1986, LB 999, § 5; Laws 1986, Third Spec. Sess., LB 3, § 18; Laws 2004, LB 813, § 30; Laws 2006, LB 876, § 54.

76-1009 Sale of trust property; public auction; bids; postponement of sale.

On the date and at the time and place designated in the notice of sale, the trustee shall sell the property at public auction to the highest bidder. The attorney for the trustee may conduct the sale. Any person, including the beneficiary, may bid at the sale. Every bid shall be deemed an irrevocable offer. If the purchaser refuses to pay the amount bid by him or her for the property struck off to him or her at the sale, the trustee may again sell the property at any time to the highest bidder, except that notice of the sale shall be given again in the same manner as the original notice of sale was required to be given. The party refusing to pay shall be liable for any loss occasioned thereby, and the trustee may also, in his or her discretion, thereafter reject any other bid of such person.

The person conducting the sale may, for any cause he or she deems expedient, postpone the sale of all or any portion of the property from time to time until it is completed and, in every such case, notice of postponement shall be given by public declaration thereof by such person at the time and place last appointed for the sale. No other notice of the postponed sale need be given unless the sale is postponed for longer than forty-five days beyond the day designated in the notice of sale in which event notice thereof shall be given in the same manner as the original notice of sale is required to be given.

Source: Laws 1965, c. 451, § 9, p. 1428; Laws 2004, LB 999, § 45.

76-1010 Sale of trust property; bid; payment; delivery of deed; recitals; effect; rights of trustor; terminated, when.

(1) The purchaser at the sale shall forthwith pay the price bid, and upon receipt of payment, the trustee shall execute and deliver his or her deed to such purchaser. The trustee's deed may contain recitals of compliance with the requirements of the Nebraska Trust Deeds Act relating to the exercise of the power of sale and sale of the property described therein, including recitals concerning any mailing, personal delivery, and publication of the notice of default, any mailing and the publication and posting of notice of sale, and the conduct of sale. Such recitals shall constitute prima facie evidence of such compliance and conclusive evidence thereof in favor of bona fide purchasers and encumbrancers for value and without notice.

(2) The trustee's deed shall operate to convey to the purchaser, without right of redemption, the trustee's title and all right, title, interest, and claim of the trustor and his or her successors in interest and of all persons claiming by, through, or under them, in and to the property sold, including all such right, title, interest, and claim in and to such property acquired by the trustor or his

or her successors in interest subsequent to the execution of the trust deed. All right, title, interest, and claim of the trustor and his or her successors in interest, and of all persons claiming by, through, or under them, in and to the property sold, including all such right, title, interest, and claim in and to such property acquired by the trustor or his or her successors in interest subsequent to the execution of the trust deed, shall be deemed to be terminated as of the time the trustee or the attorney for the trustee accepts the highest bid at the time of the sale.

Source: Laws 1965, c. 451, § 10, p. 1429; Laws 2004, LB 999, § 46.

76-1012 Trust deed; default; reinstatement; recorded notice of default; cancellation; costs and expenses.

(1) Whenever all or a portion of the principal sum of any obligation secured by a trust deed has, prior to the maturity date fixed in such obligation, become due or been declared due by reason of a breach or default in the performance of any obligation secured by the trust deed, including a default in the payment of interest or of any installment of principal, or by reason of failure of the trustor to pay, in accordance with the terms of such trust deed, taxes, assessments, premiums for insurance, or advances made by the beneficiary in accordance with terms of such obligation or of such trust deed, the trustor or his or her successor in interest in the trust property or any part thereof or any other person having a subordinate lien or encumbrance of record thereon or any beneficiary under a subordinate trust deed, at any time within one month, or within two months if the notice of default is subject to subdivision (2) of section 76-1006, of the filing for record of notice of default under such trust deed, if the power of sale is to be exercised, may pay to the beneficiary or his or her successor in interest the entire amount then due under the terms of such trust deed and the obligation secured thereby, including costs and expenses actually incurred in enforcing the terms of such obligation, or trust deed, and the trustee's fees actually incurred not exceeding in the aggregate fifty dollars or one-half of one percent of the entire unpaid principal sum secured, whichever is greater, other than such portion of the principal as would not then be due had no default occurred, and thereby cure the default theretofore existing and thereupon all proceedings theretofore had or instituted shall be dismissed or discontinued, and the obligation and trust deed shall be reinstated and shall be and remain in force and effect the same as if no acceleration had occurred. If the default is cured and the trust deed reinstated in the manner provided in this section, the beneficiary, or his or her assignee, shall, on demand of any person having an interest in the trust property, execute and deliver to him or her a request to the trustee that the trustee execute, acknowledge, and deliver a cancellation of the recorded notice of default under such trust deed, and any beneficiary under a trust deed, or his or her assignee, who, for a period of thirty days after such demand, refuses to request the trustee to execute and deliver such cancellation shall be liable to the person entitled to such request for all damages resulting from such refusal. A cancellation of recorded notice of default under a trust deed shall, when acknowledged, be entitled to be recorded and shall be sufficient if made and executed by the trustee in substantially the following form:

Cancellation of Notice of Default

The undersigned hereby cancels the notice of default filed for record, 20. . . . , and recorded in book, page, (or computer system

reference) Records of County, Nebraska, which notice of default refers to the trust deed executed by as trustor, in which is named as beneficiary and as trustee, and filed for record, 20...., and recorded in book, page, (or computer system reference) Records of County, Nebraska.

Signature of trustee or attorney for trustee

(2) Whenever all or a portion of the principal sum of any obligation secured by a trust deed has, prior to the maturity date fixed in such obligation, become due or been declared due by reason of a breach or default in the performance of any obligation secured by the trust deed, including a default in the payment of interest or of any installment of principal, or by reason of failure of the trustor to pay, in accordance with the terms of such trust deed, taxes, assessments, premiums for insurance, or advances made by the beneficiary in accordance with terms of such obligation or of such trust deed, in the event the trustor or his or her successor in interest or any other person having a subordinate lien or encumbrance of record thereon or any beneficiary under a subordinate trust deed makes payment of the entire amount then due under the terms of such trust deed and the obligation secured thereby at any time subsequent to the breach or default and prior to the sale of the trust property under section 76-1010, the beneficiary shall be allowed to collect the costs and expenses actually incurred in enforcing the terms of such obligation, or trust deed, including the trustee's fees, costs, and expenses actually incurred, not to exceed the amount provided in the trust deed or the obligation secured thereby.

Source: Laws 1965, c. 451, § 12, p. 1430; Laws 1969, c. 621, § 1, p. 2509; Laws 1986, LB 999, § 6; Laws 1986, Third Spec. Sess., LB 3, § 19; Laws 2004, LB 813, § 31; Laws 2004, LB 999, § 47; Laws 2006, LB 876, § 55.

ARTICLE 13

RETIREMENT COMMUNITIES AND SUBDIVISIONS

Section 76-1304. Application of sections; exceptions.

76-1304 Application of sections; exceptions.

Unless the method of disposition is adopted for the purpose of evasion of the provisions of sections 76-1301 to 76-1315, such provisions shall not apply to offers or dispositions of any lot or unit in a retirement subdivision or community by a purchaser for his or her own account in a single or isolated transaction, nor shall such provisions apply to the following:

- (1) Offers or dispositions of evidences of indebtedness secured by a mortgage or deed of trust of real estate;
(2) Offers or dispositions of securities or units of interest issued by a real estate investment trust regulated under any state or federal statute;
(3) The sale or lease of real estate under or pursuant to court order;
(4) The disposition in any manner whatsoever of any unit of public housing under the administrative jurisdiction of a local public housing authority;
(5) Offers or dispositions of securities currently registered with the Director of Banking and Finance and under the provisions of the Securities Act of Nebraska; and

(6) Health care facilities licensed by the Department of Health and Human Services under the Health Care Facility Licensure Act.

Source: Laws 1972, LB 1311, § 4; Laws 1988, LB 693, § 17; Laws 1996, LB 1044, § 793; Laws 2000, LB 819, § 148; Laws 2003, LB 61, § 3; Laws 2007, LB296, § 700.

Cross References

Health Care Facility Licensure Act, see section 71-401.
Securities Act of Nebraska, see section 8-1123.

ARTICLE 14

LANDLORD AND TENANT

(b) MOBILE HOME LANDLORD AND TENANT ACT

Section

76-14,102. Noncompliance by tenant affecting health and safety; landlord's rights.

(b) MOBILE HOME LANDLORD AND TENANT ACT

76-14,102 Noncompliance by tenant affecting health and safety; landlord's rights.

If there is noncompliance by a tenant with section 76-1493 materially affecting health and safety or any condition which is ordered to be changed by the State Fire Marshal, the State Electrical Board, the Department of Health and Human Services, or any other regulatory body with jurisdiction over either the park or the mobile home space that can be remedied by repair, replacement of a damaged item, or cleaning, and the tenant fails to comply as promptly as conditions require in case of emergency or within fourteen days after written notice by the landlord specifying the breach and requesting that the tenant remedy the breach or take reasonable steps to remedy it within that period of time, the landlord may enter the mobile home space, cause the work to be done in a skillful manner, and submit an itemized bill for the actual and reasonable cost or the fair and reasonable value as additional rent on the next date when periodic rent is due or, if the rental agreement has been terminated, for immediate payment. If the landlord is assessed any fine, cost, or charge as a result of the tenant's failure to comply with an order issued by the State Fire Marshal, the State Electrical Board, the Department of Health and Human Services, or any other regulatory body with jurisdiction over either the park or the mobile home space, the landlord may require the tenant to pay such fine, cost, or charge.

Source: Laws 1984, LB 916, § 53; Laws 1996, LB 1044, § 794; Laws 2007, LB296, § 701.

ARTICLE 17

NEBRASKA TIME-SHARE ACT

Section

- 76-1708. Time-share estate program; instruments; management and operation provisions; enumerated.
- 76-1711. Time-share use program; instruments; management and operation provisions; enumerated.
- 76-1734. Application for registration; contents; fees; certificate of registration; report; investigation.

76-1708 Time-share estate program; instruments; management and operation provisions; enumerated.

The time-share instruments for a time-share estate program shall prescribe reasonable arrangements for management and operation of the time-share program and for the maintenance, repair, and furnishing of units, which shall include, but not be limited to, provisions for the following:

- (1) Creation of an association of time-share estate owners;
- (2) Adoption of bylaws for organizing and operating the association;
- (3) Payment of costs and expenses of operating the time-share program and owning and maintaining the units;
- (4) Employment and termination of employment of the managing agent for the association;
- (5) Preparation and dissemination to owners of an annual budget and of operating statements and other financial information concerning the time-share program;
- (6) Adoption of standards and rules of conduct for the use and occupancy of units by owners;
- (7) Collection of assessments from owners to defray the expenses of management of the time-share program and maintenance of the units;
- (8) Comprehensive general liability insurance for death, bodily injury, and property damage arising out of, or in connection with, the use of units by owners, their guests, and other users;
- (9) Methods for providing compensating-use periods or monetary compensation to an owner if a unit cannot be made available for the period to which the owner is entitled by schedule or by confirmed reservation except for unavailability as a result of acts of nature;
- (10) Procedures for imposing a monetary penalty or suspension of an owner's rights and privileges in the time-share program for failure of the owner to comply with provisions of the time-share instruments or the rules of the association with respect to the use of the units. An owner shall be given notice and the opportunity to refute or explain the charges against him or her in person or in writing to the governing body of the association before a decision to impose discipline is rendered except in the case of delinquent payment of assessments, in which case an owner's rights and privileges for use of the accommodations and facilities of the time-share program, including the owner's guests, lessees, and third parties receiving use rights through a nonaffiliated exchange program, may be suspended by no less than thirty days' written notice after the date the assessment is due to the owner, stating the total amount of any delinquency which then exists, including any accrued interest or late charges permitted to be imposed under the terms of the time-share program. The notice shall clearly state that the owner and those claiming under the owner will not be permitted to use the owner's time-share period or to make a reservation in the time-share program's reservation system, or that any confirmed reservation may be canceled as applicable, until the total amount of such delinquency is satisfied in full or until the owner produces satisfactory evidence that the delinquency does not exist. Suspension of a third party receiving use rights through an affiliated exchange program shall only be suspended upon additional notice to the affiliated exchange program within a

reasonable time that protects the third party's rights to make alternate reservations;

(11) Employment of attorneys, accountants, and other professional persons as necessary to assist in the management of the time-share program and the units; and

(12) Maintenance of a list of the names and mailing addresses of all current time-share estate owners in the time-share program and procedures to have the association promptly mail materials to all persons on such list upon a written request by a time-share estate owner if the purpose of the request is to advance legitimate association business, including proxy solicitation. The association may require the actual costs of performing the mailing to be paid in advance by the person requesting the mailing.

Source: Laws 1980, LB 945, § 8; Laws 2001, LB 68, § 4; Laws 2004, LB 845, § 1.

76-1711 Time-share use program; instruments; management and operation provisions; enumerated.

The time-share instruments for a time-share use program shall prescribe reasonable arrangements for management and operation of the time-share program and for the maintenance, repair, and furnishing of units which shall include, but not be limited to, provisions for the following:

(1) Standards and procedures for upkeep, repair, and interior furnishing of units and for providing of maid, cleaning, linen, and similar services to the units during use periods;

(2) Adoption of standards and rules of conduct governing the use and occupancy of units by owners;

(3) Payment of the costs and expenses of operating the time-share program and owning and maintaining the units;

(4) Selection of a managing agent to act on behalf of the developer;

(5) Preparation and dissemination to owners of an annual budget and of operating statements and other financial information concerning the time-share program;

(6) Procedures for establishing the rights of owners to the use of units by prearrangement or under a first-reserved, first-served priority system;

(7) Organization of a management advisory board consisting of time-share use owners including an enumeration of rights and responsibilities of the board;

(8) Procedures for imposing and collecting assessments or use fees from time-share use owners as necessary to defray costs of management of the time-share program and in providing materials and services to the units;

(9) Comprehensive general liability insurance for death, bodily injury, and property damage arising out of, or in connection with, the use of units by time-share use owners, their guests, and other users;

(10) Methods for providing compensating-use periods or monetary compensation to an owner if a unit cannot be made available for the period to which the owner is entitled by schedule or by a confirmed reservation except for unavailability as a result of acts of nature;

(11) Procedures for imposing a monetary penalty or suspension of an owner's rights and privileges in the time-share program for failure of the owner to comply with the provisions of the time-share instruments or the rules established by the developer with respect to the use of the units. The owner shall be given notice and the opportunity to refute or explain the charges in person or in writing to the management advisory board before a decision to impose discipline is rendered except in the case of delinquent payment of assessments, in which case an owner's rights and privileges for use of the accommodations and facilities of the time-share program, including the owner's guests, lessees, and third parties receiving use rights through a nonaffiliated exchange program, may be suspended by no less than thirty days' written notice after the date the assessment is due to the owner, stating the total amount of any delinquency which then exists, including any accrued interest or late charges permitted to be imposed under the terms of the time-share program. The notice shall clearly state that the owner and those claiming under the owner will not be permitted to use the owner's time-share period or to make a reservation in the time-share program's reservation system, or that any confirmed reservation may be canceled as applicable, until the total amount of such delinquency is satisfied in full or until the owner produces satisfactory evidence that the delinquency does not exist. Suspension of a third party receiving use rights through an affiliated exchange program shall only be suspended upon additional notice to the affiliated exchange program within a reasonable time that protects the third party's rights to make alternate reservations; and

(12) Maintenance of a list of the names and mailing addresses of all current time-share use owners in the time-share program and procedures to have a prompt mailing of materials to all persons on such list upon a written request by a time-share use owner if the purpose of the request is to advance legitimate business affecting such time-share use owners, including proxy solicitation. The managing agent may require the actual costs of performing the mailing to be paid in advance by the person requesting the mailing.

Source: Laws 1980, LB 945, § 11; Laws 2001, LB 68, § 5; Laws 2004, LB 845, § 2.

76-1734 Application for registration; contents; fees; certificate of registration; report; investigation.

(1) An application for registration shall contain the public-offering statement, a brief description of the property, copies of time-share instruments, a certified, audited financial statement fully and fairly disclosing the current financial condition of the developer, and any documents referred to therein and such other information as may be required by the commission. In lieu of a certified, audited financial statement of the developer, the commission may accept a current audited consolidated financial statement which includes the financial condition of the developer and is accompanied by a statement from the developer's parent organization, in a form approved by the commission, that guarantees the developer's performance on any obligation under the Nebraska Time-Share Act or as contracted by the developer.

(2) Such application shall be accompanied by a filing fee of two hundred dollars plus five dollars for each twenty-five time-share intervals or portions thereof. If the application is approved, the commission shall issue a certificate of registration to the applicant. After issuance of a certificate, an annual fee of

fifty dollars plus five dollars for each twenty-five time-share intervals or fraction thereof computed on the number of time-share intervals in the original application shall be due and payable on or before January 1 of each year. The annual fee for each time-share program shall not exceed one thousand five hundred dollars. Failure to remit annual fees when due shall automatically cancel the certificate, but otherwise such certificate shall remain in full force and effect if the commission determines from satisfactory investigation that such certificate should be renewed.

(3) Before issuing the renewal certificate each year, the certificate holder shall furnish to the commission, on or before January 1 of each year, an annual report of all purchases and reservations made by the developer or its agents to any person with a residence, primary place of business, or mailing address in this state and any other information requested by the commission. The annual report shall (a) include the amount of any deposit required to be made in connection with the purchase or reservation of a time-share interval from the developer and (b) cover the twelve-month period ending October 31 immediately preceding the annual report.

(4) The commission shall thoroughly investigate all matters relating to the application and may require a personal inspection of the real estate by a person or persons designated by it. All expenses incurred by the commission in investigating such real estate and the proposed sale thereof in this state shall be borne by the applicant and the commission shall require a deposit sufficient to cover such expenses prior to incurring such expenses.

Source: Laws 1980, LB 945, § 34; Laws 2001, LB 68, § 16; Laws 2004, LB 845, § 3.

ARTICLE 19

FARM HOMESTEAD PROTECTION ACT

Section

- 76-1907. Petition; contents.
- 76-1908. Confirmation of redemption.
- 76-1909. Redemption; payment by petitioner; failure to pay; effect; petitioner's equity; use; when allowed.
- 76-1910. Filing of petition; effect; petitioner's rights.

76-1907 Petition; contents.

A petition filed pursuant to section 76-1906 shall:

(1) Set forth a designation of the homestead which shall, with respect to the redemptive homestead, be limited by the boundaries of any designation made pursuant to section 76-1904 in any mortgage or trust deed having priority under section 76-1905; and

(2) Include a written appraisal report prepared and signed by a credentialed real property appraiser setting forth the appraiser's opinion of value and basis for such opinion of the current market value of each of the following: (a) The protected real estate as a whole; (b) the redemptive homestead if sold separately from the balance of the protected real estate; and (c) the balance of the protected real estate if sold separately from the redemptive homestead.

Source: Laws 1986, Third Spec. Sess., LB 3, § 7; Laws 1990, LB 1153, § 60; Laws 1991, LB 203, § 5; Laws 1994, LB 1107, § 5; Laws 2006, LB 778, § 9.

76-1908 Confirmation of redemption.

If after trial as an action in equity the court finds: (1) That the petition provided for in section 76-1906 is filed in good faith and not for delay; (2) that the statements contained in the petition are true; and (3) that the requested redemption will not unreasonably affect the market value of the protected real estate exclusive of the redemptive homestead, then the court shall confirm the redemption.

Source: Laws 1986, Third Spec. Sess., LB 3, § 8; Laws 2006, LB 778, § 10.

76-1909 Redemption; payment by petitioner; failure to pay; effect; petitioner's equity; use; when allowed.

(1) Except as provided in subsection (2) of this section, an order confirming a requested homestead redemption shall direct the petitioner to pay into the court not later than ten days from the entry of such order a cash amount equal to the current market value of the redemptive homestead as found and determined by the court in its confirmation order. If the petitioner fails to make such payment, the court shall, upon its own motion or the motion of any party to the action, vacate the confirmation order, and all of the protected real estate shall then be subject to sale as provided by law, free of any redemptive or other right of the petitioner otherwise existing under the Farm Homestead Protection Act. The filing of a petition requesting redemption on the basis of the payment of a cash amount equal to the current market value of the redemptive homestead shall not constitute a waiver of any stay in effect or available to the petitioner under section 25-1506.

(2) Redemption based upon the petitioner's equity in the protected real estate shall be permitted when requested in the prayer of the petition and when the court specifically finds and determines in its confirmation order that the sum of all liens upon the protected real estate is equal to eighty-five percent or less of the current market value of that portion of the protected real estate exclusive of the redemptive homestead. If the court finds that the petitioner has sufficient equity as required by this subsection, the payment otherwise required by subsection (1) of this section shall be waived by the court in its order confirming the redemption. The filing of a petition requesting redemption on the basis of the petitioner's equity in the protected real estate as provided in this subsection shall constitute a waiver of any stay in effect or available to the petitioner under section 25-1506.

Source: Laws 1986, Third Spec. Sess., LB 3, § 9; Laws 2006, LB 778, § 11.

76-1910 Filing of petition; effect; petitioner's rights.

(1) The filing of a petition as provided in section 76-1906 shall not delay or preclude the holder of a mortgage, trust deed, or judgment lien, referred to in such section, from causing a sale as otherwise permitted by law of that portion of the protected real estate exclusive of the redemptive homestead described in the petition.

(2) Upon (a) payment of the market value of the redemptive homestead as provided in subsection (1) of section 76-1909 or (b) confirmation of a requested redemption on the basis of the petitioner's equity in the protected real estate pursuant to subsection (2) of section 76-1909, the petitioner shall be entitled to

retain his or her interest in the redemptive homestead free of the lien of the mortgage or trust deed or the judgment lien, against which the petition for redemption was filed, and free of any other lien held therein by any party to the action.

Source: Laws 1986, Third Spec. Sess., LB 3, § 10; Laws 2006, LB 778, § 12.

ARTICLE 22

REAL PROPERTY APPRAISER ACT

- Section
- 76-2201. Act, how cited.
- 76-2202. Legislative findings.
- 76-2203. Definitions, where found.
- 76-2203.01. Repealed. Laws 2006, LB 778, § 75.
- 76-2204. Appraisal, defined.
- 76-2205. Appraisal Foundation, defined.
- 76-2205.01. Appraisal practice, defined.
- 76-2206. Appraisal report, defined.
- 76-2207. Appraiser trainee, defined.
- 76-2208. Board, defined.
- 76-2209. Broker's price opinion, defined.
- 76-2210. Certified general real property appraiser, defined.
- 76-2210.01. Certified real property appraiser, defined.
- 76-2210.02. Certified residential real property appraiser, defined.
- 76-2211. Comparative market analysis, defined.
- 76-2211.01. Consulting service, defined.
- 76-2211.02. Credential, defined.
- 76-2212. Evaluation assignment, defined.
- 76-2213. Licensed real property appraiser, defined.
- 76-2213.01. Uniform Standards of Professional Appraisal Practice, defined.
- 76-2214. Real estate, defined.
- 76-2215. Real property appraisal activity, defined.
- 76-2216. Real property appraiser, defined.
- 76-2217. Real property, defined.
- 76-2217.01. Registered real property appraiser, defined.
- 76-2217.02. Trainee real property appraiser, defined.
- 76-2218. Two-year continuing education period, defined.
- 76-2218.01. Transferred to section 76-2213.01.
- 76-2219. Valuation assignment, defined.
- 76-2220. Proper credentialing required.
- 76-2221. Act; exemptions.
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- 76-2223. Board; powers and duties; rules and regulations.
- 76-2224. Board; personnel, facilities, and equipment.
- 76-2225. Board; civil and criminal immunity.
- 76-2226. Real Property Appraiser Fund; created; use; investment.
- 76-2227. Credentials; application; requirements.
- 76-2228. Appraisers; classification.
- 76-2228.01. Trainee real property appraiser; applicant; qualifications.
- 76-2229. Use of titles; restrictions.
- 76-2229.01. Credential as a registered real property appraiser; applicant; qualifications.
- 76-2230. Credential as a licensed real property appraiser; applicant; qualifications.
- 76-2231.01. Credential as a certified residential real property appraiser; applicant; qualifications.
- 76-2232. Credential as a certified general real property appraiser; applicant; qualifications.
- 76-2233. Nonresident; credential; issuance; when.
- 76-2233.01. Nonresident; temporary credential; issuance; when.

- Section
 76-2233.02. Credential; expiration; renewal.
 76-2236. Continuing education; requirements; extension or waiver.
 76-2237. Uniform Standards of Professional Appraisal Practice; rules and regulations.
 76-2238. Disciplinary action; denial of application; grounds.
 76-2239. Investigations; authorized; disciplinary action; complaint; procedure; hearing.
 76-2241. Fees.
 76-2242. Credential holder; proof of credentials; issuance.
 76-2243. Professional corporation; practice of appraising.
 76-2244. Principal place of business; requirements.
 76-2245. Action for compensation; conditions.
 76-2246. Appraisal without credentials; penalty.
 76-2247.01. Services; authorized; contingent fee prohibited; when.
 76-2248. Attorney General; powers and duties.
 76-2249. Directory of appraisers; information; distribution.
 76-2250. Certificate of good standing.

76-2201 Act, how cited.

Sections 76-2201 to 76-2250 shall be known and may be cited as the Real Property Appraiser Act.

Source: Laws 1990, LB 1153, § 1; Laws 1991, LB 203, § 6; Laws 1994, LB 1107, § 6; Laws 1999, LB 618, § 1; Laws 2001, LB 162, § 1; Laws 2006, LB 778, § 13.

76-2202 Legislative findings.

The Legislature finds that changes to the Real Property Appraiser Act made by Laws 2006, LB 778, are necessary to comply with the Appraiser Qualifications Board's Real Property Appraiser Qualification Criteria, effective January 1, 2008. Further, the increased educational standards required by Laws 2006, LB 778, are due to the changes in the required core curriculum necessitated by the 2008 criteria.

Source: Laws 1990, LB 1153, § 2; Laws 1991, LB 203, § 7; Laws 1994, LB 1107, § 7; Laws 2006, LB 778, § 14.

76-2203 Definitions, where found.

For purposes of the Real Property Appraiser Act, the definitions found in sections 76-2204 to 76-2219 shall be used.

Source: Laws 1990, LB 1153, § 3; Laws 1991, LB 203, § 8; Laws 1994, LB 1107, § 8; Laws 1999, LB 618, § 2; Laws 2001, LB 162, § 2; Laws 2006, LB 778, § 15.

76-2203.01 Repealed. Laws 2006, LB 778, § 75.

76-2204 Appraisal, defined.

Appraisal means an analysis, opinion, or conclusion prepared by a real property appraiser relating to the value of specified interests in or aspects of identified real estate or identified real property. An appraisal may be classified by the nature of the assignment into either a valuation assignment or an evaluation assignment.

Source: Laws 1990, LB 1153, § 4; Laws 2001, LB 162, § 3; Laws 2006, LB 778, § 16.

76-2205 Appraisal Foundation, defined.

Appraisal Foundation means the Appraisal Foundation that was incorporated as an Illinois not-for-profit corporation on November 30, 1987.

Source: Laws 1990, LB 1153, § 5; Laws 2006, LB 778, § 17.

76-2205.01 Appraisal practice, defined.

Appraisal practice means valuation services performed by an individual acting as an appraiser, including, but not limited to, appraisal, appraisal review, or appraisal consulting.

Source: Laws 2001, LB 162, § 4; Laws 2006, LB 778, § 18.

76-2206 Appraisal report, defined.

Appraisal report means any communication, written or oral, of an appraisal. The testimony of a real property appraiser dealing with the appraiser's analyses, conclusions, or opinions concerning identified real estate or identified real property is deemed to be an oral appraisal report.

Source: Laws 1990, LB 1153, § 6; Laws 2006, LB 778, § 19.

76-2207 Appraiser trainee, defined.

Appraiser trainee means a person who, under the direct supervision of a certified residential or certified general real property appraiser, assists the appraiser in any phase of appraisal activity but does not include nonprofessional employees such as clerical employees.

Source: Laws 1990, LB 1153, § 7; Laws 1991, LB 203, § 10; Laws 1994, LB 1107, § 9; Laws 2001, LB 162, § 5; Laws 2006, LB 778, § 20; Laws 2008, LB1011, § 1.
Effective date July 18, 2008.

76-2208 Board, defined.

Board means the Real Property Appraiser Board.

Source: Laws 1990, LB 1153, § 8; Laws 1991, LB 203, § 11; Laws 2006, LB 778, § 21.

76-2209 Broker's price opinion, defined.

Broker's price opinion means an analysis, opinion, or conclusion prepared by a person licensed under the Nebraska Real Estate License Act in the ordinary course of his or her business relating to the price of specified interests in or aspects of identified real estate or identified real property for the purpose of listing, purchase, or sale.

Source: Laws 1999, LB 618, § 3; Laws 2006, LB 778, § 22.

Cross References

Nebraska Real Estate License Act, see section 81-885.47.

76-2210 Certified general real property appraiser, defined.

Certified general real property appraiser means a person who holds a valid credential as a certified general real property appraiser issued under the Real Property Appraiser Act.

Source: Laws 1990, LB 1153, § 10; Laws 1991, LB 203, § 13; Laws 1994, LB 1107, § 10; Laws 2006, LB 778, § 23; Laws 2007, LB186, § 1.

76-2210.01 Certified real property appraiser, defined.

Certified real property appraiser means a person who holds a valid credential as a certified general real property appraiser or a valid credential as a certified residential real property appraiser issued under the Real Property Appraiser Act.

Source: Laws 1994, LB 1107, § 11; Laws 2006, LB 778, § 24; Laws 2007, LB186, § 2.

76-2210.02 Certified residential real property appraiser, defined.

Certified residential real property appraiser means a person who holds a valid credential as a certified residential real property appraiser issued under the Real Property Appraiser Act.

Source: Laws 1994, LB 1107, § 12; Laws 2006, LB 778, § 25; Laws 2007, LB186, § 3.

76-2211 Comparative market analysis, defined.

Comparative market analysis means an analysis, opinion, or conclusion prepared by a person licensed under the Nebraska Real Estate License Act in the ordinary course of his or her business relating to the price of specified interests in or aspects of identified real estate or identified real property by comparison to other real property currently or recently in the marketplace for the purpose of listing, purchase, or sale.

Source: Laws 1999, LB 618, § 4; Laws 2006, LB 778, § 26.

Cross References

Nebraska Real Estate License Act, see section 81-885.47.

76-2211.01 Consulting service, defined.

Consulting service means an impartial evaluation service as a disinterested third party rendered as part of an appraisal practice that responds to a client's stated objective and any other engagement for which a real property appraiser is employed or retained to act, or would be perceived by third parties or the public as acting, as a disinterested third party in rendering an unbiased opinion.

Source: Laws 1991, LB 203, § 14; Laws 2006, LB 778, § 27.

76-2211.02 Credential, defined.

Credential means a registration, license, or certificate.

Source: Laws 2001, LB 162, § 6; Laws 2006, LB 778, § 28.

76-2212 Evaluation assignment, defined.

Evaluation assignment means an assignment that relates to the nature, quality, or utility of identified real estate or identified real property and which

typically does not include an opinion of value. Evaluation assignment does not include reports prepared by experts from professional disciplines other than real property appraisal such as: A soil test or soil analysis of identified real estate prepared by a civil engineer; a title opinion or zoning analysis of identified real estate prepared by a lawyer; an architectural analysis of identified improved real estate prepared by an architect; and a property management analysis of identified improved real estate prepared by a property manager or property management consultant.

Source: Laws 1990, LB 1153, § 12; Laws 1991, LB 203, § 15; Laws 1994, LB 1107, § 13; Laws 2006, LB 778, § 29.

76-2213 Licensed real property appraiser, defined.

Licensed real property appraiser means a person who holds a valid credential as a licensed real property appraiser issued under the Real Property Appraiser Act.

Source: Laws 1990, LB 1153, § 13; Laws 1991, LB 203, § 16; Laws 2006, LB 778, § 30; Laws 2007, LB186, § 4.

76-2213.01 Uniform Standards of Professional Appraisal Practice, defined.

Uniform Standards of Professional Appraisal Practice means the standards promulgated by the Appraisal Foundation, as the standards existed on January 1, 2008.

Source: Laws 2001, LB 162, § 11; R.S.1943, (2003), § 76-2218.01; Laws 2006, LB 778, § 31; Laws 2007, LB186, § 5; Laws 2008, LB1011, § 2.
Effective date July 18, 2008.

76-2214 Real estate, defined.

Real estate means a parcel or tract of land, including improvements, if any.

Source: Laws 1990, LB 1153, § 14; Laws 2006, LB 778, § 32.

76-2215 Real property appraisal activity, defined.

Real property appraisal activity means any act or process, performed for a fee or other valuable consideration, involved in developing an appraisal or preparing an appraisal report, including but not limited to, a consulting service, an evaluation assignment, or a valuation assignment.

Source: Laws 1990, LB 1153, § 15; Laws 2001, LB 162, § 7; Laws 2006, LB 778, § 33.

76-2216 Real property appraiser, defined.

Real property appraiser means a person (1) who engages in real property appraisal activity, (2) who advertises or holds himself or herself out to the general public as a real property appraiser, or (3) who offers, attempts, or agrees to perform or performs real property appraisal activity with the intention or upon the promise of receiving valuable consideration. Real property

appraiser includes persons defined as real estate appraisers prior to July 14, 2006.

Source: Laws 1990, LB 1153, § 16; Laws 2001, LB 162, § 8; Laws 2006, LB 778, § 34.

76-2217 Real property, defined.

Real property means one or more defined interests, benefits, or rights inherent in the ownership of real estate.

Source: Laws 1990, LB 1153, § 17; Laws 2006, LB 778, § 35.

76-2217.01 Registered real property appraiser, defined.

Registered real property appraiser means a person who holds a valid credential as a registered real property appraiser as provided in section 76-2229.01.

Source: Laws 1991, LB 203, § 17; Laws 1994, LB 1107, § 14; Laws 2001, LB 162, § 9; Laws 2006, LB 778, § 36; Laws 2007, LB186, § 6.

76-2217.02 Trainee real property appraiser, defined.

Trainee real property appraiser means a person who holds a valid credential as a trainee real property appraiser issued under the Real Property Appraiser Act and who, under the direct supervision of a certified residential or certified general real property appraiser, assists the appraiser in any phase of appraisal activity but does not include nonprofessional employees such as clerical employees.

Source: Laws 2006, LB 778, § 37; Laws 2008, LB1011, § 3.
Effective date July 18, 2008.

76-2218 Two-year continuing education period, defined.

Two-year continuing education period means a period of twenty-four months commencing on January 1 following the date of credentialing under the Real Property Appraiser Act and each succeeding twenty-four-month period.

Source: Laws 1990, LB 1153, § 18; Laws 1991, LB 203, § 19; Laws 1994, LB 1107, § 15; Laws 2001, LB 162, § 10; Laws 2006, LB 778, § 38.

76-2218.01 Transferred to section 76-2213.01

76-2219 Valuation assignment, defined.

Valuation assignment means (1) an appraisal that estimates the value of identified real estate or identified real property at a particular point in time or (2) a valuation service provided as a consequence of an agreement between a real property appraiser and a client.

Source: Laws 1990, LB 1153, § 19; Laws 1991, LB 203, § 20; Laws 2006, LB 778, § 39; Laws 2007, LB186, § 7.

76-2220 Proper credentialing required.

Except as provided in section 76-2221, it shall be unlawful for anyone to act as a real property appraiser in this state without first obtaining proper credentialing as required under the Real Property Appraiser Act.

Source: Laws 1990, LB 1153, § 20; Laws 1991, LB 203, § 21; Laws 1994, LB 1107, § 16; Laws 2001, LB 162, § 12; Laws 2006, LB 778, § 40.

76-2221 Act; exemptions.

The Real Property Appraiser Act shall not apply to:

(1) Any real property appraiser who is a salaried employee of (a) the federal government, (b) any agency of the state government or a political subdivision which appraises real estate, (c) any insurance company authorized to do business in this state, or (d) any bank, savings bank, savings and loan association, building and loan association, credit union, or small loan company licensed by the state or supervised or regulated by or through federal enactments covering financial institutions, except that any employee of the entities listed in subdivisions (a) through (d) of this subdivision who signs an appraisal report as a credentialed real property appraiser shall be subject to the act and the Uniform Standards of Professional Appraisal Practice. Any salaried employee of the entities listed in subdivisions (a) through (d) of this subdivision who does not sign an appraisal report as a credentialed real property appraiser shall include the following disclosure prominently with such report: This opinion of value may not meet the minimum standards contained in the Uniform Standards of Professional Appraisal Practice and is not governed by the Real Property Appraiser Act;

(2) A person licensed under the Nebraska Real Estate License Act who, in the ordinary course of his or her business, gives a broker's price opinion or comparative market analysis, except that such opinion or analysis shall not be referred to as an appraisal. No compensation, fee, or other consideration shall be charged for such opinion or analysis other than a real estate commission or brokerage fee charged or paid for brokerage services rendered in connection with the sale of the real estate involved unless the opinion or analysis is in writing and carries the following disclosure in bold fourteen-point type: This opinion or analysis is not an appraisal. It is intended only for the benefit of the addressee for the purpose of assisting buyers or sellers or prospective buyers or sellers in deciding the listing, offering, or sale price of the real property and not for any other purpose, including, but not limited to, lending purposes. This opinion or analysis is not governed by the Real Property Appraiser Act, but is subject to enforcement through the Nebraska Real Estate License Act;

(3) Any person who provides assistance (a) in obtaining the data upon which an appraisal is based, (b) in the physical preparation of an appraisal report, such as taking photographs, preparing charts, maps, or graphs, or typing or printing the report, or (c) that does not directly involve the exercise of judgment in arriving at the analyses, opinions, or conclusions concerning real estate or real property set forth in the appraisal report;

(4) Any owner of real estate, employee of the owner, or attorney licensed to practice law in the State of Nebraska representing the owner who renders an estimate or opinion of value of the real estate or any interest in the real estate when such estimate or opinion is for the purpose of real estate taxation, or any other person who renders such an estimate or opinion of value when that

estimate or opinion requires a specialized knowledge that a real property appraiser would not have, except that a real property appraiser or a person licensed under the Nebraska Real Estate License Act is not exempt under this subdivision;

(5) Any owner of real estate, employee of the owner, or attorney licensed to practice law in the State of Nebraska representing the owner who renders an estimate or opinion of value of real estate or any interest in real estate or damages thereto when such estimate or opinion is offered as testimony in any condemnation proceeding, or any other person who renders such an estimate or opinion when that estimate or opinion requires a specialized knowledge that a real property appraiser would not have, except that a real property appraiser or a person licensed under the Nebraska Real Estate License Act is not exempt under this subdivision;

(6) Any owner of real estate, employee of the owner, or attorney licensed to practice law in the State of Nebraska representing the owner who renders an estimate or opinion of value of the real estate or any interest in the real estate when such estimate or opinion is offered in connection with a legal matter involving real property; or

(7) Any person appointed by a county board of equalization to act as a referee pursuant to section 77-1502.01, except that any person who also practices as an independent real property appraiser for others shall be subject to the Real Property Appraiser Act and shall be credentialed prior to engaging in such other appraising. Any appraiser appointed to act as a referee pursuant to section 77-1502.01 and who prepares an appraisal report for the county board of equalization shall not sign such appraisal report as a credentialed appraiser and shall include the following disclosure prominently with such report: This opinion of value may not meet the minimum standards contained in the Uniform Standards of Professional Appraisal Practice and is not governed by the Real Property Appraiser Act.

Source: Laws 1990, LB 1153, § 21; Laws 1991, LB 203, § 22; Laws 1994, LB 1107, § 17; Laws 1999, LB 618, § 5; Laws 2001, LB 162, § 13; Laws 2003, LB 131, § 35; Laws 2005, LB 676, § 1; Laws 2006, LB 778, § 41; Laws 2008, LB1011, § 4.
Effective date July 18, 2008.

Cross References

Nebraska Real Estate License Act, see section 81-885.47.

76-2222 Real Property Appraiser Board; created; members; terms; compensation.

(1) The Real Property Appraiser Board is hereby created. The board shall consist of five members, one member who is a certified real property appraiser shall be selected from each of the three congressional districts, and two members shall be selected at large. The two members selected at large shall include one representative of financial institutions and one licensed real estate broker who also holds a credential as a licensed or certified real property appraiser. The Governor shall appoint the members of the board. The members shall be appointed so that the membership of the board selected from the congressional districts includes at least two certified general real property appraisers.

(2) The term of each member of the board shall be five years, except that of the members initially appointed one shall serve for one year, one shall serve for two years, one shall serve for three years, and one shall serve for four years as designated by the Governor. Upon the expiration of his or her term, a member of the board shall continue to hold office until the appointment and qualification of his or her successor. No person shall serve as a member of the board for consecutive terms. Any vacancy shall be filled in the same manner as the original appointment. The Governor may remove a member for cause.

(3) The members of the board shall elect a chairperson during the first meeting of each year from among the members.

(4) Four members shall constitute a quorum. Each member shall receive a per diem of one hundred dollars per day or substantial part of a day for each scheduled meeting of the board at which the member is present and shall be reimbursed for actual and necessary expenses as provided in sections 81-1174 to 81-1177.

Source: Laws 1990, LB 1153, § 22; Laws 1991, LB 203, § 23; Laws 1994, LB 1107, § 18; Laws 2001, LB 162, § 14; Laws 2006, LB 778, § 42; Laws 2008, LB1011, § 5.
Effective date July 18, 2008.

76-2223 Board; powers and duties; rules and regulations.

The board shall administer and enforce the Real Property Appraiser Act and may:

(1) Receive applications for credentialing under the act, process such applications and regulate the issuance of credentials to qualified applicants, and maintain a directory of the names and addresses of persons who receive credentials under the act;

(2) Hold meetings, public hearings, informal conferences, and administrative hearings, prepare or cause to be prepared specifications for all appraiser classifications, solicit bids and enter into contracts with one or more educational testing services or organizations for the preparation of a bank of questions and answers for examinations, and administer or contract for the administration of examinations in such places and at such times as deemed appropriate;

(3) Develop the specifications for credentialing examinations, including timing, location, and security necessary to maintain the integrity of the examinations;

(4) Review from time to time the procedure for selecting individual questions from the bank of questions for use in connection with each scheduled examination and review from time to time the questions in the bank of questions and the related answers to ascertain that they meet the specifications established by the board;

(5) Collect all fees required or permitted by the act. The board shall remit all such receipts to the State Treasurer for credit to the Real Property Appraiser Fund. In addition, the board may collect and transmit to the appropriate federal authority any fees established under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as the act existed on January 1, 2008;

(6) Establish appropriate administrative procedures for disciplinary proceedings conducted pursuant to the Real Property Appraiser Act;

(7) Issue subpoenas to compel the attendance of witnesses and the production of books, documents, records, and other papers, administer oaths, and take testimony and require submission of and receive evidence concerning all matters within its jurisdiction. In case of disobedience of a subpoena, the board may make application to the district court of Lancaster County to require the attendance and testimony of witnesses and the production of documentary evidence. If any person fails to obey an order of the court, he or she may be punished by the court as for contempt thereof;

(8) Deny, censure, suspend, or revoke an application or credential if it finds that the applicant or credential holder has committed any of the acts or omissions set forth in section 76-2238 or otherwise violated the act. Any disciplinary matter may be resolved through informal disposition pursuant to section 84-913;

(9) Take appropriate disciplinary action against a credential holder if the board determines that a credential holder has violated any provision of the act or the Uniform Standards of Professional Appraisal Practice;

(10) Enter into consent decrees and issue cease and desist orders upon a determination that a violation of the act has occurred;

(11) Promote research and conduct studies relating to the profession of real property appraisal, sponsor real property appraisal educational activities, and incur, collect fees for, and pay the necessary expenses in connection with activities which shall be open to all credential holders;

(12) Establish and annually adopt minimum standards for appraisals as required under section 76-2237;

(13) Adopt and promulgate rules and regulations to carry out the act. The rules and regulations may include provisions establishing minimum standards for schools, courses, and instructors. The rules and regulations shall be adopted pursuant to the Administrative Procedure Act; and

(14) Do all other things necessary to carry out the Real Property Appraiser Act.

Source: Laws 1990, LB 1153, § 23; Laws 1991, LB 203, § 24; Laws 1994, LB 1107, § 19; Laws 2001, LB 162, § 15; Laws 2006, LB 778, § 43; Laws 2007, LB186, § 8; Laws 2008, LB1011, § 6.
Effective date July 18, 2008.

Cross References

Administrative Procedure Act, see section 84-920.

76-2224 Board; personnel, facilities, and equipment.

In order to administer and enforce the Real Property Appraiser Act, the board may hire a director and other staff, rent office space, and acquire other facilities and equipment. The board may contract for administrative assistance, including facilities, equipment, supplies, and personnel that are required by the board to carry out its responsibilities under the act.

Source: Laws 1990, LB 1153, § 24; Laws 1991, LB 203, § 25; Laws 1994, LB 1107, § 20; Laws 2006, LB 778, § 44.

76-2225 Board; civil and criminal immunity.

The members of the board shall be immune from any civil action or criminal prosecution for initiating or assisting in any lawful investigation of the actions of or any disciplinary proceeding concerning a credential holder pursuant to the Real Property Appraiser Act if such action is taken without malicious intent and in the reasonable belief that it was taken pursuant to the powers vested in the members of the board.

Source: Laws 1990, LB 1153, § 25; Laws 1991, LB 203, § 26; Laws 1994, LB 1107, § 21; Laws 2001, LB 162, § 16; Laws 2006, LB 778, § 45.

76-2226 Real Property Appraiser Fund; created; use; investment.

There is hereby created the Real Property Appraiser Fund. The board may use the fund for the administration and enforcement of the Real Property Appraiser Act and to meet the necessary expenditures of the board. The fund shall include a sufficient cash fund balance as determined by the board. The expense of administering and enforcing the act shall not exceed the money collected by the board under the act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1990, LB 1153, § 26; Laws 1991, LB 203, § 27; Laws 1994, LB 1066, § 78; Laws 1994, LB 1107, § 22; Laws 2001, LB 162, § 17; Laws 2006, LB 778, § 46; Laws 2007, LB186, § 9.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

76-2227 Credentials; application; requirements.

(1) Applications for credentials, including authorization to take the appropriate examination, and for renewal of credentials shall be made in writing to the board on forms approved by the board. The payment of the appropriate fee fixed by the board pursuant to section 76-2241 shall accompany all applications.

(2) At the time of filing an initial or renewal application for credentials, the applicant shall sign a pledge that he or she has read and will comply with the Uniform Standards of Professional Appraisal Practice. Each applicant shall also certify that he or she understands the types of misconduct for which disciplinary proceedings may be initiated.

(3) Credentials shall be issued only to persons who have a good reputation for honesty, trustworthiness, integrity, and competence to perform assignments in such manner as to safeguard the interest of the public and only after satisfactory proof of such qualification has been presented to the board upon request.

(4) No credential shall be issued to a corporation, partnership, limited liability company, firm, or group.

Source: Laws 1990, LB 1153, § 27; Laws 1991, LB 203, § 28; Laws 1993, LB 121, § 490; Laws 1994, LB 1107, § 23; Laws 2001, LB 162, § 18; Laws 2006, LB 778, § 47; Laws 2007, LB186, § 10.

76-2228 Appraisers; classification.

On and after January 1, 2008, there shall be five classes of credentials issued to real property appraisers as follows:

- (1) Trainee real property appraiser, which classification shall consist of those persons who meet the requirements set forth in section 76-2228.01;
- (2) Registered real property appraiser, which classification shall consist of those persons who meet the requirements set forth in section 76-2229.01;
- (3) Licensed real property appraiser, which classification shall consist of those persons who meet the requirements set forth in section 76-2230;
- (4) Certified residential real property appraiser, which classification shall consist of those persons who meet the requirements set forth in section 76-2231.01; and
- (5) Certified general real property appraiser, which classification shall consist of those persons who meet the requirements set forth in section 76-2232.

Source: Laws 1990, LB 1153, § 28; Laws 1991, LB 203, § 29; Laws 1994, LB 1107, § 24; Laws 2001, LB 162, § 19; Laws 2006, LB 778, § 48; Laws 2007, LB186, § 11; Laws 2008, LB1011, § 7.
Effective date July 18, 2008.

76-2228.01 Trainee real property appraiser; applicant; qualifications.

(1) On and after January 1, 2008, to qualify for a credential as a trainee real property appraiser, an applicant shall:

- (a) Be at least nineteen years of age;
- (b) Hold a high school diploma or a certificate of high school equivalency or have education acceptable to the board;
- (c) Have successfully completed no fewer than seventy-five class hours in board-approved courses of study which relate to appraisal and which include completion of the fifteen-hour National Uniform Standards of Professional Appraisal Practice Course, or its equivalent as approved by the Appraiser Qualifications Board. The fifteen-hour course shall be taught by a Uniform Standards of Professional Appraisal Practice Instructor who is certified by the Appraiser Qualifications Board and who is a state-certified appraiser in good standing. The courses of study shall be conducted by an accredited university, college, community college, or junior college, an appraisal society, institute, or association, a state or federal agency or commission, a proprietary school, or such other educational provider as may be approved by the board and shall be, at a minimum, fifteen class hours in length. Each course shall include an examination pertinent to the material presented. The applicant shall have completed the class hours within the five-year period immediately preceding submission of the application and shall have completed the fifteen-hour National Uniform Standards of Professional Appraisal Practice Course within the two-year period immediately preceding submission of the application;

(d) Be subject to direct supervision by a supervising appraiser or appraisers who are certified residential real property appraisers or certified general real property appraisers in good standing. The supervising appraiser shall be responsible for the training and direct supervision of the trainee by accepting responsibility for the appraisal report by signing and certifying the report is in compliance with the Uniform Standards of Professional Appraisal Practice, reviewing the trainee appraisal reports, and personally inspecting each appraised property with the trainee until the supervising appraiser determines the

trainee is competent in accordance with the competency rule of the Uniform Standards of Professional Appraisal Practice. The trainee shall maintain an appraisal log for each supervising appraiser in accordance with standards set by rule and regulation of the board; and

(e) Not have been convicted of any felony or, if so convicted, have had his or her civil rights restored.

(2) If a trainee real property appraiser remains in the classification in excess of two years, the trainee shall be required in the third and successive years to successfully complete no fewer than fourteen hours of instruction in courses or seminars for each year of the period preceding the renewal and shall have completed the seven-hour National Uniform Standards of Professional Appraisal Practice Update Course, or its equivalent, at a minimum of every two years. The courses of study shall be conducted by an accredited university, college, community college, or junior college, an appraisal society, institute, or association, a state or federal agency or commission, a proprietary school, or such other educational provider as may be approved by the board. Credit may be granted for educational offerings and for participation other than as a student as approved by the board.

(3) The application for a credential as a trainee real property appraiser shall include the applicant's social security number and such other information as the board may require.

Source: Laws 2006, LB 778, § 49; Laws 2007, LB186, § 12.

76-2229 Use of titles; restrictions.

(1) No person other than a registered real property appraiser shall assume or use the title registered real property appraiser or any title, designation, or abbreviation likely to create the impression of credentialing as a registered real property appraiser by this state. No person other than a licensed real property appraiser shall assume or use the title licensed real property appraiser or any title, designation, or abbreviation likely to create the impression of credentialing as a licensed real property appraiser by this state. No person other than a certified residential real property appraiser shall assume or use the title certified residential real property appraiser or any title, designation, or abbreviation likely to create the impression of credentialing as a certified residential real property appraiser by this state. No person other than a certified general real property appraiser shall assume or use the title certified general real property appraiser or any title, designation, or abbreviation likely to create the impression of credentialing as a certified general real property appraiser by this state. No person other than a trainee real property appraiser shall assume or use the title trainee real property appraiser or any title, designation, or abbreviation likely to create the impression of credentialing as a trainee real property appraiser by this state. A real property appraiser shall state whether he or she is a registered real property appraiser, licensed real property appraiser, certified residential real property appraiser, certified general real property appraiser, or trainee real property appraiser whenever he or she identifies himself or herself as a real property appraiser, including on all reports which are signed individually or as cosigner.

(2) The terms registered real property appraiser, licensed real property appraiser, certified residential real property appraiser, certified general real property appraiser, and trainee real property appraiser may only be used to

refer to a person who is credentialed as such under the Real Property Appraiser Act and may not be used following or immediately in connection with the name or signature of a corporation, partnership, limited liability company, firm, or group or in such manner that it might be interpreted as referring to a corporation, partnership, limited liability company, firm, or group or to anyone other than the credential holder. This requirement shall not be construed to prevent a credential holder from signing an appraisal report on behalf of a corporation, partnership, limited liability company, firm, or group if it is clear that only the individual holds the credential and that the corporation, partnership, limited liability company, firm, or group does not.

Source: Laws 1990, LB 1153, § 29; Laws 1991, LB 203, § 30; Laws 1993, LB 121, § 491; Laws 1994, LB 1107, § 25; Laws 2001, LB 162, § 20; Laws 2006, LB 778, § 50; Laws 2007, LB186, § 13; Laws 2008, LB1011, § 8.
Effective date July 18, 2008.

76-2229.01 Credential as a registered real property appraiser; applicant; qualifications.

(1) On and after January 1, 2008, to qualify for a credential as a registered real property appraiser, an applicant shall:

- (a) Be at least nineteen years of age;
- (b) Hold a high school diploma or a certificate of high school equivalency or have education acceptable to the board;
- (c) Have successfully completed no fewer than ninety class hours in board-approved courses of study which relate to appraisal and which include the fifteen-hour National Uniform Standards of Professional Appraisal Practice Course, or its equivalent as approved by the Appraiser Qualifications Board. The courses of study shall be conducted by an accredited university, college, community college, or junior college, an appraisal society, institute, or association, or such other educational provider as may be approved by the board and shall be, at a minimum, fifteen class hours in length. Each course of study shall include an examination pertinent to the material presented;
- (d) Pass an examination administered by the board which demonstrates that the applicant has:
 - (i) Knowledge of technical terms commonly used in or related to appraisal and the writing of appraisal reports;
 - (ii) Knowledge of depreciation theories, cost estimating, methods of capitalization, market data analysis, appraisal mathematics, and economic concepts applicable to real estate;
 - (iii) An understanding of the basic principles of land economics, appraisal processes, and problems encountered in the gathering, interpreting, and processing of data involved in the valuation of real property;
 - (iv) Knowledge of the appraisal of various types of and interests in real property for various functions and purposes;
 - (v) An understanding of basic real estate law;
 - (vi) An understanding of the types of misconduct for which disciplinary proceedings may be initiated;

(vii) An understanding of the Uniform Standards of Professional Appraisal Practice;

(viii) An understanding of the recognized methods and techniques necessary for the development and communication of a credible appraisal; and

(ix) Knowledge of such other principles and procedures as may be appropriate to produce a credible appraisal; and

(e) Not have been convicted of any felony or, if so convicted, have had his or her civil rights restored.

(2) The application for registration shall include the applicant's social security number and such other information as the board may require.

(3) On and after January 1, 2008, the scope of practice of a registered real property appraiser shall be limited to the appraisal of noncomplex property having one, two, three, or four residential units having a transaction value of less than two hundred fifty thousand dollars.

(4) On and after January 1, 2008, an applicant shall receive no more than three successive annual renewals for credentialing as a registered real property appraiser. Notwithstanding any other provision of section 76-2228 to the contrary, the board shall not approve any initial application for credentialing as a registered real property appraiser on and after January 1, 2012.

Source: Laws 1991, LB 203, § 31; Laws 1994, LB 1107, § 26; Laws 1997, LB 752, § 204; Laws 2001, LB 162, § 21; Laws 2006, LB 778, § 51; Laws 2007, LB186, § 14; Laws 2008, LB1011, § 9.
Effective date July 18, 2008.

76-2230 Credential as a licensed real property appraiser; applicant; qualifications.

(1) On and after January 1, 2008, to qualify for a credential as a licensed real property appraiser, an applicant shall:

(a) Be at least nineteen years of age;

(b) Hold a high school diploma or a certificate of high school equivalency or have education acceptable to the board;

(c) Have successfully completed no fewer than one hundred fifty class hours, which may include the class hours set forth in section 76-2229.01, in board-approved courses of study which relate to appraisal and which include completion of the fifteen-hour National Uniform Standards of Professional Appraisal Practice Course, or its equivalent as approved by the Appraiser Qualifications Board. The fifteen-hour course shall be taught by a Uniform Standards of Professional Appraisal Practice Instructor who is certified by the Appraiser Qualifications Board and who is a state-certified appraiser in good standing. The courses of study shall be conducted by an accredited university, college, community college, or junior college, an appraisal society, institute, or association, a state or federal agency or commission, a proprietary school, or such other educational provider as may be approved by the board and shall be, at a minimum, fifteen class hours in length. Each course shall include a closed-book examination pertinent to the material presented;

(d) Have no fewer than two thousand hours of experience in any combination of the following: Fee and staff appraisal; ad valorem tax appraisal; condemnation appraisal; technical review appraisal; appraisal analysis; real estate con-

sulting; highest-and-best-use analysis; and feasibility analysis or study. The required experience shall not be limited to the listed items but shall be acceptable to the board and subject to review and determination as to conformity with the Uniform Standards of Professional Appraisal Practice. The experience shall have occurred during a period of no fewer than twelve months. If requested, evidence acceptable to the board concerning the experience shall be presented by the applicant in the form of written reports or file memoranda;

(e) Within the twenty-four months following approval of the applicant by the board, pass a closed-book examination administered by the board which demonstrates that the applicant has:

(i) Knowledge of technical terms commonly used in or related to appraisal and the writing of appraisal reports;

(ii) Knowledge of depreciation theories, cost estimating, methods of capitalization, market data analysis, appraisal mathematics, and economic concepts applicable to real estate;

(iii) An understanding of the principles of land economics, appraisal processes, and problems encountered in the gathering, interpreting, and processing of data involved in the valuation of real property;

(iv) Knowledge of the appraisal of various types of and interests in real property for various functions and purposes;

(v) An understanding of basic real estate law;

(vi) An understanding of the types of misconduct for which disciplinary proceedings may be initiated;

(vii) An understanding of the Uniform Standards of Professional Appraisal Practice;

(viii) An understanding of the recognized methods and techniques necessary for the development and communication of a credible appraisal; and

(ix) Knowledge of such other principles and procedures as may be appropriate to produce a credible appraisal; and

(f) Not have been convicted of any felony or, if so convicted, have had his or her civil rights restored.

(2) On and after January 1, 2008, the scope of practice for a licensed real property appraiser shall be limited to the appraisal of noncomplex property having one, two, three, or four residential units with a transaction value of less than one million dollars and complex property having one, two, three, or four residential units with a transaction value of less than two hundred fifty thousand dollars.

(3) If an applicant is applying for renewal of a credential as a licensed real property appraiser on and after January 1, 2008, the applicant shall have successfully completed no fewer than fourteen hours of instruction in courses or seminars for each year of the two-year continuing education period during which the application is submitted and shall have completed the seven-hour National Uniform Standards of Professional Appraisal Practice Update Course, or its equivalent as approved by the Appraiser Qualifications Board, at a minimum of every two years. The seven-hour course shall be taught by a Uniform Standards of Professional Appraisal Practice Instructor who is certified by the Appraiser Qualifications Board and who is a state-certified appraiser in good standing. Credit toward a classroom hour requirement may be granted

only when the length of the educational offering is at least two hours. The courses of study shall be conducted by an accredited university, college, community college, or junior college, an appraisal society, institute, or association, a state or federal agency or commission, a proprietary school, or such other educational provider as may be approved by the board. Credit may be granted for educational offerings and for participation other than as a student as approved by the board.

(4) The application for the credential as a licensed real property appraiser shall include the applicant's social security number and such other information as the board may require.

Source: Laws 1990, LB 1153, § 30; Laws 1991, LB 203, § 33; Laws 1994, LB 1107, § 28; Laws 1997, LB 29, § 1; Laws 1997, LB 752, § 205; Laws 2001, LB 162, § 22; Laws 2006, LB 778, § 52; Laws 2007, LB186, § 15; Laws 2008, LB1011, § 10.
Effective date July 18, 2008.

76-2231.01 Credential as a certified residential real property appraiser; applicant; qualifications.

(1) On and after January 1, 2008, to qualify for a credential as a certified residential real property appraiser, an applicant shall:

(a) Be at least nineteen years of age;

(b)(i) Hold an associate degree, or higher, from an accredited university, college, community college, or junior college; or

(ii) Have successfully completed, as verified by the board, twenty-one semester hours of coursework or its equivalent from an accredited university, college, community college, or junior college that shall have included English composition; principles of macroeconomics or microeconomics; finance; algebra, geometry, or higher mathematics; statistics; introduction to computers, including word processing and spread sheets; and business or real estate law;

(c) Have successfully completed no fewer than two hundred class hours, which may include the class hours set forth in sections 76-2229.01 and 76-2230, in board-approved courses of study which relate to appraisal and which include completion of the fifteen-hour National Uniform Standards of Professional Appraisal Practice Course, or its equivalent as approved by the Appraiser Qualifications Board. The fifteen-hour course shall be taught by a Uniform Standards of Professional Appraisal Practice Instructor who is certified by the Appraiser Qualifications Board and who is a state-certified appraiser in good standing. The courses of study shall be conducted by an accredited university, college, community college, or junior college, an appraisal society, institute, or association, a state or federal agency or commission, a proprietary school, or such other educational provider as may be approved by the board and shall be, at a minimum, fifteen class hours in length. Credit toward the class hour requirement may be awarded to teachers of appraisal courses. Each course shall include a closed-book examination pertinent to the material presented;

(d) Have no fewer than two thousand five hundred hours of experience in any combination of the following: Fee and staff appraisal; ad valorem tax appraisal; condemnation appraisal; technical review appraisal; appraisal analysis; real estate consulting; highest-and-best-use analysis; and feasibility analysis or

study. The required experience shall not be limited to the listed items but shall be acceptable to the board and subject to review and determination as to conformity with the Uniform Standards of Professional Appraisal Practice. The experience shall have occurred during a period of no fewer than twenty-four months. If requested, evidence acceptable to the board concerning the experience shall be presented by the applicant in the form of written reports or file memoranda;

(e) Within the twenty-four months following approval of the applicant by the board, pass a closed-book examination administered by the board which demonstrates that the applicant has:

(i) Knowledge of technical terms commonly used in or related to appraisal and the writing of appraisal reports;

(ii) Knowledge of depreciation theories, cost estimating, methods of capitalization, market data analysis, appraisal mathematics, and economic concepts applicable to real estate;

(iii) An understanding of the principles of land economics, appraisal processes, and problems encountered in the gathering, interpreting, and processing of data involved in the valuation of real property;

(iv) Knowledge of the appraisal of various types of and interests in real property for various functions and purposes;

(v) An understanding of basic real estate law;

(vi) An understanding of the types of misconduct for which disciplinary proceedings may be initiated;

(vii) An understanding of the Uniform Standards of Professional Appraisal Practice;

(viii) An understanding of the recognized methods and techniques necessary for the development and communication of a credible appraisal; and

(ix) Knowledge of such other principles and procedures as may be appropriate to produce a credible appraisal; and

(f) Not have been convicted of any felony or, if so convicted, have had his or her civil rights restored.

(2) On and after January 1, 2008, the scope of practice of a certified residential real property appraiser shall be limited to the appraisal of property having one, two, three, or four residential units without regard to transaction value or complexity.

(3) If an applicant is applying for renewal of a credential as a certified residential real property appraiser on and after January 1, 2008, the applicant shall have successfully completed no fewer than fourteen hours of instruction in courses or seminars for each year of the two-year continuing education period during which the application is submitted and shall have completed the seven-hour National Uniform Standards of Professional Appraisal Practice Update Course, or its equivalent as approved by the Appraiser Qualifications Board, at a minimum of every two years. The seven-hour course shall be taught by a Uniform Standards of Professional Appraisal Practice Instructor who is certified by the Appraiser Qualifications Board and who is a state-certified appraiser in good standing. Credit toward a classroom hour requirement may be granted only if the length of the educational offering is at least two hours. The courses of study shall be conducted by an accredited university, college, community

college, or junior college, an appraisal society, institute, or association, a state or federal agency or commission, a proprietary school, or such other educational provider as may be approved by the board. Credit may be granted for educational offerings and for participation other than as a student as approved by the board.

(4) The application for a credential as a certified residential real property appraiser shall include the applicant's social security number and such other information as the board may require.

Source: Laws 1994, LB 1107, § 29; Laws 1997, LB 29, § 2; Laws 1997, LB 752, § 206; Laws 2001, LB 162, § 23; Laws 2006, LB 778, § 53; Laws 2007, LB186, § 16; Laws 2008, LB1011, § 11.
Effective date July 18, 2008.

76-2232 Credential as a certified general real property appraiser; applicant; qualifications.

(1) On and after January 1, 2008, to qualify for a credential as a certified general real property appraiser, an applicant shall:

(a) Be at least nineteen years of age;

(b)(i) Hold a bachelor's degree, or higher, from an accredited university or college; or

(ii) Have successfully completed, as verified by the board, thirty semester hours of coursework or its equivalent from an accredited university or college that shall have included English composition; macroeconomics; microeconomics; finance; algebra, geometry, or higher mathematics; statistics; introduction to computers, including word processing and spread sheets; business or real estate law; and two elective courses in accounting, geography, agricultural economics, business management, or real estate;

(c) Have successfully completed no fewer than three hundred class hours, which may include the class hours set forth in sections 76-2229.01, 76-2230, and 76-2231.01, in board-approved courses of study which relate to appraisal and which include completion of the fifteen-hour National Uniform Standards of Professional Appraisal Practice Course, or its equivalent as approved by the Appraiser Qualifications Board. The fifteen-hour course shall be taught by a Uniform Standards of Professional Appraisal Practice Instructor who is certified by the Appraiser Qualifications Board and who is a state-certified appraiser in good standing. The courses of study shall be conducted by an accredited university, college, community college, or junior college, an appraisal society, institute, or association, a state or federal agency or commission, a proprietary school, or such other educational provider as may be approved by the board and shall be, at a minimum, fifteen class hours in length. Credit toward the class hour requirement may be awarded to teachers of appraisal courses. Each course shall include a closed-book examination pertinent to the material presented;

(d) Have no fewer than three thousand hours of experience in any combination of the following: Fee and staff appraisal; ad valorem tax appraisal; condemnation appraisal; technical review appraisal; appraisal analysis; real estate consulting; highest-and-best-use analysis; and feasibility analysis or study. The required experience shall not be limited to the listed items but shall be acceptable to the board and subject to review and determination as to

conformity with the Uniform Standards of Professional Appraisal Practice. The experience shall have occurred during a period of no fewer than thirty months. If requested, evidence acceptable to the board concerning the experience shall be presented by the applicant in the form of written reports or file memoranda;

(e) Within the twenty-four months following approval of the applicant by the board, pass a closed-book examination administered by the board which demonstrates that the applicant has:

(i) Knowledge of technical terms commonly used in or related to appraisal and the writing of appraisal reports;

(ii) Knowledge of depreciation theories, cost estimating, methods of capitalization, market data analysis, appraisal mathematics, and economic concepts applicable to real estate;

(iii) An understanding of the principles of land economics, appraisal processes, and problems encountered in the gathering, interpreting, and processing of data involved in the valuation of real property;

(iv) Knowledge of the appraisal of various types of and interests in real property for various functions and purposes;

(v) An understanding of basic real estate law;

(vi) An understanding of the types of misconduct for which disciplinary proceedings may be initiated;

(vii) An understanding of the Uniform Standards of Professional Appraisal Practice;

(viii) An understanding of the recognized methods and techniques necessary for the development and communication of a credible appraisal; and

(ix) Knowledge of such other principles and procedures as may be appropriate to produce a credible appraisal; and

(f) Not have been convicted of any felony or, if so convicted, have had his or her civil rights restored.

(2) If an applicant is applying for renewal of a credential as a certified general real property appraiser on and after January 1, 2008, the applicant shall have successfully completed no fewer than fourteen hours of instruction in courses or seminars for each year of the two-year continuing education period during which the application is submitted and shall have completed the seven-hour National Uniform Standards of Professional Appraisal Practice Update Course, or its equivalent as approved by the Appraiser Qualifications Board, at a minimum of every two years. The seven-hour course shall be taught by a Uniform Standards of Professional Appraisal Practice Instructor who is certified by the Appraiser Qualifications Board and who is a state-certified appraiser in good standing. Credit toward a classroom hour requirement may be granted only if the length of the educational offering is at least two hours. The courses of study shall be conducted by an accredited university, college, community college, or junior college, an appraisal society, institute, or association, a state or federal agency or commission, a proprietary school, or such other educational provider as may be approved by the board. Credit may be granted for educational offerings and for participation other than as a student as approved by the board.

(3) The application for a credential as a certified general real property appraiser shall include the applicant's social security number and such other information as the board may require.

Source: Laws 1990, LB 1153, § 32; Laws 1991, LB 203, § 34; Laws 1994, LB 1107, § 30; Laws 1997, LB 29, § 3; Laws 1997, LB 752, § 207; Laws 2001, LB 162, § 24; Laws 2006, LB 778, § 54; Laws 2007, LB186, § 17; Laws 2008, LB1011, § 12.
Effective date July 18, 2008.

76-2233 Nonresident; credential; issuance; when.

(1) A nonresident of this state may obtain a credential as a licensed real property appraiser, a certified residential real property appraiser, or a certified general real property appraiser by (a) complying with all of the provisions of the Real Property Appraiser Act relating to the appropriate classification of credentialing, (b) submitting an application on a form approved by the board, and (c) submitting an irrevocable consent that service of process upon him or her may be made by delivery of the process to the director of the board if the plaintiff cannot, in the exercise of due diligence, effect personal service upon the applicant in an action against the applicant in a court of this state arising out of the applicant's activities in this state.

(2) If, in the determination of the board, another state or territory or the District of Columbia has substantially equivalent requirements to the requirements of this state, an applicant who is a resident of that state, territory, or district and is currently credentialed to appraise real estate and real property under the laws of that state, territory, or district may through reciprocity become credentialed under the act. To qualify for reciprocal credentialing, the applicant shall:

(a) Submit evidence that he or she is currently a resident of the state, territory, or District of Columbia in which he or she is credentialed to appraise real estate and real property and that such credential is in good standing, along with his or her social security number and such other information as the board may require;

(b) Certify that disciplinary proceedings are not pending against him or her or state the nature of any pending disciplinary proceedings;

(c) Submit an irrevocable consent that service of process upon him or her may be made by delivery of the process to the director of the board if the plaintiff cannot, in the exercise of due diligence, effect personal service upon the applicant in an action against the applicant in a court of this state arising out of the applicant's activities as a real property appraiser in this state;

(d) Pay fees as established in section 76-2241; and

(e) Comply with such other terms and conditions as may be determined by the board.

Source: Laws 1990, LB 1153, § 33; Laws 1991, LB 203, § 35; Laws 1994, LB 1107, § 31; Laws 1997, LB 752, § 208; Laws 2001, LB 162, § 25; Laws 2006, LB 778, § 55; Laws 2007, LB186, § 18; Laws 2008, LB1011, § 13.
Effective date July 18, 2008.

76-2233.01 Nonresident; temporary credential; issuance; when.

A nonresident may obtain a temporary credential as a licensed real property appraiser, a certified residential real property appraiser, or a certified general real property appraiser to perform a contract relating to the appraisal of real estate or real property in this state. To qualify for the issuance of a temporary credential, an applicant shall:

- (1) Submit an application on a form approved by the board;
- (2) Submit an irrevocable consent that service of process upon him or her may be made by delivery of the process to the director of the board if the plaintiff cannot, in the exercise of due diligence, effect personal service upon the applicant in an action against the applicant in a court of this state arising out of the applicant's activities in this state;
- (3) Submit evidence that he or she is credentialed as a licensed or certified appraiser of real estate and real property and is currently in good standing in the jurisdiction of residency, along with his or her social security number and such other information as the board may require;
- (4) Certify that disciplinary proceedings are not pending against the applicant in the applicant's state of domicile or in any other jurisdiction or state the nature of any pending disciplinary proceedings; and
- (5) Pay an application fee in an amount established by the board.

A temporary credential issued under this section shall be expressly limited to a grant of authority to perform the appraisal work required by the contract for appraisal services in this state. Each temporary credential shall expire upon the completion of the appraisal work required by the contract for appraisal services or upon the expiration of a period of six months from the date of issuance, whichever occurs first. A temporary credential may be renewed for one additional six-month period.

Source: Laws 1991, LB 203, § 36; Laws 1994, LB 1107, § 32; Laws 1997, LB 752, § 209; Laws 2001, LB 162, § 26; Laws 2006, LB 778, § 56; Laws 2007, LB186, § 19.

76-2233.02 Credential; expiration; renewal.

A credential issued under the Real Property Appraiser Act other than a temporary credential shall remain in effect until December 31 following the date of credentialing unless surrendered, revoked, suspended, or canceled prior to such date. To renew a valid credential, the credential holder shall file an application on a form approved by the board and pay the prescribed renewal fee to the board not later than November 30 of each year. In every second year of renewal, as specified in section 76-2236, evidence of completion of continuing education requirements shall accompany renewal application or be on file with the board prior to renewal.

If a credential holder fails to apply and meet the requirements for renewal by November 30, such credential holder may obtain a renewal of such credential by satisfying all of the requirements for renewal and paying a late renewal fee if such late renewal takes place prior to July 1 of the following year. The board may refuse to renew any credential if the credential holder has continued to perform real property appraisal activities or other related activities in this state following the expiration of his or her credential.

Source: Laws 1991, LB 203, § 37; Laws 1994, LB 1107, § 33; Laws 2001, LB 162, § 27; Laws 2006, LB 778, § 57.

76-2236 Continuing education; requirements; extension or waiver.

Every credential holder shall furnish evidence to the board that he or she has satisfactorily completed no fewer than twenty-eight hours of approved continuing education activities in each two-year continuing education period. Hours of satisfactorily completed approved continuing education activities cannot be carried over from one two-year continuing education period to another. The board may extend or waive the continuing education requirements by rule or regulation. As prescribed by rule or regulation of the board and at least once every two years, the seven-hour National Uniform Standards of Professional Appraisal Practice Update Course, or its equivalent as approved by the Appraiser Qualifications Board, shall be included in the continuing education requirement of each credential holder. The board shall approve continuing education activities which it determines would protect the public by improving the competency of credential holders. Evidence of completion of such continuing education activities for the two-year continuing education period may be submitted to the board as each activity is completed. A person who holds a temporary credential shall not have to meet any continuing education requirements in this state.

Source: Laws 1990, LB 1153, § 36; Laws 1991, LB 203, § 40; Laws 1994, LB 1107, § 37; Laws 1997, LB 29, § 4; Laws 2001, LB 162, § 28; Laws 2006, LB 778, § 58; Laws 2007, LB186, § 20.

76-2237 Uniform Standards of Professional Appraisal Practice; rules and regulations.

Each credential holder shall comply with the Uniform Standards of Professional Appraisal Practice. The board shall adopt and promulgate rules and regulations which conform to the Uniform Standards of Professional Appraisal Practice. The board shall review such rules and regulations annually. A copy of each such rule or regulation shall be mailed to the business address of each credential holder.

Source: Laws 1990, LB 1153, § 37; Laws 1991, LB 203, § 41; Laws 1994, LB 1107, § 38; Laws 2001, LB 162, § 29; Laws 2006, LB 778, § 59; Laws 2007, LB186, § 21.

76-2238 Disciplinary action; denial of application; grounds.

The following acts and omissions shall be considered grounds for disciplinary action or denial of an application by the board:

- (1) Failing to meet the minimum qualifications for credentialing established by or pursuant to the Real Property Appraiser Act;
- (2) Procuring or attempting to procure a credential under the act by knowingly making a false statement, submitting false information, or making a material misrepresentation in an application filed with the board or procuring or attempting to procure a credential through fraud or misrepresentation;
- (3) Paying money or other valuable consideration other than the fees provided for by the act to any member or employee of the board to procure a credential;
- (4) An act or omission involving real estate or appraisal practice which constitutes dishonesty, fraud, or misrepresentation with or without the intent to

substantially benefit the credential holder or another person or with the intent to substantially injure another person;

(5) Entry of a final civil or criminal judgment against a credential holder on grounds of fraud, misrepresentation, or deceit involving real estate or in the making of an appraisal;

(6) Conviction, including a conviction based upon a plea of guilty or nolo contendere, of a crime which is related to the qualifications, functions, or duties of a real property appraiser;

(7) Engaging in the business of real property appraising under an assumed or fictitious name;

(8) Paying a finder's fee or a referral fee to any person in connection with the appraisal of real estate or real property, except that an intracompany payment for business development shall not be considered to be unethical or a violation of this subdivision;

(9) Making a false or misleading statement in that portion of a written appraisal report that deals with professional qualifications or in any testimony concerning professional qualifications;

(10) Any violation of the act or any rule or regulation adopted and promulgated pursuant to the act;

(11) Violation of the confidential nature of any information to which a credential holder gained access through employment for evaluation assignments or valuation assignments;

(12) Acceptance of a fee for performing a real property appraisal valuation assignment or evaluation assignment when the fee is or was contingent upon (a) the real property appraiser reporting a predetermined analysis, opinion, or conclusion, (b) the analysis, opinion, conclusion, or valuation reached, or (c) the consequences resulting from the appraisal;

(13) Failure or refusal to exercise reasonable diligence in developing an appraisal, preparing an appraisal report, or communicating an appraisal;

(14) Negligence or incompetence in developing an appraisal, preparing an appraisal report, or communicating an appraisal, including failure to follow the standards and ethical rules adopted by the board;

(15) Failure to maintain, or to make available for inspection and copying, records required by the board;

(16) Demonstrating negligence, incompetence, or unworthiness to act as an appraiser, whether of the same or of a different character as otherwise specified in this section;

(17) Suspension or revocation of an appraisal credential or a license in another regulated occupation, trade, or profession in this or any other jurisdiction;

(18) Failure to comply with terms of a consent agreement or settlement agreement;

(19) Failure to submit or produce books, records, documents, work files, appraisal reports, or other materials requested by the board concerning any matter under investigation;

(20) Presentation to the board of any check which is returned to the State Treasurer unpaid, whether payment of fee is for an initial or renewal credential or for examination; and

(21) Failure to pass the examination.

Source: Laws 1990, LB 1153, § 38; Laws 1991, LB 203, § 42; Laws 1994, LB 1107, § 39; Laws 2001, LB 162, § 30; Laws 2006, LB 778, § 60.

76-2239 Investigations; authorized; disciplinary action; complaint; procedure; hearing.

The board may, upon its own motion, and shall, upon the written complaint of any aggrieved person, cause an investigation to be made with respect to an alleged violation of the Real Property Appraiser Act by any credential holder or applicant for credentialing under the act. The board may revoke or suspend the credential or otherwise discipline a credential holder or deny any application for any of the acts or omissions set forth in section 76-2238. Violation of the act or the rules and regulations during a period of probation shall cause immediate execution of a suspension penalty. Upon receipt of information indicating that a credential holder may have violated any provision of the act, the board shall make an investigation of the facts to determine whether or not there is evidence of a violation. If technical assistance is required, the board may contract with or use qualified individuals or companies.

If an investigation indicates that a credential holder may have violated a provision of the act, the board may offer the credential holder an opportunity to voluntarily and informally discuss the alleged violation before the board. The board may enter into consent agreements or negotiate settlements. If an investigation indicates that a credential holder has violated a provision of the act, a formal complaint shall be prepared by the board and served upon the credential holder. The complaint shall require the credential holder to file an answer within thirty days of the date of service. In responding to a complaint, the credential holder may admit the allegations of the complaint, deny the allegations of the complaint, or plead otherwise. Failure to make a timely response shall be deemed an admission of the allegations of the complaint. Upon receipt of an answer to the complaint, the director or chairperson of the board shall set a date, time, and place for an administrative hearing on the complaint. The date of the hearing shall not be less than thirty nor more than one hundred twenty days from the date that the answer is filed unless such date is extended for good cause.

Source: Laws 1990, LB 1153, § 39; Laws 1991, LB 203, § 43; Laws 1994, LB 1107, § 40; Laws 2001, LB 162, § 31; Laws 2006, LB 778, § 61.

76-2241 Fees.

The board shall charge and collect appropriate fees for its services under the Real Property Appraiser Act as follows:

- (1) An application fee of one hundred fifty dollars;
- (2) An examination fee of no more than three hundred dollars. The board may direct applicants to pay the fee directly to a third party who has contracted to administer the examination;
- (3) An initial and renewal credentialing fee, other than temporary credentialing, of no more than three hundred dollars;

(4) A late renewal fee of twenty-five dollars for each month or portion of a month the fee is late;

(5) A temporary credential application fee for a licensed real property appraiser, a certified residential real property appraiser, or a certified general real property appraiser of no more than one hundred dollars; and

(6) A pocket card fee of no more than fifty dollars for a licensed real property appraiser, certified residential real property appraiser, or certified general real property appraiser holding a temporary credential under the act.

All fees for credentialing through reciprocity shall be the same as those paid by others pursuant to this section.

In addition to the fees set forth in this section, the board may collect and transmit to the appropriate federal authority any fees established under the provisions of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as the act existed on January 1, 2008. The board may establish such fees as it deems appropriate for special examinations and other services provided by the board. All fees and other revenue collected pursuant to the Real Property Appraiser Act shall be remitted by the board to the State Treasurer for credit to the Real Property Appraiser Fund.

Source: Laws 1990, LB 1153, § 41; Laws 1991, LB 203, § 45; Laws 1994, LB 1107, § 42; Laws 2001, LB 162, § 33; Laws 2006, LB 778, § 62; Laws 2007, LB186, § 22; Laws 2008, LB1011, § 14.
Effective date July 18, 2008.

76-2242 Credential holder; proof of credentials; issuance.

(1) The board shall provide to each credential holder proof that such person has been credentialed under the Real Property Appraiser Act for the classification requirements set forth in the act. The board shall also issue a pocket card in such size and form as it may approve.

(2) Each credential issued under the act shall designate the principal place of business of the credential holder.

(3) Proof of credentialing and pocket cards issued by the board shall remain the property of the state, and upon surrender, cancellation, suspension, or revocation, any person holding the documents shall immediately return such documents to the board.

Source: Laws 1990, LB 1153, § 42; Laws 1991, LB 203, § 46; Laws 1994, LB 1107, § 43; Laws 2001, LB 162, § 34; Laws 2006, LB 778, § 63; Laws 2007, LB186, § 23.

76-2243 Professional corporation; practice of appraising.

Nothing contained in the Real Property Appraiser Act shall be deemed to prohibit any credential holder under the act from engaging in the practice of real property appraising as a professional corporation in accordance with the Nebraska Professional Corporation Act.

Source: Laws 1990, LB 1153, § 43; Laws 1991, LB 203, § 47; Laws 2001, LB 162, § 35; Laws 2006, LB 778, § 64.

Cross References

Nebraska Professional Corporation Act, see section 21-2201.

76-2244 Principal place of business; requirements.

Each resident credential holder shall designate and maintain a principal place of business and shall conspicuously display his or her proof of credentialing in such place of business. Upon any change of his or her principal place of business, a resident or nonresident credential holder shall promptly give notice thereof in writing to the board and the board shall issue a new proof of credentialing for the unexpired term. A nonresident shall not be required to maintain a place of business in this state if he or she maintains an active place of business in his or her place of domicile.

Source: Laws 1990, LB 1153, § 44; Laws 1991, LB 203, § 48; Laws 2001, LB 162, § 36; Laws 2008, LB1011, § 15.
Effective date July 18, 2008.

76-2245 Action for compensation; conditions.

No person engaged in real property appraisal activities in this state or acting in the capacity of a real property appraiser in this state may bring or maintain any action in any court of this state to collect compensation for the performance of real property appraisal activities for which credentialing is required by the Real Property Appraiser Act without alleging and proving that he or she was duly credentialed under the act in this state at all times during the performance of such activities.

Source: Laws 1990, LB 1153, § 45; Laws 1991, LB 203, § 49; Laws 2001, LB 162, § 37; Laws 2006, LB 778, § 65.

76-2246 Appraisal without credentials; penalty.

Any person required to be credentialed by the Real Property Appraiser Act who engages in real property appraisal activity or who advertises or holds himself or herself out to the general public as a real property appraiser in this state without obtaining proper credentialing under the act shall be guilty of a Class III misdemeanor and shall be ineligible to apply for credentialing under the act for a period of one year from the date of his or her conviction of such offense. The board may, in its discretion, credential such person within such one-year period upon application and after an administrative hearing.

Source: Laws 1990, LB 1153, § 46; Laws 1991, LB 203, § 50; Laws 1994, LB 1107, § 44; Laws 2001, LB 162, § 38; Laws 2006, LB 778, § 66.

76-2247.01 Services; authorized; contingent fee prohibited; when.

A person may retain or employ a real property appraiser credentialed under the Real Property Appraiser Act to provide appraisal services, including, but not limited to, valuation assignments and consulting services. In each case, the appraisal and the appraisal report shall comply with the Real Property Appraiser Act and the Uniform Standards of Professional Appraisal Practice.

In a valuation assignment, the real property appraiser shall remain an impartial, disinterested third party. When providing a consulting service, the real property appraiser may complete the evaluation assignment in a manner that responds to a client's stated objective but shall also remain an impartial, disinterested third party. Compensation of a real property appraiser for either a valuation assignment or consulting service shall not be contingent upon the real

property appraiser reporting a predetermined analysis, opinion, or conclusion reached or upon the results achieved.

Source: Laws 1991, LB 203, § 51; Laws 1994, LB 1107, § 45; Laws 2001, LB 162, § 39; Laws 2006, LB 778, § 67; Laws 2007, LB186, § 24.

76-2248 Attorney General; powers and duties.

At the request of the board, the Attorney General shall render to the board an opinion with respect to all questions of law arising in connection with the administration of the Real Property Appraiser Act and shall act as attorney for the board in all actions and proceedings brought by or against the board under or pursuant to the act. All fees and expenses of the Attorney General arising out of such duties shall be paid out of the Real Property Appraiser Fund. The Attorney General may appoint special counsel to prosecute such action, and all fees and expenses of such counsel allowed shall be taxed as costs in the action as the court may direct.

Source: Laws 1990, LB 1153, § 48; Laws 1991, LB 203, § 52; Laws 2001, LB 162, § 40; Laws 2006, LB 778, § 68.

76-2249 Directory of appraisers; information; distribution.

(1) The board may prepare a directory showing the name and place of business of credential holders under the Real Property Appraiser Act. Copies of the directory shall be made available to the public at such reasonable price per copy as may be fixed by the board and shall be provided to federal authorities as required by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as the act existed on January 1, 2008.

(2) The board shall provide without charge to any credential holder under the act a set of rules and regulations adopted and promulgated by the board and any other information which the board deems important in the area of real property appraisal in the State of Nebraska. The information may be printed in a booklet, a pamphlet, or any other form the board determines appropriate. The board may update such material as often as it deems necessary. The board may provide such material to any other person upon request and may charge a fee for the material. The fee shall be reasonable and shall not exceed any reasonable or necessary costs of producing the material for distribution.

Source: Laws 1990, LB 1153, § 49; Laws 1991, LB 203, § 53; Laws 1993, LB 842, § 1; Laws 1994, LB 1107, § 46; Laws 2001, LB 162, § 41; Laws 2006, LB 778, § 69; Laws 2008, LB1011, § 16. Effective date July 18, 2008.

76-2250 Certificate of good standing.

The board may, upon payment of a fee in an amount specified in its rules and regulations, issue a certificate of good standing to any credential holder under the Real Property Appraiser Act who is in good standing in this state.

Source: Laws 1990, LB 1153, § 50; Laws 1991, LB 203, § 54; Laws 1994, LB 1107, § 47; Laws 2001, LB 162, § 42; Laws 2006, LB 778, § 70.

ARTICLE 24

AGENCY RELATIONSHIPS

Section

76-2422. Written agreements for brokerage services; when required.

76-2422 Written agreements for brokerage services; when required.

(1) All written agreements for brokerage services on behalf of a seller, landlord, buyer, or tenant shall be entered into by the designated broker on behalf of that broker and affiliated licensees, except that the designated broker may authorize affiliated licensees in writing to enter into the written agreements on behalf of the designated broker. A copy of a written agreement for brokerage services shall be left with the client or clients.

(2) Before engaging in any of the activities enumerated in subdivision (2) of section 81-885.01, a designated broker intending to establish a single agency relationship with a seller or landlord shall enter into a written agency agreement with the party to be represented. The agreement shall include a licensee's duties and responsibilities specified in section 76-2417, the terms of compensation, a fixed date of expiration of the agreement, and whether an offer of subagency may be made to any other designated broker, except that if a licensee is a limited seller's agent for a builder, the terms of compensation may be established for a specific new construction property on or before the builder's acceptance of a contract to sell.

(3) Before or while engaging in any of the acts enumerated in subdivision (2) of section 81-885.01, a designated broker acting as a single agent for a buyer or tenant may enter into a written agency agreement with the party to be represented. The agreement shall include a licensee's duties and responsibilities specified in section 76-2418, the terms of compensation, a fixed date of expiration of the agreement, and whether an offer of subagency may be made to any other designated broker.

(4) Before engaging in any of the activities enumerated in subdivision (2) of section 81-885.01, a designated broker intending to act as a dual agent shall obtain the written consent of the seller and buyer or landlord and tenant permitting the designated broker to serve as a dual agent. The consent shall include a licensee's duties and responsibilities specified in section 76-2419. The requirements of this subsection are met as to a seller or landlord if the written agreement entered into with the seller or landlord complies with this subsection. The requirements of this subsection are met as to a buyer or tenant if a consent or buyer's or tenant's agency agreement is signed by a potential buyer or tenant which complies with this subsection. The consent of the buyer or tenant does not need to refer to a specific property and may refer generally to all properties for which the buyer's or tenant's agent may also be acting as a seller's or landlord's agent and would be a dual agent. If a licensee is acting as a dual agent with regard to a specific property, the seller and buyer or landlord and tenant shall confirm in writing the dual-agency status and the party or parties responsible for paying any compensation prior to or at the time a contract to purchase property or a lease or letter of intent to lease is entered into for the specific property.

(5) Before engaging in any of the activities enumerated in subdivision (2) of section 81-885.01, a designated broker intending to act as a subagent shall

enter into a written contract with the primary designated broker for the client. If a designated broker has made a unilateral offer of subagency, another designated broker can enter into the subagency relationship by the act of disclosing to the customer that he or she is a subagent of the client.

(6) Before engaging in any of the activities enumerated in subdivision (2) of section 81-885.01, a designated broker who intends to establish an agency relationship with any party or parties to a transaction in which the designated broker's duties and responsibilities exceed those contained in sections 76-2417 and 76-2418 shall enter into a written agency agreement with a party or parties to the transaction to perform services on their behalf. The agreement shall specify the agent's duties and responsibilities, including any duty of confidentiality, and the terms of compensation. Any agreement under this subsection shall be subject to the common-law requirements of agency applicable to real estate licensees.

Source: Laws 1994, LB 883, § 22; Laws 2002, LB 863, § 8; Laws 2005, LB 88, § 1.

ARTICLE 26

UNIFORM ENVIRONMENTAL COVENANTS ACT

Section

- 76-2601. Act, how cited.
- 76-2602. Terms, defined.
- 76-2603. Nature of rights; subordination of interests.
- 76-2604. Contents of environmental covenant.
- 76-2605. Validity; effect on other instruments.
- 76-2606. Relationship to other land-use law.
- 76-2607. Notice.
- 76-2608. Recording.
- 76-2609. Duration; amendment by court action.
- 76-2610. Amendment or termination by consent.
- 76-2611. Enforcement of environmental covenant.
- 76-2612. Uniformity of application and construction.
- 76-2613. Relation to Electronic Signatures in Global and National Commerce Act.

76-2601 Act, how cited.

Sections 76-2601 to 76-2613 may be cited as the Uniform Environmental Covenants Act.

Source: Laws 2005, LB 298, § 2.

76-2602 Terms, defined.

In the Uniform Environmental Covenants Act:

(1) Activity and use limitations means restrictions or obligations created under the act with respect to real property.

(2) Agency means the Department of Environmental Quality or any other Nebraska or federal agency that determines or approves the environmental response project pursuant to which the environmental covenant is created.

(3) Common interest community means a condominium, cooperative, or other real property with respect to which a person, by virtue of the person's ownership of a parcel of real property, is obligated to pay property taxes or insurance premiums, or for maintenance, or improvement of other real proper-

ty described in a recorded covenant that creates the common interest community.

(4) Environmental covenant means a servitude arising under an environmental response project that imposes activity and use limitations.

(5) Environmental response project means a plan or work performed for environmental remediation of real property and conducted:

(A) Under a federal or state program governing environmental remediation of real property, including the Petroleum Release Remedial Action Act;

(B) Incident to closure of a solid or hazardous waste management unit, if the closure is conducted with approval of an agency; or

(C) Under a state voluntary cleanup program authorized by the Remedial Action Plan Monitoring Act.

(6) Holder means the grantee of an environmental covenant as specified in subsection (a) of section 76-2603.

(7) Person means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(8) Record, used as a noun, 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.

(9) State means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

Source: Laws 2005, LB 298, § 3.

Cross References

Petroleum Release Remedial Action Act, see section 66-1501.

Remedial Action Plan Monitoring Act, see section 81-15,181.

76-2603 Nature of rights; subordination of interests.

(a) Any person, including a person that owns an interest in the real property, may be a holder, except that the State of Nebraska, a municipality, or another unit of local government may not be a holder unless it is the owner of the real property. An environmental covenant may identify more than one holder. The interest of a holder is an interest in real property.

(b) A right of an agency under the Uniform Environmental Covenants Act or under an environmental covenant, other than a right as a holder, is not an interest in real property.

(c) An agency is only bound by any obligation it expressly assumes in an environmental covenant, but an agency does not assume obligations merely by signing an environmental covenant. Any other person that signs an environmental covenant is bound by the obligations the person assumes in the covenant, but signing the covenant does not change obligations, rights, or protections granted or imposed under law other than the act except as provided in the covenant.

(d) The following rules apply to interests in real property in existence at the time an environmental covenant is created or amended:

(1) A prior interest is not affected by an environmental covenant unless the person that owns the interest subordinates that interest to the covenant.

(2) The act does not require a person that owns a prior interest to subordinate that interest to an environmental covenant or to agree to be bound by the covenant.

(3) A subordination agreement may be contained in an environmental covenant covering real property or in a separate record. If the environmental covenant covers commonly owned property in a common interest community, the record may be signed by any person authorized by the governing board of the owners' association.

(4) An agreement by a person to subordinate a prior interest to an environmental covenant affects the priority of that person's interest but does not by itself impose any affirmative obligation on the person with respect to the environmental covenant.

Source: Laws 2005, LB 298, § 4.

76-2604 Contents of environmental covenant.

(a) An environmental covenant must:

(1) State that the instrument is an environmental covenant executed pursuant to the Uniform Environmental Covenants Act;

(2) Contain a legally sufficient description of the real property subject to the covenant;

(3) Describe the activity and use limitations on the real property;

(4) Identify every holder;

(5) Be signed by the agency, every holder, and unless waived by the agency every owner of the fee simple of the real property subject to the covenant; and

(6) Identify the name and location of any administrative record for the environmental response project reflected in the environmental covenant.

(b) In addition to the information required by subsection (a) of this section, an environmental covenant may contain other information, restrictions, and requirements agreed to by the persons who signed it, including any:

(1) Requirements for notice following transfer of a specified interest in, or concerning proposed changes in use of, applications for building permits for, or proposals for any site work affecting the contamination on, the property subject to the covenant;

(2) Requirements for periodic reporting describing compliance with the covenant;

(3) Rights of access to the property granted in connection with implementation or enforcement of the covenant;

(4) A brief narrative description of the contamination and remedy, including the contaminants of concern, the pathways of exposure, limits on exposure, and the location and extent of the contamination;

(5) Limitation on amendment or termination of the covenant in addition to those contained in sections 76-2609 and 76-2610;

(6) Rights of the holder in addition to its right to enforce the covenant pursuant to section 76-2611; and

(7) Rights to enforce granted to any person.

(c) In addition to other conditions for its approval of an environmental covenant, the agency may require that those persons specified by the agency who have interests in the real property have signed the covenant.

Source: Laws 2005, LB 298, § 5.

76-2605 Validity; effect on other instruments.

(a) An environmental covenant that complies with the Uniform Environmental Covenants Act runs with the land.

(b) An environmental covenant that is otherwise effective is valid and enforceable even if:

- (1) It is not appurtenant to an interest in real property;
- (2) It can be or has been assigned to a person other than the original holder;
- (3) It is not of a character that has been recognized traditionally at common law;
- (4) It imposes a negative burden;
- (5) It imposes an affirmative obligation on a person having an interest in the real property or on the holder;
- (6) The benefit or burden does not touch or concern real property;
- (7) There is no privity of estate or contract;
- (8) The holder dies, ceases to exist, resigns, or is replaced; or
- (9) The owner of an interest subject to the environmental covenant and the holder are the same person.

(c) An instrument that creates restrictions or obligations with respect to real property that would qualify as activity and use limitations except for the fact that the instrument was recorded before September 4, 2005, is not invalid or unenforceable because of any of the limitations on enforcement of interests described in subsection (b) of this section or because it was identified as an easement, servitude, deed restriction, or other interest. The act does not apply in any other respect to such an instrument.

(d) The act does not invalidate or render unenforceable any interest, whether designated as an environmental covenant or other interest, that is otherwise enforceable under the law of this state.

Source: Laws 2005, LB 298, § 6.

76-2606 Relationship to other land-use law.

The Uniform Environmental Covenants Act does not authorize a use of real property that is otherwise prohibited by zoning, by law other than the act regulating use of real property, or by a recorded instrument that has priority over the environmental covenant. An environmental covenant may prohibit or restrict uses of real property which are authorized by zoning or by law other than the act.

Source: Laws 2005, LB 298, § 7.

76-2607 Notice.

(a) A copy of an environmental covenant shall be provided by the persons and in the manner required by the agency to:

- (1) Each person that signed the covenant;

(2) Each person holding a recorded interest in the real property subject to the covenant;

(3) Each person in possession of the real property subject to the covenant;

(4) Each municipality or other unit of local government in which real property subject to the covenant is located; and

(5) Any other person the agency requires.

(b) The validity of a covenant is not affected by failure to provide a copy of the covenant as required under this section.

Source: Laws 2005, LB 298, § 8.

76-2608 Recording.

(a) An environmental covenant, any amendment or termination of the covenant under section 76-2609 or 76-2610, and any subordination agreement must be recorded in every county in which any portion of the real property subject to the covenant is located. For purposes of indexing, a holder shall be treated as a grantee.

(b) Except as otherwise provided in subsection (c) of section 76-2609, an environmental covenant is subject to the laws of this state governing recording and priority of interests in real property.

(c) A copy of a document recorded under subsection (a) of this section shall also be provided to the Department of Environmental Quality if the department has not signed the covenant.

(d) The department shall make available to the public a listing of all documents under subsection (a) of this section or documents under subsection (c) of this section which have been provided to the department.

Source: Laws 2005, LB 298, § 9.

76-2609 Duration; amendment by court action.

(a) An environmental covenant is perpetual unless it is:

(1) By its terms limited to a specific duration or terminated by the occurrence of a specific event;

(2) Terminated by consent pursuant to section 76-2610;

(3) Terminated pursuant to subsection (b) of this section;

(4) Terminated by foreclosure of an interest that has priority over the environmental covenant; or

(5) Terminated or modified in an eminent domain proceeding, but only if:

(A) The agency that signed the covenant is a party to the proceeding;

(B) All persons identified in subsections (a) and (b) of section 76-2610 are given notice of the pendency of the proceeding; and

(C) The court determines, after hearing, that the termination or modification will not adversely affect human health or the environment.

(b) If the agency that signed an environmental covenant has determined that the intended benefits of the covenant can no longer be realized, a court, under the doctrine of changed circumstances, in an action in which all persons identified in subsections (a) and (b) of section 76-2610 have been given notice, may terminate the covenant or reduce its burden on the real property subject to

the covenant. The agency's determination or its failure to make a determination upon request is subject to review pursuant to the Administrative Procedure Act.

(c) Except as otherwise provided in subsections (a) and (b) of this section, an environmental covenant may not be extinguished, limited, or impaired through issuance of a tax deed, foreclosure of a tax lien, or application of the doctrine of adverse possession, prescription, abandonment, waiver, lack of enforcement, or acquiescence, or a similar doctrine.

(d) An environmental covenant may not be extinguished, limited, or impaired by application of sections 57-227 to 57-239, 72-301 to 72-314, or 76-288 to 76-298.

Source: Laws 2005, LB 298, § 10.

Cross References

Administrative Procedure Act, see section 84-920.

76-2610 Amendment or termination by consent.

(a) An environmental covenant may be amended or terminated by consent only if the amendment or termination is signed by:

- (1) The agency;
- (2) Unless waived by the agency, the current owner of the fee simple of the real property subject to the covenant;
- (3) Each person that originally signed the covenant, unless the person waived in a signed record the right to consent or a court finds that the person no longer exists or cannot be located or identified with the exercise of reasonable diligence; and
- (4) Except as otherwise provided in subdivision (d)(2) of this section, the holder.

(b) If an interest in real property is subject to an environmental covenant, the interest is not affected by an amendment of the covenant unless the current owner of the interest consents to the amendment or has waived in a signed record the right to consent to amendments.

(c) Except for an assignment undertaken pursuant to a governmental reorganization, assignment of an environmental covenant to a new holder is an amendment.

(d) Except as otherwise provided in an environmental covenant:

- (1) A holder may not assign its interest without consent of the other parties;
- (2) A holder may be removed and replaced by agreement of the other parties specified in subsection (a) of this section; and

(e) A court of competent jurisdiction may fill a vacancy in the position of holder.

Source: Laws 2005, LB 298, § 11.

76-2611 Enforcement of environmental covenant.

(a) A civil action for injunctive or other equitable relief for violation of an environmental covenant may be maintained by:

- (1) A party to the covenant;
- (2) The agency;

- (3) Any person to whom the covenant expressly grants power to enforce;
- (4) A person whose interest in the real property or whose collateral or liability may be affected by the alleged violation of the covenant; or
- (5) A municipality or other unit of local government in which the real property subject to the covenant is located.
- (b) The Uniform Environmental Covenants Act does not limit the regulatory authority of the agency under law other than the Uniform Environmental Covenants Act with respect to an environmental response project.
- (c) A person is not responsible for or subject to liability for environmental remediation solely because it has the right to enforce an environmental covenant.
- (d) The Uniform Environmental Covenants Act does not limit the right of any person to recover damages under any other provision of law.

Source: Laws 2005, LB 298, § 12.

76-2612 Uniformity of application and construction.

In applying and construing the Uniform Environmental Covenants 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 2005, LB 298, § 13.

76-2613 Relation to Electronic Signatures in Global and National Commerce Act.

The Uniform Environmental Covenants 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 of that act, 15 U.S.C. 7001(a), or authorize electronic delivery of any of the notices described in section 103 of that act, 15 U.S.C. 7003(b).

Source: Laws 2005, LB 298, § 14.

ARTICLE 27

NEBRASKA FORECLOSURE PROTECTION ACT

Section

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§ 76-2701

REAL PROPERTY

Section

- 76-2717. Foreclosure consultant or associate; unconscionable transaction or contract; review by court.
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- 76-2728. Violation; penalty.

76-2701 Act, how cited.

Sections 76-2701 to 76-2728 shall be known and may be cited as the Nebraska Foreclosure Protection Act.

Source: Laws 2008, LB123, § 1.
Effective date July 18, 2008.

76-2702 Legislative findings and intent.

The Legislature hereby finds, determines, and declares that home ownership and the accumulation of equity in one's home provide significant social and economic benefits to the state and its citizens. Unfortunately, too many homeowners in financial distress, especially the poor, elderly, and financially unsophisticated, are vulnerable to a variety of deceptive or unconscionable business practices designed to dispossess them or otherwise strip the equity from their homes. There is a compelling need to curtail and prevent the most deceptive and unconscionable of these business practices, provide each homeowner with information necessary to make an informed and intelligent decision regarding transactions with certain foreclosure consultants and equity purchasers, provide certain minimum requirements for contracts between such parties, including statutory rights to cancel such contracts, and ensure and foster fair dealing in the sale and purchase of homes in foreclosure. Therefore, it is the intent of the Legislature that all violations of the Nebraska Foreclosure Protection Act have a significant public impact and that the terms of the act be liberally construed to achieve these purposes.

Source: Laws 2008, LB123, § 2.
Effective date July 18, 2008.

76-2703 Definitions, where found.

For purposes of the Nebraska Foreclosure Protection Act, unless the context otherwise requires, the definitions found in sections 76-2704 to 76-2712 apply.

Source: Laws 2008, LB123, § 3.
Effective date July 18, 2008.

76-2704 Associate, defined.

Associate means a partner, a subsidiary, an affiliate, an agent, or any other person working in association with a foreclosure consultant or an equity purchaser. Associate does not include a person who is excluded from the definition of an equity purchaser or a foreclosure consultant.

Source: Laws 2008, LB123, § 4.
Effective date July 18, 2008.

76-2705 Equity purchase contract, defined.

Equity purchase contract means an agreement between an equity purchaser and a homeowner pertaining to the acquisition of title to the homeowner's personal residence.

Source: Laws 2008, LB123, § 5.
Effective date July 18, 2008.

76-2706 Equity purchaser, defined.

Equity purchaser means a person who, in the course of the person's business, vocation, or occupation, acquires title to a residence in foreclosure. Equity purchaser does not include a person who acquires such title:

- (1) For the purpose of using such property as his or her personal residence for at least one year;
- (2) By a deed in lieu of foreclosure to the holder of an evidence of debt, or an associate of the holder of an evidence of debt, of a consensual lien or encumbrance of record, if such consensual lien or encumbrance is recorded in the register of deeds office of the county where the residence in foreclosure is located prior to a foreclosure sale;
- (3) By a deed from any trustee, sheriff, or other person appointed by a court as a result of a foreclosure sale;
- (4) At a sale of property authorized by statute;
- (5) By order or judgment of any court;
- (6) From the person's spouse, relative, or relative of a spouse, by the half or whole blood or by adoption, or from a guardian, conservator, or personal representative of such person; or
- (7) While performing services as a part of a person's normal business activities under any law of this state or the United States that regulates banks, trust companies, savings and loan associations, credit unions, insurance companies, title insurers, insurance producers, or escrow companies authorized to conduct business in this state, an affiliate or subsidiary of such person, or an employee or agent acting on behalf of such person.

Source: Laws 2008, LB123, § 6.
Effective date July 18, 2008.

76-2707 Evidence of debt, defined.

Evidence of debt means a writing that evidences a promise to pay or a right to the payment of a monetary obligation such as a promissory note; bond; negotiable instrument; loan, credit, or similar agreement; or monetary judgment entered by a court of competent jurisdiction.

Source: Laws 2008, LB123, § 7.
Effective date July 18, 2008.

76-2708 Foreclosure consultant, defined.

(1) Foreclosure consultant means a person who:

(a) Does not, directly or through an associate, take or acquire any interest in or title to the residence in foreclosure; and

(b) In the course of such person's business, vocation, or occupation, makes a solicitation, representation, or offer to a homeowner to perform, in exchange for compensation from the homeowner or from the proceeds of any loan or advance of funds, a service that the person represents will do any of the following:

(i) Stop or postpone a foreclosure sale;

(ii) Obtain a forbearance from a beneficiary under a deed of trust, mortgage, or other lien;

(iii) Assist the homeowner in exercising a right to cure a default;

(iv) Obtain an extension of the period within which the homeowner may cure a default;

(v) Obtain a waiver of an acceleration clause contained in an evidence of debt secured by a deed of trust, mortgage, or other lien on a residence in foreclosure or contained in such deed of trust, mortgage, or other lien;

(vi) Assist the homeowner to obtain a loan or an advance of funds;

(vii) Avoid or reduce the impairment of the homeowner's credit resulting from the recording of a notice of election and demand for sale, commencement of a judicial foreclosure action, any foreclosure sale or the granting of a deed in lieu of foreclosure, or any late payment or other failure to pay or perform under the evidence of debt, the deed of trust, or other lien securing such evidence of debt;

(viii) In any way delay, hinder, or prevent the foreclosure upon the homeowner's residence; or

(ix) Assist the homeowner in obtaining from the beneficiary, mortgagee, or grantee of the lien in foreclosure, or from counsel for such beneficiary, mortgagee, or grantee, the remaining or excess proceeds from the foreclosure sale of the residence in foreclosure.

(2) Foreclosure consultant does not include:

(a) A person licensed to practice law in this state while performing any activity related to the person's attorney-client relationship with a homeowner or any activity related to the person's attorney-client relationship with the beneficiary, mortgagee, grantee, or holder of any lien being enforced by way of foreclosure;

(b) A holder or servicer of an evidence of debt or the attorney for the holder or servicer of an evidence of debt secured by a deed of trust or other lien on any residence in foreclosure while the person performs services in connection with the evidence of debt, lien, deed of trust, or other lien securing such debt;

(c) A person doing business under any law of this state or the United States, which law regulates banks, trust companies, savings and loan associations, credit unions, insurance companies, title insurers, insurance producers, or escrow companies authorized to conduct business in the state, while the person performs services as part of the person's normal business activities, an affiliate

or subsidiary of any of such entities, or an employee or agent acting on behalf of any of such entities;

(d) A person originating or closing a loan in a person's normal course of business, if, as to that loan:

(i) The loan is subject to the requirements of the federal Real Estate Settlement Procedures Act of 1974, 12 U.S.C. 2601 et seq., as the act existed on July 18, 2008; or

(ii) With respect to any junior mortgage or home equity line of credit, the loan is subordinate to and closed simultaneously with a qualified first mortgage loan under subdivision (2)(d)(i) of this section or is initially payable on the face of the note or contract to an entity included in subdivision (2)(c) of this section;

(e) A judgment creditor of the homeowner;

(f) A title insurance company or title insurance agent authorized to conduct business in this state while performing title insurance and settlement services;

(g) A person licensed as a real estate broker, associate broker, or real estate salesperson pursuant to the Nebraska Real Estate License Act while the person engages in any activity for which the person is licensed; or

(h) A nonprofit organization that solely offers counseling or advice to homeowners in foreclosure or loan default, unless the organization is an associate of the foreclosure consultant.

Source: Laws 2008, LB123, § 8.
Effective date July 18, 2008.

76-2709 Foreclosure consulting contract, defined.

Foreclosure consulting contract means any agreement between a foreclosure consultant and a homeowner.

Source: Laws 2008, LB123, § 9.
Effective date July 18, 2008.

76-2710 Holder of evidence of debt, defined.

Holder of evidence of debt means the person in actual possession of or otherwise entitled to enforce an evidence of debt, except that holder of evidence of debt does not include a person acting as a nominee solely for the purpose of holding the evidence of debt or deed of trust as an electronic registry without any authority to enforce the evidence of debt or deed of trust. The following persons are presumed to be the holder of evidence of debt:

(1) The person who is the obligee of and who is in possession of an original evidence of debt;

(2) The person in possession of an original evidence of debt together with the proper endorsement or assignment thereof to such person;

(3) The person in possession of a negotiable instrument evidencing a debt which has been duly negotiated to such person or to bearer or indorsed in blank; or

(4) The person in possession of an evidence of debt with authority, which may be granted by the original evidence of debt or deed of trust, to enforce the

evidence of debt as an agent, a nominee, or a trustee or in a similar capacity for the obligee of the evidence of debt.

Source: Laws 2008, LB123, § 10.
Effective date July 18, 2008.

76-2711 Homeowner, defined.

Homeowner means the owner of a residence in foreclosure, including a vendee under a contract for deed to real property as defined in subdivision (15) of section 45-702.

Source: Laws 2008, LB123, § 11.
Effective date July 18, 2008.

76-2712 Residence in foreclosure, defined.

Residence in foreclosure means a residence or dwelling that is occupied as the homeowner’s principal place of residence and against which any type of foreclosure action, including, but not limited to, the filing of a notice of default of a deed of trust or the filing of a lawsuit to foreclose a mortgage or other lien, has been commenced.

Source: Laws 2008, LB123, § 12.
Effective date July 18, 2008.

76-2713 Foreclosure consulting contract; form; notice required; right to cancel; notice.

(1) A foreclosure consulting contract shall be in writing and provided to and retained by the homeowner, with changes, alterations, or modifications, for review at least twenty-four hours before it is signed by the homeowner.

(2) A foreclosure consulting contract shall be printed in at least twelve-point type and shall include the name, address, facsimile number, and email address of the foreclosure consultant to which a notice of cancellation may be delivered and the date the homeowner signed the contract.

(3) A foreclosure consulting contract shall fully disclose the exact nature of the foreclosure consulting services to be provided and the total amount and terms of any compensation to be received by the foreclosure consultant or associate.

(4) A foreclosure consulting contract shall be dated and personally signed, with each page being initialed by each homeowner of the residence in foreclosure and the foreclosure consultant, and shall be acknowledged by a notary public in the presence of the homeowner at the time the contract is signed by the homeowner.

(5) A foreclosure consulting contract shall contain the following notice, which shall be printed in at least fourteen-point, boldface type, completed with the name of the foreclosure consultant, and located in immediate proximity to the space reserved for the homeowner’s signature:

NOTICE REQUIRED BY NEBRASKA LAW

..... (NAME OF FORECLOSURE CONSULTANT) OR (HIS/HER/ITS) ASSOCIATE CANNOT ASK YOU TO SIGN OR HAVE YOU SIGN ANY DOCUMENT THAT TRANSFERS ANY INTEREST IN YOUR HOME OR PROPERTY TO (HIM/HER/IT) OR (HIS/HER/ITS) ASSOCIATE.

..... (NAME OF FORECLOSURE CONSULTANT) OR (HIS/HER/ITS) ASSOCIATE CANNOT GUARANTEE YOU THAT THEY WILL BE ABLE TO REFINANCE YOUR HOME OR ARRANGE FOR YOU TO KEEP YOUR HOME. YOU MAY, AT ANY TIME, CANCEL THIS CONTRACT, WITHOUT PENALTY OF ANY KIND.

IF YOU WANT TO CANCEL THIS CONTRACT, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS NOTICE OF CANCELLATION, OR ANY OTHER WRITTEN NOTICE, INDICATING YOUR INTENT TO CANCEL TO (NAME OF FORECLOSURE CONSULTANT) AT (ADDRESS OF FORECLOSURE CONSULTANT, INCLUDING FACSIMILE NUMBER AND EMAIL ADDRESS).

AS PART OF ANY CANCELLATION, YOU (THE HOMEOWNER) MUST REPAY ANY MONEY ACTUALLY SPENT ON YOUR BEHALF BY (NAME OF FORECLOSURE CONSULTANT) PRIOR TO RECEIPT OF THIS NOTICE AND, AS A RESULT OF THIS AGREEMENT, WITHIN SIXTY DAYS, ALONG WITH INTEREST AT THE PRIME RATE PUBLISHED BY THE FEDERAL RESERVE BOARD PLUS TWO PERCENT-AGE POINTS, WITH THE TOTAL INTEREST RATE NOT TO EXCEED EIGHT PERCENT PER YEAR.

THIS IS AN IMPORTANT LEGAL CONTRACT AND COULD RESULT IN THE LOSS OF YOUR HOME. CONTACT AN ATTORNEY OR A HOUSING COUNSELOR APPROVED BY THE FEDERAL DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT BEFORE SIGNING.

(6) A completed form in duplicate, captioned NOTICE OF CANCELLATION, shall accompany a foreclosure consulting contract. The notice of cancellation shall:

- (a) Be on a separate sheet of paper attached to the contract;
- (b) Be easily detachable; and
- (c) Contain the following statement, printed in at least fourteen-point type:

NOTICE OF CANCELLATION

..... (DATE OF CONTRACT)

TO: (NAME OF FORECLOSURE CONSULTANT)

(ADDRESS OF FORECLOSURE CONSULTANT, INCLUDING FACSIMILE NUMBER AND EMAIL ADDRESS)

I HEREBY CANCEL THIS CONTRACT.

..... (DATE)

..... (HOMEOWNER'S SIGNATURE)

(7) A foreclosure consultant shall provide to the homeowner a signed, dated, and acknowledged copy of the foreclosure consulting contract and the attached notice of cancellation immediately upon execution of the contract.

(8) The time during which the homeowner may cancel a foreclosure consulting contract does not begin to run until the foreclosure consultant has complied with this section.

Source: Laws 2008, LB123, § 13.
Effective date July 18, 2008.

76-2714 Homeowner; right to cancel foreclosure consulting contract; notice; when effective; repayment of funds.

(1) In addition to any right of rescission available under state or federal law, a homeowner has the right to cancel a foreclosure consulting contract at any time.

(2) Cancellation occurs when a homeowner gives written notice of cancellation of the foreclosure consulting contract to the foreclosure consultant at the address specified in the contract or through any facsimile number or email address identified in the contract or other materials provided to the homeowner by the foreclosure consultant.

(3) Notice of cancellation, if given by mail, is effective when deposited in the United States mail, properly addressed, with postage prepaid.

(4) Notice of cancellation need not be in the form provided with the contract and is effective, however expressed, if it indicates the intention of the homeowner to cancel the foreclosure consulting contract.

(5) As part of the cancellation of a foreclosure consulting contract, the homeowner shall repay, within sixty days after the date of cancellation, all funds paid or advanced in good faith prior to the receipt of notice of cancellation by the foreclosure consultant or his or her associate under the terms of the foreclosure consulting contract, together with interest at the prime rate published by the Federal Reserve Board plus two percentage points, with the total interest rate not to exceed eight percent per year, from the date of expenditure until repaid by the homeowner.

(6) Except as provided in subsection (5) of this section, the right to cancel shall not be conditioned on the repayment of any funds.

Source: Laws 2008, LB123, § 14.

Effective date July 18, 2008.

76-2715 Foreclosure consulting contract; provisions prohibited.

A provision in a foreclosure consulting contract is void as against public policy if the provision attempts or purports to:

(1) Waive any of the rights specified in sections 76-2713 to 76-2718 or the right to a jury trial;

(2) Consent to jurisdiction for litigation or choice of law in a state other than Nebraska;

(3) Consent to venue in a county other than the county in which the residence in foreclosure is located; or

(4) Impose any costs or fees greater than the actual costs and fees.

Source: Laws 2008, LB123, § 15.

Effective date July 18, 2008.

76-2716 Foreclosure consultant; prohibited acts.

A foreclosure consultant shall not:

(1) Claim, demand, charge, collect, or receive any compensation until after the foreclosure consultant has fully performed each and every service the foreclosure consultant contracted to perform or represented that the foreclosure consultant would perform;

- (2) Claim, demand, charge, collect, or receive any interest or any other compensation for a loan that the foreclosure consultant makes to the homeowner that exceeds the prime rate published by the Federal Reserve Board at the time of any loan plus two percentage points, with the total interest rate not to exceed eight percent per year;
- (3) Take a wage assignment, a lien of any type on real or personal property, or any other security to secure the payment of compensation;
- (4) Receive any consideration from a third party in connection with foreclosure consulting services provided to a homeowner unless the consideration is first fully disclosed in writing to the homeowner;
- (5) Acquire an interest, directly, indirectly, or through an associate, in the real or personal property of a homeowner with whom the foreclosure consultant has contracted;
- (6) Obtain a power of attorney from a homeowner for any purpose other than to inspect documents as provided by law; or
- (7) Induce or attempt to induce a homeowner to enter into a foreclosure consulting contract that does not comply in all respects with sections 76-2713 to 76-2718.

Source: Laws 2008, LB123, § 16.
Effective date July 18, 2008.

76-2717 Foreclosure consultant or associate; unconscionable transaction or contract; review by court.

- (1) A foreclosure consultant or associate may not facilitate or engage in any transaction that is unconscionable given the terms and circumstances of the transaction.
- (2)(a) If a court, as a matter of law, finds a foreclosure consulting contract or any clause of such contract to have been unconscionable at the time it was made, the court may refuse to enforce the contract, enforce the remainder of the contract without the unconscionable clause, or so limit the application of any unconscionable clause as to avoid an unconscionable result.
- (b) When it is claimed or appears to the court that a foreclosure consulting contract or any clause of such contract may be unconscionable, the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose, and effect to aid the court in making the determination.
- (c) In order to support a finding of unconscionability, there must be evidence of an unreasonable inequality of bargaining power or other circumstances in which there is an absence of meaningful choice for one of the parties, together with contract terms that are, under standard industry practices, unreasonably favorable to the foreclosure consultant or associate.

Source: Laws 2008, LB123, § 17.
Effective date July 18, 2008.

76-2718 Foreclosure consulting contract and notices; English required; translation into other language.

A foreclosure consulting contract, and all notices of cancellation provided for therein, shall be written in English and shall be accompanied by a written

translation from English into any other language principally spoken by the homeowner, certified by the person making the translation as a true and correct translation of the English version. The translated version shall be presumed to have equal status and credibility as the English version.

Source: Laws 2008, LB123, § 18.
Effective date July 18, 2008.

76-2719 Equity purchase contract; form.

Every equity purchase contract shall be written in at least twelve-point, boldface type and fully completed, signed, and dated by the homeowner and equity purchaser prior to the execution of any instrument quitclaiming, assigning, transferring, conveying, or encumbering an interest in the residence in foreclosure.

Source: Laws 2008, LB123, § 19.
Effective date July 18, 2008.

76-2720 Equity purchase contract; contents; notice.

(1) Every equity purchase contract shall contain the entire agreement of the parties and shall include the following:

- (a) The name, business address, telephone number, facsimile number, and email address of the equity purchaser;
- (b) The street address and full legal description of the residence in foreclosure;
- (c) Clear and conspicuous disclosure of any financial or legal obligations of the homeowner that will be assumed by the equity purchaser. If the equity purchaser will not be assuming any financial or legal obligations of the homeowner, the equity purchase contract shall so state;
- (d) The total consideration to be paid by the equity purchaser in connection with or incident to the acquisition by the equity purchaser of the residence in foreclosure;
- (e) The terms of payment or other consideration, including, but not limited to, any services of any nature that the equity purchaser represents will be performed for the homeowner before or after the sale;
- (f) The date and time when possession of the residence in foreclosure is to be transferred to the equity purchaser;
- (g) The terms of any rental agreement or lease;
- (h) The specifications of any option or right to repurchase the residence in foreclosure, including the specific amounts of any escrow deposit, downpayment, purchase price, closing costs, commissions, or other fees or costs;
- (i) A notice of cancellation as provided in section 76-2722; and
- (j) The following notice, in at least fourteen-point, boldface type, completed with the name of the equity purchaser, immediately above the statement required by section 76-2722:

NOTICE REQUIRED BY NEBRASKA LAW

**UNTIL YOUR RIGHT TO CANCEL THIS CONTRACT HAS ENDED,
..... (NAME) OR ANYONE WORKING FOR**

..... (NAME) CANNOT ASK YOU TO SIGN OR HAVE YOU SIGN ANY DEED OR ANY OTHER DOCUMENT.

(2) The equity purchase contract required by this section survives delivery of any instrument of conveyance of the residence in foreclosure, but does not have any effect on persons other than the parties to the contract or affect title to the residence in foreclosure.

Source: Laws 2008, LB123, § 20.
Effective date July 18, 2008.

76-2721 Homeowner; right to cancel equity purchase contract; limitation; when effective.

(1)(a) In addition to any right of rescission available under state or federal law, a homeowner has the right to cancel an equity purchase contract until midnight of the third business day following the day on which the homeowner signs a contract that complies with the Nebraska Foreclosure Protection Act or until noon on the last business day before the foreclosure sale of the residence in foreclosure, whichever occurs first.

(b) There shall be no right to cancel under the act with regard to any equity purchase contract executed on or after noon of the last business day before the foreclosure sale of the residence in foreclosure, if the homeowner first agrees to enter into an equity purchase contract with the equity purchaser on or after noon of the last business day before the foreclosure sale.

(2) Cancellation occurs when a homeowner personally delivers written notice of cancellation to the address specified in the equity purchase contract or upon deposit of such notice in the United States mail, properly addressed, with postage prepaid.

(3) A notice of cancellation given by a homeowner need not take the particular form as provided with the equity purchase contract and, however expressed, is effective if it indicates the intention of the homeowner not to be bound by the equity purchase contract.

(4) In the absence of any written notice of cancellation from a homeowner, the execution by the homeowner of a deed or other instrument of conveyance of an interest in the residence in foreclosure to the equity purchaser after the expiration of the rescission period creates a rebuttable presumption that the homeowner did not cancel the equity purchase contract.

Source: Laws 2008, LB123, § 21.
Effective date July 18, 2008.

76-2722 Equity purchase contract; Notice of Cancellation; form; copy provided to homeowner.

(1)(a) The equity purchase contract shall contain, as the last provision before the space reserved for the homeowner’s signature, a conspicuous statement in at least twelve-point, boldface type, as follows:

YOU MAY CANCEL THIS CONTRACT FOR THE SALE OF YOUR HOUSE WITHOUT ANY PENALTY OR OBLIGATION AT ANY TIME BEFORE (DATE AND TIME OF DAY). SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT.

(b) The equity purchaser shall accurately specify, within the equity purchase contract, the date and time of day on which the cancellation right ends.

(c) If no right to cancel the equity purchase contract exists under the Nebraska Foreclosure Protection Act as set forth in subdivision (1)(b) of section 76-2721, the equity purchase contract shall conspicuously state that no such cancellation right exists.

(2) The equity purchase contract shall be accompanied by duplicate completed forms, captioned Notice of Cancellation in at least twelve-point, boldface type if the equity purchase contract is printed or in capital letters if the equity purchase contract is typed, followed by a space in which the equity purchaser shall enter the date on which the homeowner executed the equity purchase contract. Such form shall:

- (a) Be attached to the equity purchase contract;
- (b) Be easily detachable; and

(c) Contain the following statement, in at least ten-point type if the equity purchase contract is printed or in capital letters if the contract is typed:

NOTICE OF CANCELLATION

..... (ENTER DATE EQUITY PURCHASE CONTRACT WAS SIGNED). YOU MAY CANCEL THIS CONTRACT FOR THE SALE OF YOUR HOUSE, WITHOUT ANY PENALTY OR OBLIGATION, AT ANY TIME BEFORE (ENTER DATE AND TIME OF DAY). TO CANCEL THIS TRANSACTION, PERSONALLY DELIVER A SIGNED AND DATED COPY OF THIS NOTICE OF CANCELLATION IN THE UNITED STATES MAIL, POSTAGE PREPAID, TO, (NAME OF PURCHASER) AT (STREET ADDRESS OF PURCHASER'S PLACE OF BUSINESS) NOT LATER THAN (ENTER DATE AND TIME OF DAY). I HEREBY CANCEL THIS TRANSACTION

..... (DATE)
..... (SELLER'S SIGNATURE).

(3) The equity purchaser shall provide the homeowner with a copy of the equity purchase contract and the attached notice of cancellation.

(4) The time during which the homeowner may cancel the equity purchase contract does not begin to run until the equity purchaser has complied with this section.

Source: Laws 2008, LB123, § 22.
Effective date July 18, 2008.

76-2723 Option to repurchase; conditions.

A transaction in which a homeowner purports to grant a residence in foreclosure to an equity purchaser by an instrument that appears to be an absolute conveyance and in which an option to repurchase is reserved to the homeowner or is given by the equity purchaser to the homeowner shall be permitted only where all of the following conditions have been met:

- (1) The reconveyance contract complies in all respects with section 76-2720;
- (2) The reconveyance contract provides the homeowner with a nonwaivable, thirty-day right to cure any default of the reconveyance contract and specifies that the homeowner may exercise this right to cure on at least three separate occasions during the term of such reconveyance contract;
- (3) The equity purchaser fully assumes or discharges the lien in foreclosure as well as any prior liens that will not be extinguished by the foreclosure, which

assumption or discharge shall be accomplished without a violation of the terms and conditions of the liens being assumed or discharged;

(4) The equity purchaser verifies and can demonstrate that the homeowner has or will have a reasonable ability to make the lease payments and to repurchase the residence in foreclosure within the term of the option to repurchase under the reconveyance contract. For purposes of this section, there is a rebuttable presumption that the homeowner has a reasonable ability to make lease payments and to repurchase the residence in foreclosure if the homeowner's payments for primary housing expenses and regular principal and interest payments on other personal debt do not exceed sixty percent of the homeowner's monthly gross income; and

(5) The price the homeowner must pay to exercise the option to repurchase the residence in foreclosure is not unconscionable. Without limitation on available claims under section 76-2726, a repurchase price exceeding twenty-five percent of the price at which the equity purchaser acquired the residence in foreclosure creates a rebuttable presumption that the reconveyance contract is unconscionable. The acquisition price paid by the equity purchaser may include any actual costs incurred by the equity purchaser in acquiring the residence in foreclosure, including repairs and capital improvements, and may include below market rent discounts. The equity purchaser shall provide the homeowner with documentation proving such costs and below market rent discounts prior to the homeowner's exercise of the option to purchase.

Source: Laws 2008, LB123, § 23.
Effective date July 18, 2008.

76-2724 Equity purchase contract; provisions prohibited.

A provision in an equity purchase contract between an equity purchaser and a homeowner is void as against public policy if it attempts or purports to:

- (1) Waive any of the rights specified in sections 76-2719 to 76-2727 or the right to a jury trial;
- (2) Consent to jurisdiction for litigation or choice of law in a state other than Nebraska;
- (3) Consent to venue in a county other than the county in which the residence in foreclosure is located; or
- (4) Impose any costs or fees greater than the actual costs and fees.

Source: Laws 2008, LB123, § 24.
Effective date July 18, 2008.

76-2725 Equity purchaser; duties; prohibited acts.

(1) The equity purchase contract provisions required by sections 76-2719 to 76-2724 shall be provided and completed in conformity with such sections by the equity purchaser.

(2) Until the time within which the homeowner may cancel the transaction has fully elapsed, the equity purchaser shall not do any of the following:

- (a) Accept from a homeowner an execution of, or induce a homeowner to execute, an instrument of conveyance of any interest in the residence in foreclosure;

(b) Record with the register of deeds any document, including, but not limited to, the equity purchase contract, or any lease, lien, or instrument of conveyance that has been signed by the homeowner;

(c) Transfer or encumber or purport to transfer or encumber an interest in the residence in foreclosure to a third party; or

(d) Pay the homeowner any consideration.

(3) Within ten days following receipt of a notice of cancellation given in accordance with sections 76-2721 and 76-2722, the equity purchaser shall return without condition the original equity purchase contract and any other documents signed by the homeowner.

(4) An equity purchaser shall not make any untrue or misleading statements of material fact regarding the value of the residence in foreclosure, the amount of proceeds the homeowner will receive after a foreclosure sale, any equity purchase contract term, the homeowner's rights or obligations incident to or arising out of the sale transaction, or the nature of any document that the equity purchaser induces the homeowner to sign or any other untrue or misleading statement concerning the sale of the residence in foreclosure to the equity purchaser.

Source: Laws 2008, LB123, § 25.
Effective date July 18, 2008.

76-2726 Equity purchaser or associate; unconscionable transaction or contract; review by court.

(1) An equity purchaser or associate may not facilitate or engage in any transaction that is unconscionable given the terms and circumstances of the transaction.

(2)(a) If a court, as a matter of law, finds an equity purchase contract or any clause of such contract to have been unconscionable at the time it was made, the court may refuse to enforce the equity purchase contract, enforce the remainder of the equity purchase contract without the unconscionable clause, or so limit the application of any unconscionable clause as to avoid an unconscionable result.

(b) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable, the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose, and effect to aid the court in making the determination.

(c) In order to support a finding of unconscionability, there must be evidence of some bad faith overreaching on the part of the equity purchaser or associate such as that which results from an unreasonable inequality of bargaining power or under other circumstances in which there is an absence of meaningful choice for one of the parties, together with contract terms that are, under standard industry practices, unreasonably favorable to the equity purchaser or associate.

Source: Laws 2008, LB123, § 26.
Effective date July 18, 2008.

76-2727 Equity purchase contract and related documents and instruments; English required; translation into other language.

Any equity purchase contract, rental agreement, lease, or option or right to repurchase and any notice, conveyance, lien, encumbrance, consent, or other document or instrument signed by a homeowner shall be written in English and shall be accompanied by a written translation from English into any other language principally spoken by the homeowner, certified by the person making the translation as a true and correct translation of the English version. The translated version shall be presumed to have equal status and credibility as the English version.

Source: Laws 2008, LB123, § 27.
Effective date July 18, 2008.

76-2728 Violation; penalty.

A person who violates any provision of the Nebraska Foreclosure Protection Act is guilty of a Class IV felony.

Source: Laws 2008, LB123, § 28.
Effective date July 18, 2008.

ARTICLE 28

NEBRASKA SECURITY INSTRUMENT SATISFACTION ACT

Section

- 76-2801. Act, how cited.
- 76-2802. Terms, defined.
- 76-2803. Secured creditor; record deed of reconveyance or release or satisfaction of security interest; failure to act; liability.
- 76-2804. Closing agent; certificate of satisfaction; execution and recordation authorized.
- 76-2805. Certificate of satisfaction; contents; statutory form.
- 76-2806. Closing agent; notification to secured creditor; contents; statutory form.
- 76-2807. Certificate of satisfaction; recording; effect; wrongful recording; remedy; liability; designation of authority; recording.

76-2801 Act, how cited.

Sections 76-2801 to 76-2807 shall be known and may be cited as the Nebraska Security Instrument Satisfaction Act.

Source: Laws 2008, LB386, § 1.
Effective date July 18, 2008.

76-2802 Terms, defined.

For purposes of the Nebraska Security Instrument Satisfaction Act:

(1) Closing agent means a licensed title insurance agent as defined in section 44-19,108 designated by a title insurer to execute and file certificates of satisfaction pursuant to a designation of authority or a member in good standing of the Nebraska State Bar Association;

(2) Designation of authority means the designation of a title insurance agent by a title insurer, executed and acknowledged as required by law, stating (a) the name of the title insurer, (b) the name of the title insurance agent, (c) that the title insurance agent has authority to execute and record certificates of satisfaction on behalf of the title insurer, and (d) that the title insurance agent has consented to and accepts the terms of the designation;

(3) Good faith means honesty in fact and the observance of reasonable commercial standards of fair dealing;

(4) Landowner means a person that owns the real property described in a security instrument;

(5)(a) Notification or notice means:

(i) Depositing the notice in the mail or any commercially reasonable delivery service, properly addressed with postage or cost of delivery provided for;

(ii) Transmitting the notice by facsimile transmission or electronic mail to an address identified by the recipient, but only if the recipient agreed to receive notification in this manner; or

(iii) Otherwise causing the notice to be received within the time it would have been received if notification had been given by mail or commercial delivery service.

(b) Notification given under subdivision (5)(a) of this section is effective:

(i) Three days following the date that the notice is deposited in the mail or with a commercially reasonable delivery service for delivery other than by overnight delivery;

(ii) One day following the date the notice is deposited with a commercially reasonable delivery service for overnight delivery;

(iii) On the date that the secured creditor or closing agent submits electronic verification of receipt of the notice, if transmitted under subdivision (5)(a)(ii) of this section; or

(iv) On the date the notice is received, if transmitted by any other method permitted by the Nebraska Security Instrument Satisfaction Act;

(6) Payoff amount means the sum necessary to satisfy a secured obligation;

(7) Payoff statement means a statement of the amount of unpaid balance of the secured obligation containing (a) the date on which it was prepared and the payoff amount as of that date, including the amount by type of each fee, charge, or other sum included within the payoff amount, (b) the information reasonably necessary to calculate the payoff amount as of the requested payoff date, including the per diem interest, (c) the payment cutoff time, if any, (d) the address or place where payment must be made, and (e) any limitation as to the authorized method of payment;

(8) Person means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation or government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity;

(9) Purchase means taking by sale, mortgage, lien, security interest, gift, or any other voluntary transaction creating an interest in real property;

(10) Purchaser means a person who takes by purchase;

(11) Record means to submit a document complying with applicable legal standards with required fees and taxes paid to the appropriate government office pursuant to Nebraska law;

(12) Residential real property means real property located in this state which is used primarily for personal, family, or household purposes and is improved by one to four dwelling units;

(13) Secured creditor means a person that holds or is the beneficiary of a security interest or that is authorized both to receive payments on behalf of a person that holds a security interest and to record a satisfaction of the security instrument upon receiving full payment or performance of the secured obligation. The term does not include a trustee under a security instrument;

(14) Secured obligation means an obligation the payment or performance of which is secured by a security interest;

(15) Security instrument means an agreement, whether denominated a mortgage, deed of trust, trust deed, or otherwise, that creates or provides for a security interest. Such an agreement is a security instrument even if it also creates or provides for a lien upon personal property;

(16) Security interest means an interest in residential real property created by a security instrument; and

(17) Title insurer means a person authorized and licensed to transact the business of insuring titles to interests in real property in this state.

Source: Laws 2008, LB386, § 2.

Effective date July 18, 2008.

76-2803 Secured creditor; record deed of reconveyance or release or satisfaction of security interest; failure to act; liability.

(1) A secured creditor shall, after the secured creditor receives full payment or performance of the secured obligation, record a deed of reconveyance or a release or satisfaction of a security interest in the real property records of each county in which the security instrument is recorded. If a security instrument secures a line of credit or future advances, the secured obligation is fully paid or performed if, in addition to full payment or performance, the secured creditor has received a notification requesting the creditor to terminate the line of credit or containing a statement sufficient to terminate the effectiveness of the provision for future advances as provided under section 76-238.01 or 76-1002.

(2) In addition to any other remedy provided by law, a secured creditor who fails to record a deed of reconveyance or a release or satisfaction of a security interest within sixty days after receiving full payment or performance of the secured obligation is liable to the landowner or purchaser for actual damages in the amount of any loss caused by the failure, including reasonable attorney's fees and costs. The provisions of this subsection do not apply if the secured creditor received full payment or performance before July 18, 2008.

(3) A secured creditor is not liable under this section if the secured creditor (a) established a reasonable procedure to achieve compliance with its obligations under this section, (b) complied with that procedure in good faith, and (c) was unable to comply with its obligations due to circumstances beyond its control.

Source: Laws 2008, LB386, § 3.

Effective date July 18, 2008.

76-2804 Closing agent; certificate of satisfaction; execution and recordation authorized.

A closing agent may, on behalf of a landowner or purchaser, execute a certificate of satisfaction that complies with the requirements of the Nebraska

Security Instrument Satisfaction Act and record the certificate of satisfaction in the real property records of each county in which the security instrument is recorded, if a deed of reconveyance or release or satisfaction of the security interest has not been executed and recorded within sixty days after the date (1) the secured creditor has received full payment or performance of the secured obligation in accordance with a payoff statement furnished by the secured creditor and, if applicable, notification pursuant to subsection (1) of section 76-2803 has been performed and (2) the closing agent has notified the secured creditor in accordance with section 76-2806.

Source: Laws 2008, LB386, § 4.
Effective date July 18, 2008.

76-2805 Certificate of satisfaction; contents; statutory form.

(1) A certificate of satisfaction shall:

(a) Identify the original parties to the security instrument, the landowner, the secured creditor, the record holder of the security instrument, if different from the secured creditor, the recording data for the security instrument, and a legal description of the real property identified in the security instrument;

(b) State that the person executing the certificate of satisfaction is the closing agent and, if the closing agent is a title insurance agent, state the book and page or instrument number of the designation of authority by which the title insurance agent is authorized to file the certificate of satisfaction;

(c) State that the secured creditor provided a payoff statement;

(d) State that there is satisfactory evidence that the secured creditor has received full payment or performance of the sums identified in the payoff statement;

(e) State that there are reasonable grounds to believe that the real property described in the security instrument is residential real property;

(f) State that the secured creditor has failed to execute and record a deed of reconveyance or release or satisfaction of the security interest and that the closing agent has not received a notification that the secured obligation remains unsatisfied;

(g) State that sixty days have elapsed since the secured creditor received full payment or performance of the sums identified in the payoff statement and notification in accordance with section 76-2806 has been given to the secured creditor; and

(h) Be executed and acknowledged as required for a conveyance of an interest in real property.

(2) The following statutory certificate of satisfaction, when reproduced and used in the identical words or in substantially the same or a more similar than dissimilar form, shall satisfy the requirements of subsection (1) of this section:

CERTIFICATE OF SATISFACTION

The undersigned closing agent with a designation of authority recorded in book, page(s), or as instrument of the miscellaneous records relating to real estate of County, Nebraska, from a title insurer authorized to transact the business of insuring titles to interests in real property in the State of

Nebraska, or a member in good standing of the Nebraska State Bar Association, hereby represents:

(a) The indebtedness secured by that certain security instrument, identified as a mortgage, trust deed, or deed of trust, executed by, as mortgagor/trustor, to, as trustee, and, as beneficiary or, as mortgagee, recorded on in book, page(s), or as Inst. No. of the mortgage records of County, Nebraska, and creating a security interest in the following described real estate: has received full payment or performance pursuant to a payoff statement provided to the undersigned on by, the holder of the underlying indebtedness, and being the secured creditor;

(b) The undersigned has satisfactory evidence that the secured creditor has received full payment or performance of the sums identified in such payoff statement;

(c) The undersigned has reasonable grounds to believe that the real property described in the security instrument is residential real property;

(d) The undersigned has not received notification that the secured obligation remains unsatisfied; and

(e) To the best knowledge of the undersigned, the secured creditor has not recorded any instrument satisfying or releasing the security interest within sixty days following (i) the secured creditor's receipt of full payment or performance and (ii) notification as required by law.

Dated:, by, Closing Agent.

Source: Laws 2008, LB386, § 5.
Effective date July 18, 2008.

76-2806 Closing agent; notification to secured creditor; contents; statutory form.

(1) At least sixty days in advance of recording a certificate of satisfaction, a closing agent shall notify the secured creditor that the closing agent has the authority to execute and record a certificate of satisfaction of the security interest. The notification shall include:

(a) The identity and mailing address of the closing agent;

(b) Identification of the security instrument for which the recording of a deed of reconveyance or a release or satisfaction is sought, including the names of the original parties to, and the recording data for, the security instrument;

(c) A statement that the closing agent has reasonable grounds to believe that:

(i) The real property described in the security instrument is residential real property;

(ii) The person to which the notification is being given is the secured creditor; and

(iii) The closing agent has made full payment or performance of the secured obligation in accordance with a payoff statement furnished by the secured creditor either prior to or contemporaneous with the giving of the notification;

(d) A statement that the closing agent has the authority, pursuant to a designation of authority if the closing agent is a title insurance agent, to execute

and record a certificate of satisfaction of the security interest unless within sixty days after notification:

- (i) The secured creditor records a deed of reconveyance or a release or satisfaction of a security interest;
- (ii) The closing agent receives from the secured creditor a notification stating that the secured obligation remains unsatisfied; or
- (iii) The closing agent receives from the secured creditor a notification stating that the secured creditor has assigned the security instrument and identifying the name and address of the assignee; and
- (e) A statement that the secured creditor will be subject to liability under section 76-252 or 76-1014.01 or the Nebraska Security Instrument Satisfaction Act.

(2) The following statutory notification, when reproduced and used in the identical words or in substantially the same or a more similar than dissimilar form, shall satisfy the requirements of subsection (1) of this section:

LENDER PAYOFF/SATISFACTION NOTIFICATION

This notification is given pursuant to the Nebraska Security Instrument Satisfaction Act by the below-named closing agent with regard to the payoff and release or satisfaction of the lien of a security instrument in which you are named the secured creditor.

(a) The closing agent is The mailing address of the closing agent is

(b) The security instrument that is the subject of this notification was entered into on by, as mortgagor/trustor(s); to, as trustee, and, as beneficiary or, as mortgagee, recorded on in book, page(s) or as Inst. No. of the mortgage records of County, Nebraska, against the following described real estate:

(c) The closing agent has reasonable grounds to believe that:

- (i) The real property described in the security instrument is residential real property;
- (ii) The person to whom this notification is being given is the secured creditor; and
- (iii) Full payment or performance of the secured obligation has been made in accordance with a payoff statement furnished by the secured creditor prior to or contemporaneous with the giving of this notification.

(d) The closing agent has authority, pursuant to a designation of authority if the closing agent is a title insurance agent, to execute and record a certificate of satisfaction of the security interest unless within sixty days after notification:

- (i) The secured creditor records a deed of reconveyance or a release or satisfaction of the security interest;
- (ii) The closing agent is notified by the secured creditor that the secured obligation remains unsatisfied; or
- (iii) The closing agent receives from the secured creditor a notification stating that the secured creditor has assigned the security interest and identifying the name and address of the assignee.

(e) This notification shall constitute a written request for a deed of reconveyance of a trust deed or release or satisfaction of a mortgage pursuant to sections 76-252 and 76-1014.01. These statutes provide for liability on the part of a mortgagee or beneficiary who fails to deliver such deed of reconveyance of a trust deed or release or satisfaction of a mortgage within sixty days following such written request. Liability shall be five thousand dollars or actual damages resulting from such failure, whichever is greater, together with court costs to include reasonable attorney's fees.

Dated:, by, Closing Agent.

Source: Laws 2008, LB386, § 6.
Effective date July 18, 2008.

76-2807 Certificate of satisfaction; recording; effect; wrongful recording; remedy; liability; designation of authority; recording.

(1) A certificate of satisfaction complying with the Nebraska Security Instrument Satisfaction Act is evidence of the facts contained in it, shall be accepted for recording in the county in which the security instrument is recorded, and, upon recording, operates as a satisfaction of the security interest described in the certificate of satisfaction. If a security instrument is recorded in more than one county and a certificate of satisfaction is recorded in one of them, a certified copy of the certificate of satisfaction may be recorded in another county with the same effect as the original.

(2)(a) Except as otherwise provided in subdivision (b) of this subsection, in addition to any other remedy provided by law, a closing agent wrongfully or erroneously recording a certificate of satisfaction under this section shall be liable to the secured creditor for actual damages caused by the recording of the certificate of satisfaction and reasonable attorney's fees and costs.

(b) A closing agent that records a certificate of satisfaction of a security instrument wrongfully or erroneously is not liable if the closing agent complied in good faith with the act.

(c) If a certificate of satisfaction is executed and recorded by a title insurance agent pursuant to a designation of authority, the title insurer making such designation shall be liable to a secured creditor for the wrongful or erroneous recording of the certificate of satisfaction by such designee, to the same extent as provided under subdivisions (a) and (b) of this subsection.

(d) A single designation of authority may be recorded in the office of the register of deeds in any county in which a certificate of satisfaction may be recorded. The register of deeds shall record such designation of authority upon payment of the required fees. When the designation of authority is recorded, the register of deeds shall index such instrument under the name of the title insurance agent designated in the instrument in the manner provided for miscellaneous instruments relating to real estate. A separate designation of authority shall not be necessary for each certificate of satisfaction. Such authority shall continue until a revocation of the designation of authority is recorded in the county where the designation of authority was recorded.

(3) The recording of a certificate of satisfaction does not itself extinguish the liability of any person liable for payment of the underlying obligation.

Source: Laws 2008, LB386, § 7.
Effective date July 18, 2008.

ARTICLE 29

MANUFACTURED HOMES AND MOBILE HOMES

Section

76-2901. Manufactured home or mobile home; deemed real property.

76-2901 Manufactured home or mobile home; deemed real property.

For purposes of a bankruptcy plan under 11 U.S.C. chapter 13, a manufactured home or a mobile home shall be deemed real property under subdivision (b)(2) of 11 U.S.C. 1322, as such section existed on July 18, 2008.

Source: Laws 2008, LB953, § 1.

Effective date July 18, 2008.

REVENUE AND TAXATION

CHAPTER 77
REVENUE AND TAXATION

Article.

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ARTICLE 1

DEFINITIONS

Section

- 77-101. Definitions, where found.
- 77-103. Real property, defined.
- 77-105. Tangible personal property, intangible personal property, defined.
- 77-115. County assessor, defined.
- 77-123. Omitted property, defined.
- 77-132. Parcel, defined.

77-101 Definitions, where found.

For purposes of Chapter 77 and any statutes dealing with taxation, unless the context otherwise requires, the definitions found in sections 77-102 to 77-132 shall be used.

Source: Report of 1943 Statute Commission, § 77-101; Laws 1943, c. 115, § 1, p. 401; R.S.1943, § 77-101; Laws 1987, LB 508, § 1; Laws 1992, LB 1063, § 43; Laws 1992, Second Spec. Sess., LB 1, § 42; Laws 1997, LB 270, § 2; Laws 1999, LB 194, § 5; Laws 2000, LB 968, § 22; Laws 2001, LB 170, § 2; Laws 2003, LB 292, § 3; Laws 2005, LB 263, § 2.

77-103 Real property, defined.

Real property shall mean:

- (1) All land;
- (2) All buildings, improvements, and fixtures, except trade fixtures;
- (3) Mobile homes, cabin trailers, and similar property, not registered for highway use, which are used, or designed to be used, for residential, office, commercial, agricultural, or other similar purposes, but not including mobile homes, cabin trailers, and similar property when unoccupied and held for sale by persons engaged in the business of selling such property when such property is at the location of the business;
- (4) Mines, minerals, quarries, mineral springs and wells, oil and gas wells, overriding royalty interests, and production payments with respect to oil or gas leases; and
- (5) All privileges pertaining to real property described in subdivisions (1) through (4) of this section.

Source: Laws 1903, c. 73, § 1, p. 389; R.S.1913, § 6289; Laws 1921, c. 133, art. I, § 2, p. 545; C.S.1922, § 5809; C.S.1929, § 77-102; R.S.1943, § 77-103; Laws 1951, c. 257, § 1, p. 881; Laws 1961, c. 372, § 1, p. 1147; Laws 1969, c. 638, § 1, p. 2551; Laws 1989,

Spec. Sess., LB 1, § 1; Laws 1991, LB 829, § 5; Laws 1992, LB 1063, § 44; Laws 1992, Second Spec. Sess., LB 1, § 43; Laws 1997, LB 270, § 3; Laws 2007, LB334, § 13.

77-105 Tangible personal property, intangible personal property, defined.

The term tangible personal property includes all personal property possessing a physical existence, excluding money. The term tangible personal property also includes trade fixtures, which means machinery and equipment, regardless of the degree of attachment to real property, used directly in commercial, manufacturing, or processing activities conducted on real property, regardless of whether the real property is owned or leased. The term intangible personal property includes all other personal property, including money.

Source: Laws 1921, c. 133, art. I, § 4, p. 545; C.S.1922, § 5811; C.S.1929, § 77-104; Laws 1933, c. 156, § 2, p. 592; C.S.Supp.,1941, § 77-104; R.S.1943, § 77-105; Laws 1991, LB 829, § 6; Laws 2007, LB334, § 14.

77-115 County assessor, defined.

County assessor includes an elected or appointed county assessor or a county clerk who is an ex officio county assessor. In counties in which the state has assumed the assessment function, the Property Tax Administrator or his or her designee performs the duties and has the authority of the county assessor.

Source: Laws 1987, LB 508, § 2; Laws 1990, LB 821, § 41; Laws 2000, LB 968, § 24; Laws 2003, LB 292, § 5; Laws 2008, LB965, § 2. Operative date April 15, 2008.

Cross References

County clerk acting as ex officio county assessor, see section 23-3203.

77-123 Omitted property, defined.

Omitted property means, for the current tax year, any taxable real property that was not assessed on March 19 and any taxable tangible personal property that was not assessed on May 1. Omitted property also means any taxable real or tangible personal property that was not assessed for any prior tax year. Omitted property does not include property exempt under subdivisions (1)(a) through (d) of section 77-202, listing errors of an item of property on the assessment roll of the county assessor, or clerical errors as defined in section 77-128.

Source: Laws 1997, LB 270, § 6; Laws 1998, LB 1104, § 5; Laws 1999, LB 194, § 6; Laws 1999, LB 271, § 3; Laws 2004, LB 973, § 5.

77-132 Parcel, defined.

Parcel means a contiguous tract of land determined by its boundaries, under the same ownership, and in the same tax district and section. Parcel also means an improvement on leased land. If all or several lots in the same block are owned by the same person and are contained in the same tax district, they may be included in one parcel.

Source: Laws 2005, LB 263, § 3.

ARTICLE 2

PROPERTY TAXABLE, EXEMPTIONS, LIENS

Section

- 77-201. Property taxable; valuation; classification.
 77-202. Property taxable; exemptions enumerated.
 77-202.01. Property taxable; tax exemptions; application; waiver of deadline; penalty; lien.
 77-202.02. Property taxable; exempt status; application; hearing; procedure.
 77-202.03. Property taxable; exempt status; period of exemption; change of status; late filing authorized; when; penalty; lien; new applications; reviewed; hearing; procedure; list.
 77-202.04. Property taxable; exempt status; appeal; failure to give notice; effect.
 77-202.05. Property taxable; exempt status; Tax Commissioner; forms; prescribe; contents.
 77-202.06. Repealed. Laws 2004, LB 973, § 72.
 77-202.07. Repealed. Laws 2004, LB 973, § 72.
 77-202.09. Cemetery organization; exemption; application; procedure; late filing.
 77-202.12. Public property; taxation status; county assessor; duties; appeal.
 77-202.13. Repealed. Laws 2008, LB 965, § 27.
 77-202.24. Disabled or blind veteran; mobile home exempt.

77-201 Property taxable; valuation; classification.

(1) Except as provided in subsections (2) through (4) of this section, all real property in this state, not expressly exempt therefrom, shall be subject to taxation and shall be valued at its actual value.

(2) Agricultural land and horticultural land as defined in section 77-1359 shall constitute a separate and distinct class of property for purposes of property taxation, shall be subject to taxation, unless expressly exempt from taxation, and shall be valued at seventy-five percent of its actual value.

(3) Agricultural land and horticultural land actively devoted to agricultural or horticultural purposes which has value for purposes other than agricultural or horticultural uses and which meets the qualifications for special valuation under section 77-1344 shall constitute a separate and distinct class of property for purposes of property taxation, shall be subject to taxation, and shall be valued for taxation at seventy-five percent of its special value as defined in section 77-1343 and at seventy-five percent of its actual value when the land is disqualified for special valuation under section 77-1347.

(4) Commencing January 1, 2006, historically significant real property which meets the qualifications for historic rehabilitation valuation under sections 77-1385 to 77-1394 shall be valued for taxation as provided in such sections.

(5) Tangible personal property, not including motor vehicles registered for operation on the highways of this state, shall constitute a separate and distinct class of property for purposes of property taxation, shall be subject to taxation, unless expressly exempt from taxation, and shall be valued at its net book value. Tangible personal property transferred as a gift or devise or as part of a transaction which is not a purchase shall be subject to taxation based upon the date the property was acquired by the previous owner and at the previous owner's Nebraska adjusted basis. Tangible personal property acquired as replacement property for converted property shall be subject to taxation based upon the date the converted property was acquired and at the Nebraska adjusted basis of the converted property unless insurance proceeds are payable by reason of the conversion. For purposes of this subsection, (a) converted

property means tangible personal property which is compulsorily or involuntarily converted as a result of its destruction in whole or in part, theft, seizure, requisition, or condemnation, or the threat or imminence thereof, and no gain or loss is recognized for federal or state income tax purposes by the holder of the property as a result of the conversion and (b) replacement property means tangible personal property acquired within two years after the close of the calendar year in which tangible personal property was converted and which is, except for date of construction or manufacture, substantially the same as the converted property.

Source: Laws 1903, c. 73, § 12, p. 390; R.S.1913, § 6300; Laws 1921, c. 133, art. II, § 1, p. 546; C.S.1922, § 5820; C.S.1929, § 77-201; Laws 1939, c. 102, § 1, p. 461; C.S.Supp.,1941, § 77-201; R.S. 1943, § 77-201; Laws 1953, c. 265, § 1, p. 877; Laws 1955, c. 289, § 2, p. 918; Laws 1957, c. 320, § 2, p. 1138; Laws 1959, c. 353, § 1, p. 1244; Laws 1979, LB 187, § 191; Laws 1985, LB 30, § 2; Laws 1985, LB 271, § 2; Laws 1986, LB 816, § 1; Laws 1989, LB 361, § 5; Laws 1991, LB 404, § 2; Laws 1991, LB 320, § 2; Laws 1992, LB 1063, § 52; Laws 1992, Second Spec. Sess., LB 1, § 50; Laws 1997, LB 269, § 34; Laws 1997, LB 270, § 11; Laws 1997, LB 271, § 38; Laws 2004, LB 973, § 6; Laws 2005, LB 66, § 11; Laws 2006, LB 808, § 24; Laws 2006, LB 968, § 2; Laws 2007, LB166, § 3.

77-202 Property taxable; exemptions enumerated.

(1) The following property shall be exempt from property taxes:

(a) Property of the state and its governmental subdivisions to the extent used or being developed for use by the state or governmental subdivision for a public purpose. For purposes of this subdivision, public purpose means use of the property (i) to provide public services with or without cost to the recipient, including the general operation of government, public education, public safety, transportation, public works, civil and criminal justice, public health and welfare, developments by a public housing authority, parks, culture, recreation, community development, and cemetery purposes, or (ii) to carry out the duties and responsibilities conferred by law with or without consideration. Public purpose does not include leasing of property to a private party unless the lease of the property is at fair market value for a public purpose. Leases of property by a public housing authority to low-income individuals as a place of residence are for the authority's public purpose;

(b) Unleased property of the state or its governmental subdivisions which is not being used or developed for use for a public purpose but upon which a payment in lieu of taxes is paid for public safety, rescue, and emergency services and road or street construction or maintenance services to all governmental units providing such services to the property. Except as provided in Article VIII, section 11, of the Constitution of Nebraska, the payment in lieu of taxes shall be based on the proportionate share of the cost of providing public safety, rescue, or emergency services and road or street construction or maintenance services unless a general policy is adopted by the governing body of the governmental subdivision providing such services which provides for a different method of determining the amount of the payment in lieu of taxes. The governing body may adopt a general policy by ordinance or resolution for

determining the amount of payment in lieu of taxes by majority vote after a hearing on the ordinance or resolution. Such ordinance or resolution shall nevertheless result in an equitable contribution for the cost of providing such services to the exempt property;

(c) Property owned by and used exclusively for agricultural and horticultural societies;

(d) Property owned by educational, religious, charitable, or cemetery organizations, or any organization for the exclusive benefit of any such educational, religious, charitable, or cemetery organization, and used exclusively for educational, religious, charitable, or cemetery purposes, when such property is not (i) owned or used for financial gain or profit to either the owner or user, (ii) used for the sale of alcoholic liquors for more than twenty hours per week, or (iii) owned or used by an organization which discriminates in membership or employment based on race, color, or national origin. For purposes of this subdivision, educational organization means (A) an institution operated exclusively for the purpose of offering regular courses with systematic instruction in academic, vocational, or technical subjects or assisting students through services relating to the origination, processing, or guarantying of federally reinsured student loans for higher education or (B) a museum or historical society operated exclusively for the benefit and education of the public. For purposes of this subdivision, charitable organization means an organization operated exclusively for the purpose of the mental, social, or physical benefit of the public or an indefinite number of persons; and

(e) Household goods and personal effects not owned or used for financial gain or profit to either the owner or user.

(2) The increased value of land by reason of shade and ornamental trees planted along the highway shall not be taken into account in the valuation of land.

(3) Tangible personal property which is not depreciable tangible personal property as defined in section 77-119 shall be exempt from property tax.

(4) Motor vehicles required to be registered for operation on the highways of this state shall be exempt from payment of property taxes.

(5) Business and agricultural inventory shall be exempt from the personal property tax. For purposes of this subsection, business inventory includes personal property owned for purposes of leasing or renting such property to others for financial gain only if the personal property is of a type which in the ordinary course of business is leased or rented thirty days or less and may be returned at the option of the lessee or renter at any time and the personal property is of a type which would be considered household goods or personal effects if owned by an individual. All other personal property owned for purposes of leasing or renting such property to others for financial gain shall not be considered business inventory.

(6) Any personal property exempt pursuant to subsection (2) of section 77-4105 or 77-5209.02 shall be exempt from the personal property tax.

(7) Livestock shall be exempt from the personal property tax.

(8) Any personal property exempt pursuant to the Nebraska Advantage Act shall be exempt from the personal property tax.

Source: Laws 1903, c. 73, § 13, p. 390; R.S.1913, § 6301; Laws 1921, c. 133, art. II, § 2, p. 547; C.S.1922, § 5821; C.S.1929, § 77-202;

R.S.1943, § 77-202; Laws 1955, c. 290, § 1, p. 921; Laws 1965, c. 468, § 1, p. 1514; Laws 1965, c. 469, § 1, p. 1516; Laws 1967, c. 494, § 1, p. 1685; Laws 1967, c. 495, § 1, p. 1686; Laws 1971, LB 945, § 2; Laws 1975, LB 530, § 3; Laws 1980, LB 882, § 1; Laws 1980, LB 913, § 1; Laws 1982, LB 383, § 5; Laws 1984, LB 891, § 1; Laws 1985, LB 268, § 1; Laws 1986, LB 732, § 1; Laws 1987, LB 775, § 13; Laws 1988, LB 855, § 3; Laws 1989, Spec. Sess., LB 7, § 2; Laws 1991, LB 829, § 7; Laws 1992, LB 1063, § 53; Laws 1992, Second Spec. Sess., LB 1, § 51; Laws 1994, LB 961, § 7; Laws 1997, LB 271, § 39; Laws 1999, LB 271, § 4; Laws 2002, LB 994, § 10; Laws 2005, LB 312, § 4; Laws 2008, LB1027, § 1.

Effective date July 18, 2008.

Cross References

Nebraska Advantage Act, see section 77-5701.

77-202.01 Property taxable; tax exemptions; application; waiver of deadline; penalty; lien.

(1) Any organization or society seeking a tax exemption provided in subdivisions (1)(c) and (d) of section 77-202 for any real or tangible personal property, except real property used for cemetery purposes, shall apply for exemption to the county assessor on or before December 31 of the year preceding the year for which the exemption is sought on forms prescribed by the Tax Commissioner. The county assessor shall examine the application and recommend either taxable or exempt for the real property or tangible personal property to the county board of equalization on or before February 1 following. Notice that a list of the applications from organizations seeking tax exemption, descriptions of the property, and recommendations of the county assessor are available in the county assessor's office shall be published in a newspaper of general circulation in the county at least ten days prior to consideration of any application by the county board of equalization.

(2) Any organization or society which fails to file an exemption application on or before December 31 may apply on or before June 30 to the county assessor. The organization or society shall also file in writing a request with the county board of equalization for a waiver so that the county assessor may consider the application for exemption. The county board of equalization shall grant the waiver upon a finding that good cause exists for the failure to make application on or before December 31. When the waiver is granted, the county assessor shall examine the application and recommend either taxable or exempt for the real property or tangible personal property to the county board of equalization and shall assess a penalty against the property of ten percent of the tax that would have been assessed had the waiver been denied or one hundred dollars, whichever is less, for each calendar month or fraction thereof for which the filing of the exemption application missed the December 31 deadline. The penalty shall be collected and distributed in the same manner as a tax on the property and interest shall be assessed at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, from the date the tax would have been delinquent until paid. The penalty shall also become a lien in the same manner as a tax pursuant to section 77-203.

Source: Laws 1963, c. 441, § 1, p. 1460; Laws 1969, c. 639, § 1, p. 2552; Laws 1980, LB 688, § 1; Laws 1984, LB 835, § 2; Laws 1986, LB

817, § 1; Laws 1993, LB 346, § 7; Laws 1993, LB 345, § 4; Laws 1995, LB 490, § 28; Laws 1996, LB 1122, § 1; Laws 1997, LB 270, § 12; Laws 1997, LB 271, § 40; Laws 1999, LB 194, § 10; Laws 1999, LB 271, § 5; Laws 2000, LB 968, § 26; Laws 2007, LB334, § 15.

77-202.02 Property taxable; exempt status; application; hearing; procedure.

The county board of equalization, between February 1 and June 1 after a hearing on ten days' notice to the applicant and the publication of notice as provided in section 77-202.01, and after considering the recommendation of the county assessor and any other information it may obtain from public testimony, shall grant or withhold tax exemption for the real property or tangible personal property on the basis of law and of regulations promulgated by the Tax Commissioner.

For applications accepted after approval of a waiver pursuant to section 77-202.01, the county board of equalization shall hear and certify its decision on or before August 15.

Source: Laws 1963, c. 441, § 2, p. 1460; Laws 1969, c. 640, § 1, p. 2553; Laws 1980, LB 688, § 2; Laws 1995, LB 490, § 29; Laws 1997, LB 270, § 13; Laws 1997, LB 271, § 41; Laws 2000, LB 968, § 27; Laws 2003, LB 292, § 9; Laws 2005, LB 263, § 4; Laws 2007, LB334, § 16.

77-202.03 Property taxable; exempt status; period of exemption; change of status; late filing authorized; when; penalty; lien; new applications; reviewed; hearing; procedure; list.

(1) A properly granted exemption of real or tangible personal property, except real property used for cemetery purposes, provided for in subdivisions (1)(c) and (d) of section 77-202 shall continue for a period of four years if the statement of reaffirmation of exemption required by subsection (2) of this section is filed when due. The four-year period shall begin with years evenly divisible by four.

(2) In each intervening year occurring between application years, the organization or society which filed the granted exemption application for the real or tangible personal property, except real property used for cemetery purposes, shall file a statement of reaffirmation of exemption with the county assessor on or before December 31 of the year preceding the year for which the exemption is sought, on forms prescribed by the Tax Commissioner, certifying that the ownership and use of the exempted property has not changed during the year. Any organization or society which misses the December 31 deadline for filing the statement of reaffirmation of exemption may file the statement of reaffirmation of exemption by June 30. Such filing shall maintain the tax-exempt status of the property without further action by the county and regardless of any previous action by the county board of equalization to deny the exemption due to late filing of the statement of reaffirmation of exemption. Upon any such late filing, the county assessor shall assess a penalty against the property of ten percent of the tax that would have been assessed had the statement of reaffirmation of exemption not been filed or one hundred dollars, whichever is less, for each calendar month or fraction thereof for which the filing of the statement of reaffirmation of exemption is late. The penalty shall be collected

and distributed in the same manner as a tax on the property and interest shall be assessed at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, from the date the tax would have been delinquent until paid. The penalty shall also become a lien in the same manner as a tax pursuant to section 77-203.

(3)(a) If any organization or society seeks a tax exemption for any real or tangible personal property acquired on or after January 1 of any year or converted to exempt use on or after January 1 of any year, the organization or society shall make application for exemption on or before August 1 of that year as provided in subsection (1) of section 77-202.01. The procedure for reviewing the application shall be as in sections 77-202.01 to 77-202.05, except that the exempt use shall be determined as of the date of application and the review by the county board of equalization shall be completed by August 15.

(b) If an organization as described in subdivision (1)(c) or (d) of section 77-202 purchases, between August 1 and the levy date, property that has been granted tax exemption and the property continues to be qualified for a property tax exemption, the purchaser shall on or before November 15 make application for exemption as provided in section 77-202.01. The procedure for reviewing the application shall be as in sections 77-202.01 to 77-202.05, and the review by the county board of equalization shall be completed by December 15.

(4) In any year, the county assessor or the county board of equalization may cause a review of any exemption to determine whether the exemption is proper. Such a review may be taken even if the ownership or use of the property has not changed from the date of the allowance of the exemption. If it is determined that a change in an exemption is warranted, the procedure for hearing set out in section 77-202.02 shall be followed, except that the published notice shall state that the list provided in the county assessor's office only includes those properties being reviewed. If an exemption is denied, the county board of equalization shall place the property on the tax rolls retroactive to January 1 of that year if on the date of the decision of the county board of equalization the property no longer qualifies for an exemption.

The county board of equalization shall give notice of the assessed value of the real property in the same manner as outlined in section 77-1507, and the procedures for filing a protest shall be the same as those in section 77-1502.

When personal property which was exempt becomes taxable because of lost exemption status, the owner or his or her agent has thirty days after the date of denial to file a personal property return with the county assessor. Upon the expiration of the thirty days for filing a personal property return pursuant to this subsection, the county assessor shall proceed to list and value the personal property and apply the penalty pursuant to section 77-1233.04.

(5) During the month of September of each year, the county board of equalization shall cause to be published in a paper of general circulation in the county a list of all real estate in the county exempt from taxation for that year pursuant to subdivisions (1)(c) and (d) of section 77-202. Such list shall be grouped into categories as provided by the Property Tax Administrator. A copy of the list and proof of publication shall be forwarded to the Property Tax Administrator.

Source: Laws 1963, c. 441, § 3, p. 1460; Laws 1965, c. 470, § 1, p. 1517; Laws 1969, c. 641, § 1, p. 2554; Laws 1973, LB 530, § 1; Laws 1973, LB 114, § 1; Laws 1976, LB 786, § 1; Laws 1979, LB 17,

§ 8; Laws 1980, LB 688, § 3; Laws 1981, LB 179, § 3; Laws 1983, LB 494, § 1; Laws 1986, LB 817, § 2; Laws 1989, LB 133, § 1; Laws 1990, LB 919, § 1; Laws 1993, LB 734, § 42; Laws 1995, LB 490, § 30; Laws 1996, LB 1122, § 2; Laws 1997, LB 270, § 14; Laws 1997, LB 271, § 42; Laws 1998, LB 1104, § 6; Laws 1999, LB 194, § 11; Laws 1999, LB 271, § 6; Laws 2000, LB 968, § 28; Laws 2004, LB 973, § 7; Laws 2007, LB166, § 4; Laws 2007, LB334, § 17.

77-202.04 Property taxable; exempt status; appeal; failure to give notice; effect.

(1) Notice of a county board of equalization's decision granting or denying an application for exemption from taxation for real or tangible personal property shall be mailed or delivered to the applicant and the county assessor by the county clerk within seven days after the date of the board's decision. Persons, corporations, or organizations may appeal denial of an application for exemption by a county board of equalization. Only the county assessor may appeal the grant of such an exemption by a county board of equalization. Appeals pursuant to this section shall be made to the Tax Equalization and Review Commission in accordance with section 77-5013 within thirty days after the decision of the county board of equalization. The Tax Commissioner may in his or her discretion intervene in any such appeal pursuant to this section.

(2) Any owner may petition the Tax Equalization and Review Commission in accordance with section 77-5013, on or before December 31 of each year, to determine the taxable status of real property for that year if a failure to give notice as prescribed by this section prevented timely filing of a protest or appeal provided for in sections 77-202 to 77-202.25.

Source: Laws 1963, c. 441, § 4, p. 1461; Laws 1969, c. 642, § 1, p. 2556; Laws 1995, LB 490, § 31; Laws 1997, LB 271, § 43; Laws 2000, LB 968, § 29; Laws 2004, LB 973, § 8; Laws 2005, LB 15, § 3; Laws 2007, LB334, § 18.

77-202.05 Property taxable; exempt status; Tax Commissioner; forms; prescribe; contents.

The Tax Commissioner shall prescribe forms for distribution to the county assessors on which persons, corporations, and organizations may apply for tax-exempt status for real or tangible personal property. The forms shall include the following information:

(1) Name of owner or owners of the property, and if a corporation, the names of the officers and directors, and place of incorporation;

(2) Legal description of real property and a general description as to class and use of all tangible personal property; and

(3) The precise statutory provision under which exempt status for such property is claimed.

Source: Laws 1963, c. 441, § 5, p. 1461; Laws 1969, c. 643, § 1, p. 2557; Laws 1995, LB 490, § 32; Laws 1997, LB 271, § 44; Laws 2000, LB 968, § 30; Laws 2007, LB334, § 19.

77-202.06 Repealed. Laws 2004, LB 973, § 72.

77-202.07 Repealed. Laws 2004, LB 973, § 72.**77-202.09 Cemetery organization; exemption; application; procedure; late filing.**

Any cemetery organization seeking a tax exemption for any real property used to maintain areas set apart for the interment of human dead shall apply for exemption to the county assessor on forms prescribed by the Tax Commissioner. An application for a tax exemption shall be made on or before December 31 of the year preceding the year for which the exemption is sought. The county assessor shall examine the application and recommend either taxable or exempt to the county board of equalization on or before February 1 following. If a cemetery organization seeks a tax exemption for any real or tangible personal property acquired for or converted to exempt use on or after January 1, the organization shall make application for exemption on or before August 1. The procedure for reviewing the application shall be the same as for other exemptions pursuant to subdivisions (1)(c) and (d) of section 77-202. Any cemetery organization which fails to file on or before December 31 for exemption may apply on or before June 30 pursuant to subsection (2) of section 77-202.01, and the penalty and procedures specified in section 77-202.01 shall apply.

Source: Laws 1997, LB 270, § 16; Laws 1999, LB 271, § 7; Laws 2007, LB334, § 20.

77-202.12 Public property; taxation status; county assessor; duties; appeal.

(1) On or before March 1, the county assessor shall send notice to the state or to any governmental subdivision if it has property not being used for a public purpose upon which a payment in lieu of taxes is not made. Such notice shall inform the state or governmental subdivision that the property will be subject to taxation for property tax purposes. The written notice shall contain the legal description of the property and be given by first-class mail addressed to the state's or governmental subdivision's last-known address. If the property is leased by the state or the governmental subdivision to another entity and the lessor does not intend to pay the taxes for the lessee as allowed under subsection (4) of section 77-202.11, the lessor shall immediately forward the notice to the lessee.

(2) The state, governmental subdivision, or lessee may protest the determination of the county assessor that the property is not used for a public purpose to the county board of equalization on or before April 1. The county board of equalization shall issue its decision on the protest on or before May 1.

(3) The decision of the county board of equalization may be appealed to the Tax Equalization and Review Commission on or before June 1. The Tax Commissioner in his or her discretion may intervene in an appeal pursuant to this section.

Source: Laws 1999, LB 271, § 9; Laws 2000, LB 968, § 32; Laws 2005, LB 263, § 5; Laws 2007, LB334, § 21.

77-202.13 Repealed. Laws 2008, LB 965, § 27.**77-202.24 Disabled or blind veteran; mobile home exempt.**

A mobile home shall be exempt from taxation if it is owned and occupied by a disabled or blind veteran of the United States Armed Forces whose disability or blindness is recognized by the United States Department of Veterans Affairs as service connected and who was discharged or otherwise separated with a characterization of honorable or general (under honorable conditions).

Source: Laws 1971, LB 990, § 2; Laws 1979, LB 273, § 2; Laws 1991, LB 2, § 16; Laws 1992, LB 719A, § 162; Laws 1997, LB 271, § 46; Laws 2005, LB 54, § 16.

ARTICLE 3

DEPARTMENT OF REVENUE

Section

- 77-361. Department of Revenue; functions and goals.
- 77-366. Tax Commissioner; officers and employees; deputies; bond or insurance; powers.
- 77-370. Department of Revenue; uniform tax books, records, and forms; approval.
- 77-374. Department of Revenue; efficiency recommendations; report; to whom.
- 77-375. Tax Commissioner; administer oaths; compel attendance of witnesses; production of records; rules of procedure for discovery.
- 77-377. Proceedings by Attorney General or county attorney; enforcement of revenue laws.
- 77-3,112. Low-level radioactive waste facility or employment; employment of person removed under immigration and customs enforcement or convicted for certain violations; tax credit or exemption; prohibited.

77-361 Department of Revenue; functions and goals.

The functions and goals of the Department of Revenue shall be to: (1) Execute faithfully the revenue and property tax laws of the State of Nebraska; (2) provide for efficient, updated, and economical methods and systems of revenue accounting, reporting, enforcement, and related activities; and (3) continually seek to improve its system of administration to provide greater efficiency and convenience to this state's taxpayers.

Source: Laws 1980, LB 834, § 2; Laws 2007, LB334, § 23.

77-366 Tax Commissioner; officers and employees; deputies; bond or insurance; powers.

(1) The Tax Commissioner shall appoint or employ deputies, investigators, inspectors, agents, security personnel, and other persons as he or she deems necessary to administer and effectively enforce all provisions of the revenue and property tax laws of this state. The appointed personnel shall hold office at the pleasure of the Tax Commissioner. Any appointed or employed personnel shall perform the duties assigned by the Tax Commissioner.

(2) All personnel appointed or employed by the Tax Commissioner shall be bonded or insured as required by section 11-201. As specified by the Tax Commissioner, certain personnel shall be vested with the authority and power of a law enforcement officer to carry out the laws of this state administered by the Tax Commissioner or the Department of Revenue and to enforce sections 28-1101 to 28-1117 relating to possession of a gambling device pursuant to the limitations in section 9-1,101. Such personnel shall be empowered to arrest with or without a warrant, file and serve any lien, seize property, serve and return a summons, warrant, or subpoena issued by the Tax Commissioner, collect taxes, and bring an offender before any court with jurisdiction in this

state, except that such personnel shall not be authorized to carry weapons or enforce any laws other than laws administered by the Tax Commissioner or the Department of Revenue and sections 28-1101 to 28-1117 relating to possession of a gambling device pursuant to the limitations in section 9-1,101.

(3) Subsection (2) of this section shall not be construed to restrict any other law enforcement officer of this state from enforcing any state law, revenue or otherwise.

Source: Laws 1980, LB 834, § 7; Laws 1990, LB 821, § 42; Laws 1993, LB 345, § 5; Laws 1995, LB 490, § 38; Laws 1999, LB 36, § 6; Laws 2004, LB 884, § 36; Laws 2007, LB334, § 24; Laws 2007, LB638, § 19.

77-370 Department of Revenue; uniform tax books, records, and forms; approval.

The form of all schedules, books of instruction, records, and all other forms which may be necessary or expedient for the proper administration of the revenue and property tax laws of the state shall be approved by the Department of Revenue. All such schedules, forms, and documents shall be uniform throughout the several counties insofar as the same is possible and practicable.

Source: Laws 1921, c. 133, art. III, § 3, p. 548; C.S.1922, § 5829; C.S.1929, § 77-303; R.S.1943, § 77-304; Laws 1959, c. 355, § 2, p. 1251; Laws 1969, c. 647, § 1, p. 2565; R.S.1943, (1976), § 77-304; Laws 1980, LB 834, § 11; Laws 1997, LB 270, § 18; Laws 1999, LB 36, § 8; Laws 2007, LB334, § 25.

77-374 Department of Revenue; efficiency recommendations; report; to whom.

Where the Department of Revenue shall find that the administration of the revenue and property tax laws of the state might be more efficiently and economically conducted, it shall cause to be prepared recommendations to effect the desired objective. Such recommendations shall be given to the Governor and the chairperson of the appropriate legislative committee when the Legislature is next in regular session following the development of the recommendations. Should the Legislature be in regular session at the time such recommendations are compiled, the recommendations shall be communicated to the Governor and the appropriate committee of the Legislature.

Source: Laws 1965, c. 459, § 13, p. 1459; R.S.1943, (1976), § 77-332; Laws 1980, LB 834, § 15; Laws 2007, LB334, § 26.

77-375 Tax Commissioner; administer oaths; compel attendance of witnesses; production of records; rules of procedure for discovery.

(1) The Tax Commissioner or his or her duly authorized representative may administer oaths and compel the attendance of witnesses and require the production of records as may be necessary for the performance of his or her responsibilities under applicable state law.

(2) Any person shall comply with a written demand of the Tax Commissioner requiring the production of records notwithstanding the confidentiality provisions of section 8-1401. The records and the information contained thereon shall be protected pursuant to the confidentiality provisions applicable to the

Tax Commissioner. Any person disclosing information to the Tax Commissioner pursuant to a demand for production of records under this subsection is immune from liability, civil, criminal, or otherwise, that might result from disclosing such information. The Tax Commissioner shall pay the costs of providing such information pursuant to section 8-1402.

(3) The Tax Commissioner may adopt and promulgate rules of procedure for discovery, not in conflict with the laws governing discovery in civil cases, as may be necessary for the performance of his or her responsibilities under applicable state law.

(4) The Tax Commissioner shall have access to the information required to be reported under the New Hire Reporting Act for the purpose of administering taxes he or she has a duty to collect.

Source: Laws 1965, c. 459, § 9, p. 1457; R.S.1943, (1976), § 77-328; Laws 1980, LB 834, § 16; Laws 1993, LB 345, § 6; Laws 1995, LB 490, § 42; Laws 1998, LB 1104, § 8; Laws 1999, LB 36, § 9; Laws 2007, LB223, § 1.

Cross References

New Hire Reporting Act, see section 48-2301.

77-377 Proceedings by Attorney General or county attorney; enforcement of revenue laws.

The Department of Revenue may request the Attorney General or any county attorney to institute proceedings, actions, and prosecutions as may be required to enforce the laws relating to penalties, liabilities, assessments, collection, and payment of revenue and punishment of public officers, persons, or officers or agents of corporations for failure to comply with or for neglect to comply with the provisions of any revenue or property tax law administered by or subject to the administrative jurisdiction of the department.

Source: Laws 1965, c. 459, § 8, p. 1457; R.S.1943, (1976), § 77-327; Laws 1980, LB 834, § 18; Laws 1993, LB 345, § 7; Laws 2007, LB334, § 27.

77-3,112 Low-level radioactive waste facility or employment; employment of person removed under immigration and customs enforcement or convicted for certain violations; tax credit or exemption; prohibited.

(1) Notwithstanding any provision of law, the Tax Commissioner shall not approve or grant to any person or taxpayer any tax credit or exemption for the construction of a facility or the employment of people for the disposal in Nebraska of low-level radioactive waste for which a license is required pursuant to the Low-Level Radioactive Waste Disposal Act.

(2) Notwithstanding any provision of law, the Tax Commissioner shall not approve or grant to any person any tax credit, exemption, or refund for the employment of any person who has been removed from the United States pursuant to proceedings initiated by the United States Immigration and Customs Enforcement, or other competent authority, or who has been convicted in a criminal court proceeding for offenses related to illegal immigration. Any benefits that were received prior to the removal or conviction will be recap-

tured to the extent the benefits were received based on the employment of such persons.

Source: Laws 1987, LB 523, § 46; Laws 2007, LB223, § 2.

Cross References

Low-Level Radioactive Waste Disposal Act, see section 81-1578.

ARTICLE 4

TRAINING AND CERTIFICATION OF COUNTY ASSESSORS

Section

- 77-414. Educational courses and standards; Tax Commissioner; duties.
- 77-415. Repealed. Laws 2007, LB 334, § 108.
- 77-417. Repealed. Laws 2007, LB 334, § 108.
- 77-421. Certification as county assessor; applicants; forms; examination; fee.
- 77-422. Certification as county assessor; examination; successful completion; certificate; disciplinary actions; appeal; invalidated certificate; effect.

77-414 Educational courses and standards; Tax Commissioner; duties.

The Property Tax Administrator shall:

- (1) Establish, implement, and maintain a required system of educational courses for the certification and recertification of all holders of county assessor certificates; and
- (2) Establish the required educational standards and criteria for certification and recertification of all holders of county assessor certificates.

In order to promote compliance with the requirements of this section, the Tax Commissioner shall adopt and promulgate, and from time to time amend or revise, rules and regulations containing the necessary educational standards and criteria for certification and recertification.

Source: Laws 1999, LB 194, § 14; Laws 2003, LB 443, § 1; Laws 2007, LB334, § 28.

77-415 Repealed. Laws 2007, LB 334, § 108.

77-417 Repealed. Laws 2007, LB 334, § 108.

77-421 Certification as county assessor; applicants; forms; examination; fee.

The Property Tax Administrator shall, in February, May, August, and November of each year, hold an examination of applicants for certification as county assessor. An applicant for the examination shall, not less than ten days before an examination, present to the Property Tax Administrator a written application on forms provided by the Property Tax Administrator. Such application shall not be considered by the Property Tax Administrator unless accompanied by a payment of a fee to the order of the Tax Commissioner. The fees shall be credited to the Department of Revenue Property Assessment Division Cash Fund. The amount of such fee shall be determined annually by the Tax Commissioner and shall be sufficient to cover the costs of the administration of the examination. Such examination shall be written and shall be of such character as fairly to test and determine the qualifications, fitness, and ability of

the person tested actually to perform the duties of county assessor. The Property Tax Administrator shall prepare such examination.

Source: Laws 1969, c. 623, § 1, p. 2520; Laws 1983, LB 245, § 1; Laws 1986, LB 1105, § 1; Laws 1995, LB 490, § 52; Laws 1997, LB 270, § 22; Laws 1999, LB 36, § 12; Laws 2000, LB 968, § 34; Laws 2007, LB334, § 29.

77-422 Certification as county assessor; examination; successful completion; certificate; disciplinary actions; appeal; invalidated certificate; effect.

(1) Upon the successful completion of the examination by the applicant, a county assessor certificate shall be issued to him or her.

(2) The Tax Commissioner shall establish a system for revocation or suspension of a certificate, including a certificate issued by the Property Tax Administrator, for failure to maintain the educational standards and criteria and shall have the power to revoke the certificate if the certificate holder has not successfully met the educational requirements in section 77-414. A copy of the Tax Commissioner’s written order revoking or suspending a certificate shall be mailed to the person within seven days after the date of the order.

(3) Any person whose certificate, including a certificate issued by the Property Tax Administrator, has been revoked or suspended may appeal the written order of the Tax Commissioner, within thirty days after the date of the order, to the Tax Equalization and Review Commission in accordance with section 77-5013.

(4) A person whose certificate has been invalidated by the commission or the Tax Commissioner shall not be eligible to hold a certificate for five years after the date of invalidation.

Source: Laws 1969, c. 623, § 2, p. 2521; Laws 2003, LB 443, § 5; Laws 2004, LB 973, § 9; Laws 2006, LB 808, § 25; Laws 2007, LB334, § 30.

ARTICLE 6

ASSESSMENT AND EQUALIZATION OF RAILROAD PROPERTY

(a) RAILROAD OPERATING PROPERTY

Section

- 77-603. Railroad property; annual statement; contents.
- 77-603.01. Railroad operating property; sale; report by purchaser; contents; penalty; waiver.
- 77-605. Railroad operating property; failure of railroad to furnish statement or information; penalty; waiver.
- 77-607. Railroad property; Tax Commissioner; hearing; power to compel attendance of railroad’s officers or agents.
- 77-612. Railroad property; notice of valuation; appeal.

(b) CAR LINE COMPANIES

- 77-683. Failure to furnish statement; penalty; waiver; Tax Commissioner; harmonize statements.
- 77-684. Tax rate; determination; collection; appeal; distribution.
- 77-685. Distress warrant; receipt issued.
- 77-687. Delinquency in payment of taxes; interest; collection by Tax Commissioner.
- 77-689. Taxes; delinquent; lien; collection.
- 77-690. Taxation; levy; money and credits; surrender to Tax Commissioner.
- 77-691. Money; disposition.

(a) RAILROAD OPERATING PROPERTY

77-603 Railroad property; annual statement; contents.

On or before April 15 each year, the person, company, or corporation owning, operating, or controlling any railroad or railroad service in this state shall, by a duly authorized corporate representative or official, return to the Property Tax Administrator a statement of the property of such company on January 1 preceding. The statement shall be made on forms prescribed by the Tax Commissioner. All information reported by the railroad company, not available from any other public source, and any memorandum thereof shall be confidential and available to taxing officials only. For good cause shown, the Property Tax Administrator may allow an extension of time in which to file such statement. Such extension shall not exceed fifteen days after April 15. Such statement shall include:

(1) A list of the right-of-way, track, and roadbed, giving the entire length of the main track and sidetrack in this and other states, and showing as to this state the portion in each governmental subdivision;

(2) A schedule showing: (a) The amount of capital stock authorized and the number of shares into which such capital stock is divided; (b) the amount of capital stock paid up; (c) the market value of the stock or, if of no market value, then the true value of the shares of stock; (d) the total amount of all secured and unsecured indebtedness except for current expenses of operating the road; and (e) the taxable valuation of all its operating property in this state that is locally assessed;

(3) A correct return of the value of all materials and supplies used for operating and carrying on the business of such railroad;

(4) The total gross earnings and net earnings of such corporation during the year for which the statement is made, and the total amount expended in the operation and maintenance of the property and the improvements to such property, distinguishing that expended in improvement or betterment from that expended in maintenance and operation, also the dividend last declared upon its shares and the amount thereof, and the date, number, and amount of all dividends declared upon its stock during the year preceding the date of such report; and

(5) Such other necessary information as the Property Tax Administrator may require, all of which shall be taken into consideration in ascertaining and fixing the value of such railroad and the franchise thereof.

Source: Laws 1903, c. 73, § 87, p. 414; R.S.1913, § 6377; Laws 1921, c. 133, art. VI, § 3, p. 555; C.S.1922, § 5841; C.S.1929, § 77-503; R.S.1943, § 77-603; Laws 1979, LB 105, § 3; Laws 1979, LB 103, § 2; Laws 1981, LB 179, § 4; Laws 1985, LB 268, § 5; Laws 1992, LB 719A, § 163; Laws 1995, LB 490, § 62; Laws 1997, LB 270, § 25; Laws 2004, LB 973, § 10; Laws 2007, LB334, § 31.

77-603.01 Railroad operating property; sale; report by purchaser; contents; penalty; waiver.

The sale of railroad operating property as defined in section 77-602 shall be reported by the purchaser to the Property Tax Administrator within thirty days after the date of sale. The purchaser shall identify the seller, the date of the sale,

any change in the name of the railroad, the main track and sidetrack mileage located in each political subdivision, and the purchase price. If additional information regarding the sale is deemed necessary, the Property Tax Administrator shall make a written request for such information to the purchaser or seller. This requirement shall apply only to a purchaser subject to section 77-603. For each day's failure to furnish the information required to be reported by this section, the Tax Commissioner shall assess a penalty in the amount of one hundred dollars, except that the penalty shall not exceed ten thousand dollars. Such penalty shall be collected by the Tax Commissioner and credited to the Department of Revenue Property Assessment Division Cash Fund. The Tax Commissioner may waive all or part of the penalty provided in this section.

Source: Laws 1997, LB 270, § 26; Laws 1999, LB 36, § 13; Laws 2007, LB334, § 32.

77-605 Railroad operating property; failure of railroad to furnish statement or information; penalty; waiver.

For each day's failure to furnish the statement required by section 77-603 or for each day's failure to furnish the information as required on those statements, the Tax Commissioner shall assess a penalty in the amount of one hundred dollars, except that the penalty shall not exceed ten thousand dollars. Such penalty shall be collected by the Tax Commissioner and credited to the Department of Revenue Property Assessment Division Cash Fund. The Tax Commissioner, in his or her discretion, may waive all or part of the penalty provided in this section.

Source: Laws 1903, c. 73, § 88, p. 416; R.S.1913, § 6379; Laws 1921, c. 133, art. VI, § 5, p. 557; C.S.1922, § 5843; C.S.1929, § 77-505; R.S.1943, § 77-605; Laws 1977, LB 39, § 212; Laws 1979, LB 105, § 4; Laws 1979, LB 187, § 195; Laws 1980, LB 599, § 11; Laws 1985, LB 268, § 7; Laws 1986, LB 817, § 4; Laws 1995, LB 490, § 64; Laws 1997, LB 270, § 27; Laws 1999, LB 36, § 14; Laws 2007, LB334, § 33.

77-607 Railroad property; Tax Commissioner; hearing; power to compel attendance of railroad's officers or agents.

The Tax Commissioner shall have power to require any officer, agent, or servant of any railroad or railway company having any portion of its property in this state to attend a hearing and to answer under oath questions regarding the property. The Tax Commissioner shall have power to issue whatever notice or process may be necessary to compel the attendance of any such person as a witness.

Source: Laws 1903, c. 73, § 91, p. 417; R.S.1913, § 6381; Laws 1921, c. 133, art. VI, § 7, p. 558; C.S.1922, § 5845; C.S.1929, § 77-507; R.S.1943, § 77-607; Laws 1977, LB 39, § 213; Laws 1985, LB 268, § 9; Laws 1995, LB 490, § 66; Laws 1997, LB 270, § 29; Laws 2007, LB334, § 34.

77-612 Railroad property; notice of valuation; appeal.

On or before July 1, the Property Tax Administrator shall mail a draft appraisal to each railroad company required to file pursuant to section 77-603.

The Property Tax Administrator shall, on or before July 15 of each year, notify by certified mail each railroad company of the total allocated value of its operating property. If a railroad company feels aggrieved, such railroad company may, on or before August 1, file with the Tax Commissioner an administrative appeal in writing stating that it claims the valuation is unjust or inequitable, the amount which it is claimed the valuation should be, and the excess therein and asking for an adjustment of the valuation by the Tax Commissioner. The Tax Commissioner shall act upon the appeal and shall issue a written order mailed to the company within seven days after the date of the order. The order may be appealed within thirty days after the date of the order to the Tax Equalization and Review Commission in accordance with section 77-5013.

Source: Laws 1927, c. 174, § 1, p. 510; C.S.1929, § 77-509; R.S.1943, § 77-612; Laws 1985, LB 268, § 13; Laws 1988, LB 352, § 153; Laws 1995, LB 490, § 70; Laws 1997, LB 270, § 30; Laws 2004, LB 973, § 11; Laws 2007, LB334, § 35.

(b) CAR LINE COMPANIES

77-683 Failure to furnish statement; penalty; waiver; Tax Commissioner; harmonize statements.

(1) For each day's failure to furnish the statement required by section 77-680 or 77-681 or for each day's failure to furnish the information as required on the statement, the company may be assessed a penalty in the amount of one hundred dollars, except that the penalty shall not exceed ten thousand dollars. Such penalty shall be collected by the Tax Commissioner and credited to the Department of Revenue Property Assessment Division Cash Fund. The Tax Commissioner may waive all or part of the penalty provided in this section.

(2) In determining the number of such cars, the Property Tax Administrator, insofar as may be practicable, shall harmonize the statements of the railroad companies and car line companies. Such assessment shall be included in the records of the Property Tax Administrator.

Source: Laws 1992, LB 1063, § 68; Laws 1992, LB 719A, § 209; Laws 1995, LB 490, § 78; Laws 1997, LB 270, § 34; Laws 1999, LB 36, § 15; Laws 2007, LB334, § 36.

77-684 Tax rate; determination; collection; appeal; distribution.

The Property Tax Administrator shall, on or before January 15 each year, establish a tax rate for purposes of taxation against the taxable value as provided in sections 77-682 and 77-683 at a rate which shall be equal to the total property taxes levied in the state divided by the total taxable value of all taxable property in the state as certified pursuant to section 77-1613.01. The date when such tax rate is determined shall be deemed to be the levy date for the property. The Property Tax Administrator shall send to each car line company a statement showing the taxable value, the tax rate, and the amount of the tax and a statement that such tax is due and payable to the Property Tax Administrator on January 31 next following the levy thereof. If a car line company feels aggrieved, such company may, on or before February 15, file an appeal with the Tax Commissioner. The Tax Commissioner shall act upon the appeal and shall issue a written order mailed to the company within seven days after the date of the order. The order may be appealed within thirty days after

the date of the order to the Tax Equalization and Review Commission in accordance with section 77-5013. The Property Tax Administrator shall remit the tax collected, less a three-percent collection fee, to the State Treasurer for distribution among the taxing subdivisions in proportion to all railroad taxes levied by taxing subdivisions. The collection fee shall be remitted to the State Treasurer for credit to the Department of Revenue Property Assessment Division Cash Fund.

Source: Laws 1992, LB 1063, § 69; Laws 1992, LB 719A, § 210; Laws 1993, LB 345, § 11; Laws 1995, LB 490, § 79; Laws 1997, LB 270, § 35; Laws 1999, LB 36, § 16; Laws 2000, LB 968, § 37; Laws 2004, LB 973, § 12; Laws 2007, LB334, § 37.

77-685 Distress warrant; receipt issued.

The Tax Commissioner may issue a distress warrant to compel payment of the tax required by section 77-684 which may be served by any sheriff, any member of the Nebraska State Patrol, or any person specially deputized by the Tax Commissioner to serve such warrant. At the time the tax is paid, the Tax Commissioner shall issue a receipt in duplicate, one of which shall be given to the taxpayer and one filed with the State Treasurer at the time the tax collected is remitted by the Tax Commissioner to the state treasury.

Source: Laws 1992, LB 1063, § 70; Laws 1992, Second Spec. Sess., LB 1, § 63; Laws 1995, LB 490, § 80; Laws 2007, LB334, § 38.

77-687 Delinquency in payment of taxes; interest; collection by Tax Commissioner.

One-half of the taxes levied as provided in section 77-684 shall become delinquent March 1, and the second half on July 1, next following the date the tax has become due and payable. All delinquent taxes shall bear interest at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, from the date they become delinquent, and the interest shall be collected in the same manner as the tax on which the interest accrues. If such taxes and interest due thereon have not been paid on July 1 following the levy thereof, the Tax Commissioner shall collect the tax and interest by distress and sale of any property belonging to such delinquent car line company in the same manner as is required of county treasurers and county sheriffs in like cases.

Source: Laws 1992, LB 1063, § 72; Laws 1992, LB 719A, § 212; Laws 1995, LB 490, § 82; Laws 1997, LB 270, § 36; Laws 2007, LB334, § 39.

77-689 Taxes; delinquent; lien; collection.

If any taxes and interest and penalties due on such taxes have not been paid on July 1 following the levy thereof, the total amount shall be a lien in favor of the State of Nebraska upon all money and credits belonging to the car line companies until the liability therefor is satisfied or otherwise released or discharged. The Tax Commissioner or his or her designated agent may collect such total amount by issuing a distress warrant and making levy upon all money and credits belonging to such car line companies. Such lien shall be

filed and enforced pursuant to the Uniform State Tax Lien Registration and Enforcement Act.

Source: Laws 1992, LB 1063, § 74; Laws 1992, LB 719A, § 214; Laws 1995, LB 490, § 83; Laws 2007, LB334, § 40.

Cross References

Uniform State Tax Lien Registration and Enforcement Act, see section 77-3901.

77-690 Taxation; levy; money and credits; surrender to Tax Commissioner.

Any car line company in possession of any money and credits upon which levy has been made shall, upon demand of the Tax Commissioner or his or her designated agent, surrender the same to the Tax Commissioner or his or her designated agent. If any such car line company fails or refuses to surrender the money and credits in accordance with the requirements of this section, such car line company shall be liable to the State of Nebraska in a sum equal to the value of the money and credits not so surrendered but not exceeding the amount of the taxes, interest, and penalties for the collection of which such levy has been made.

Source: Laws 1992, LB 1063, § 75; Laws 1992, LB 719A, § 215; Laws 1995, LB 490, § 84; Laws 2007, LB334, § 41.

77-691 Money; disposition.

The money realized from any levy made pursuant to section 77-689 shall be first applied by the Tax Commissioner toward payment of any costs incurred by virtue of such levy and next to the payment of such taxes, interest, and penalties. Any balance remaining shall then be paid over to the car line company entitled thereto.

Source: Laws 1992, LB 1063, § 76; Laws 1992, LB 719A, § 216; Laws 1995, LB 490, § 85; Laws 2007, LB334, § 42.

ARTICLE 7

DEPARTMENT OF PROPERTY ASSESSMENT AND TAXATION

Section

- 77-701. Property assessment division; established; Property Tax Administrator; powers and duties; pending litigation; how treated.
- 77-702. Property Tax Administrator; qualifications; duties.
- 77-703. Repealed. Laws 2007, LB 334, § 108.
- 77-704. Repealed. Laws 2007, LB 334, § 108.
- 77-705. Uniform tax books, records, and forms; approval.
- 77-706. Property tax administration; implementation of agreements and working relationships; state and federal agencies.
- 77-708. Repealed. Laws 2007, LB 334, § 108.
- 77-709. Property assessment division; annual report; powers and duties.

77-701 Property assessment division; established; Property Tax Administrator; powers and duties; pending litigation; how treated.

(1) A division of state government to be known as the property assessment division of the Department of Revenue is established. The Property Tax Administrator shall be the chief administrative officer of the division but shall be under the general supervision of the Tax Commissioner.

(2) The goals and functions of the division shall be to: (a) Execute faithfully the property tax laws of the State of Nebraska; (b) provide for efficient, updated

methods and systems of property tax reporting, enforcement, and related activities; and (c) continually seek to improve its system of administration.

(3) All employees, budget requirements, appropriations, encumbrances, and assets and liabilities of the Department of Property Assessment and Taxation for the administration of property valuation and equalization shall be transferred and delivered to the division. The transferred employees shall not lose any accrued benefits or status due to the transfer and shall receive the same benefits as other state employees, including participation in the State Employees Retirement Act.

(4) In any litigation pending on July 1, 2007, at 12:01 a.m., in any court in this state, any contested case pending on such date and time under the Administrative Procedure Act, or any appeal pending on such date and time before the Tax Equalization and Review Commission, in which the Property Tax Administrator is a party, the Tax Commissioner shall be substituted for the Property Tax Administrator as the party in such litigation, contested case, or appeal.

Source: Laws 1999, LB 36, § 21; Laws 2007, LB334, § 43.

Cross References

Administrative Procedure Act, see section 84-920.

State Employees Retirement Act, see section 84-1331.

77-702 Property Tax Administrator; qualifications; duties.

(1) Commencing with the expiration of the term of the Property Tax Administrator holding office on July 1, 1999, the Governor shall appoint a Property Tax Administrator with the approval of a majority of the members of the Legislature. The Property Tax Administrator shall have experience and training in the fields of taxation and property appraisal and shall meet all the qualifications required for members of the Tax Equalization and Review Commission under subsections (1) and (2) and subdivision (6)(a) of section 77-5004. The Property Tax Administrator shall adopt and promulgate rules and regulations to carry out his or her duties through June 30, 2007. Rules, regulations, and forms of the Property Tax Administrator in effect on July 1, 2007, shall be valid rules, regulations, and forms of the Department of Revenue beginning on July 1, 2007.

(2) In addition to any duties, powers, or responsibilities otherwise conferred upon the Property Tax Administrator, he or she shall administer and enforce all laws related to the state supervision of local property tax administration and the central assessment of property subject to property taxation. The Property Tax Administrator shall also advise county assessors regarding the administration and assessment of taxable property within the state and measure assessment performance in order to determine the accuracy and uniformity of assessments.

Source: Laws 1999, LB 36, § 22; Laws 2001, LB 465, § 1; Laws 2007, LB334, § 44.

77-703 Repealed. Laws 2007, LB 334, § 108.

77-704 Repealed. Laws 2007, LB 334, § 108.

77-705 Uniform tax books, records, and forms; approval.

The form of all schedules, books of instruction, assessment and tax books, records, and other forms which may be necessary or expedient for the proper administration of the property tax laws of the state shall be approved by the Tax Commissioner. All such schedules, forms, and documents shall be uniform throughout the several counties insofar as the same is possible and practicable. The Department of Revenue may provide forms on a reimbursement basis. Alterations to any prescribed form may be made only upon written application to and written approval from the Tax Commissioner.

Source: Laws 1999, LB 36, § 25; Laws 2007, LB334, § 45.

77-706 Property tax administration; implementation of agreements and working relationships; state and federal agencies.

The Department of Revenue may develop and implement such agreements and working relationships which are consistent with the laws of the State of Nebraska with any federal office, state agency, or local subdivision of state government, either within or without the State of Nebraska, which it may find necessary or desirable for proper administration of the property tax laws of this state.

Source: Laws 1999, LB 36, § 26; Laws 2007, LB334, § 46.

77-708 Repealed. Laws 2007, LB 334, § 108.

77-709 Property assessment division; annual report; powers and duties.

The property assessment division of the Department of Revenue shall publish an annual report detailing property tax valuations, taxes levied, and property tax rates throughout the state. The annual report shall display information by political subdivision and by property type within each county and also include statewide summarizations. The department may charge a fee for copies of the annual report. The Tax Commissioner shall set the fee, based on the reasonable cost of production.

Source: Laws 2001, LB 170, § 4; Laws 2007, LB334, § 47.

ARTICLE 8

PUBLIC SERVICE ENTITIES

Section

- 77-801. Public service entity; furnish information; confidentiality.
- 77-801.01. Terms, defined.
- 77-801.02. Tax Commissioner; powers.
- 77-802. Property Tax Administrator; valuation; apportionment of tax.
- 77-802.02. Public service entity; appeals.
- 77-803. Public service entity; failure to furnish statement or information; penalty; waiver.
- 77-804. Sale of entity; report required; penalty; waiver.

77-801 Public service entity; furnish information; confidentiality.

All public service entities shall, on or before April 15 of each year, furnish a statement specifying such information as may be required by the Property Tax Administrator on forms prescribed by the Property Tax Administrator to determine and distribute the entity's total taxable value including the franchise value. All information reported by the public service entities, not available from any other public source, and any memorandum thereof shall be confidential

and available to taxing officials only. For good cause shown, the Property Tax Administrator may allow an extension of time in which to file such statement. Such extension shall not exceed fifteen days after April 15.

The returns of public service entities shall not be held to be conclusive as to the taxable value of the property, but the Property Tax Administrator shall, from all the information which he or she is able to obtain, find the taxable value of all such property, including tangible property and franchises, and shall assess such property on the same basis as other property is required to be assessed.

The county assessor shall assess all nonoperating property of any public service entity. A public service entity operating within the State of Nebraska shall, on or before January 1 of each year, report to the county assessor of each county in which it has situs all nonoperating property belonging to such entity which is not subject to assessment and assessed by the Property Tax Administrator under section 77-802.

Source: Laws 1903, c. 73, § 68, p. 408; Laws 1903, c. 73, § 76, p. 411; Laws 1903, c. 73, § 80, p. 412; Laws 1911, c. 104, § 6, p. 373; R.S.1913, §§ 6358, 6366, 6370; Laws 1921, c. 133, art. IX, § 1, p. 586; C.S.1922, § 5890; C.S.1929, § 77-801; R.S.1943, § 77-801; Laws 1981, LB 179, § 8; Laws 1983, LB 353, § 1; Laws 1985, LB 269, § 2; Laws 1995, LB 490, § 87; Laws 1997, LB 270, § 37; Laws 2000, LB 968, § 38; Laws 2004, LB 973, § 13.

77-801.01 Terms, defined.

As used in sections 77-801 to 77-804:

- (1) Nonoperating property means property owned or leased by a public service entity that does not contribute to the entity's function;
- (2) Operating property means property owned or leased that contributes to a public service entity's function; and
- (3) Public service entity means any person as defined in section 49-801 or entity, organized for profit under the laws of this state or any other state or government and engaged in the business of waterworks, electrical power, gas works, natural gas, telecommunications, pipelines used for the transmission of oil, heat, steam, or any substance to be used for lighting, heating, or power, and pipelines used for the transmission of articles by pneumatic or other power and all other similar or like entities.

Source: Laws 1985, LB 269, § 1; Laws 1986, LB 732, § 2; Laws 1997, LB 270, § 38; Laws 2000, LB 968, § 39; Laws 2006, LB 808, § 26.

77-801.02 Tax Commissioner; powers.

The Tax Commissioner shall have power to require any officer, agent, or servant of any public service entity having any portion of its property in this state to attend a hearing and to answer under oath questions regarding the property. The Tax Commissioner shall have power to issue whatever notice or process may be necessary to compel the attendance of any such person as a witness.

Source: Laws 1997, LB 270, § 39; Laws 2007, LB334, § 48.

77-802 Property Tax Administrator; valuation; apportionment of tax.

The Property Tax Administrator shall apportion the total taxable value including the franchise value to all taxing subdivisions in proportion to the ratio of the original cost of all operating real and tangible personal property of that public service entity having a situs in that taxing subdivision to the original cost of all operating real and tangible personal property of that public service entity having a situs in the state.

If the apportionment in accordance with this section does not fairly represent the proportion of the taxable value, including franchise value properly allocable to the county, the taxpayer may petition for or the Property Tax Administrator may require the inclusion of any other method to effectuate an equitable allocation of the value of the public service entity for purposes of taxation.

On or before July 25, the Property Tax Administrator shall mail a draft appraisal to each public service entity as defined in section 77-801.01. On or before August 10, the Property Tax Administrator shall, by certified mail, notify each public service entity of its taxable value and the distribution of that value to the taxing subdivisions in which the entity has situs. On or before August 10, the Property Tax Administrator shall also certify to the county assessors the taxable value so determined.

Source: Laws 1921, c. 133, art. IX, § 2, p. 587; C.S.1922, § 5891; C.S.1929, § 77-802; R.S.1943, § 77-802; Laws 1983, LB 353, § 2; Laws 1984, LB 835, § 6; Laws 1985, LB 269, § 3; Laws 1987, LB 508, § 26; Laws 1995, LB 490, § 88; Laws 1997, LB 270, § 40; Laws 1998, LB 306, § 20; Laws 2004, LB 973, § 14.

77-802.02 Public service entity; appeals.

On or before September 10, if a public service entity feels aggrieved, such public service entity may file an appeal with the Tax Commissioner. The Tax Commissioner shall act upon the appeal and shall issue a written order mailed to the entity within seven days after the date of the order. The order may be appealed within thirty days after the date of the order to the Tax Equalization and Review Commission in accordance with section 77-5013.

Source: Laws 1997, LB 270, § 42; Laws 2000, LB 968, § 41; Laws 2004, LB 973, § 15; Laws 2007, LB334, § 49.

Cross References

Tax Equalization and Review Commission Act, see section 77-5001.

77-803 Public service entity; failure to furnish statement or information; penalty; waiver.

For each day's failure to furnish the statement required by section 77-801 or for each day's failure to furnish the information as required on those statements, the public service entity may be assessed a penalty in the amount of one hundred dollars, except that the penalty shall not exceed ten thousand dollars. Such penalty shall be collected by the Tax Commissioner and credited to the Department of Revenue Property Assessment Division Cash Fund. The Tax Commissioner, in his or her discretion, may waive all or part of the penalty provided in this section.

Source: Laws 1903, c. 73, § 77, p. 411; Laws 1903, c. 73, § 81, p. 412; Laws 1911, c. 104, § 9, p. 375; R.S.1913, §§ 6367, 6371; Laws 1921, c. 133, art. IX, § 3, p. 587; C.S.1922, § 5892; C.S.1929,

§ 77-803; R.S.1943, § 77-803; Laws 1986, LB 732, § 3; Laws 1986, LB 817, § 6; Laws 1995, LB 490, § 89; Laws 1997, LB 270, § 43; Laws 1999, LB 36, § 17; Laws 2007, LB334, § 50.

77-804 Sale of entity; report required; penalty; waiver.

Any sale of a public service entity as defined in section 77-801.01 shall be reported by the purchaser to the Property Tax Administrator within thirty days from the date of the sale. The purchaser shall identify the seller, the date of the sale, any change in name of the entity, and the purchase price of the entity. If additional information regarding the sale is needed by the Property Tax Administrator, a specific written request shall be made. For each day's failure to furnish the information, an entity may be assessed a penalty in the amount of one hundred dollars, except that the penalty shall not exceed ten thousand dollars. Such penalty shall be collected by the Tax Commissioner and credited to the Department of Revenue Property Assessment Division Cash Fund. The Tax Commissioner may waive all or part of the penalty provided in this section.

Source: Laws 1987, LB 508, § 27; Laws 1995, LB 490, § 90; Laws 1997, LB 270, § 44; Laws 1999, LB 36, § 18; Laws 2007, LB334, § 51.

ARTICLE 9

INSURANCE COMPANIES

Section

77-908. Insurance companies; tax on gross premiums; rate; exceptions.

77-912. Tax; Director of Insurance; disposition; exceptions.

77-908 Insurance companies; tax on gross premiums; rate; exceptions.

Every insurance company organized under the stock, mutual, assessment, or reciprocal plan, except fraternal benefit societies, which is transacting business in this state shall, on or before March 1 of each year, pay a tax to the director of one percent of the gross amount of direct writing premiums received by it during the preceding calendar year for business done in this state, except that (1) for group sickness and accident insurance the rate of such tax shall be five-tenths of one percent, (2) for property and casualty insurance, excluding individual sickness and accident insurance, the rate of such tax shall be one percent, and (3) for capitation payments made in accordance with the Medical Assistance Act, the rate of tax shall be five percent. A captive insurer authorized under the Captive Insurers Act that is transacting business in this state shall, on or before March 1 of each year, pay to the director a tax of one-fourth of one percent of the gross amount of direct writing premiums received by such insurer during the preceding calendar year for business transacted in the state. The taxable premiums shall include premiums paid on the lives of persons residing in this state and premiums paid for risks located in this state whether the insurance was written in this state or not, including that portion of a group premium paid which represents the premium for insurance on Nebraska residents or risks located in Nebraska included within the group when the number of lives in the group exceeds five hundred. The tax shall also apply to premiums received by domestic companies for insurance written on individuals residing outside this state or risks located outside this state if no comparable tax is paid by the direct writing domestic company to any other appropriate taxing authority. Companies whose scheme of operation contemplates the

return of a portion of premiums to policyholders, without such policyholders being claimants under the terms of their policies, may deduct such return premiums or dividends from their gross premiums for the purpose of tax calculations. Any such insurance company shall receive a credit on the tax imposed as provided in the Community Development Assistance Act.

Source: Laws 1951, c. 256, § 2, p. 878; Laws 1984, LB 372, § 13; Laws 1986, LB 1114, § 10; Laws 1989, LB 92, § 275; Laws 1992, LB 1063, § 91; Laws 1992, Second Spec. Sess., LB 1, § 64; Laws 2001, LB 433, § 1; Laws 2002, Second Spec. Sess., LB 9, § 3; Laws 2006, LB 1248, § 83; Laws 2007, LB117, § 53; Laws 2007, LB367, § 5.

Cross References

Captive Insurers Act, see section 44-8201.

Community Development Assistance Act, see section 13-201.

Medical Assistance Act, see section 68-901.

77-912 Tax; Director of Insurance; disposition; exceptions.

The Director of Insurance shall transmit fifty percent of the taxes paid in conformity with Chapter 44, article 1, and Chapter 77, article 9, to the State Treasurer, forty percent of such taxes paid to the General Fund, and ten percent of such taxes paid to the Mutual Finance Assistance Fund promptly upon completion of his or her audit and examination and in no event later than May 1 of each year, except that:

(1) All fire insurance taxes paid pursuant to sections 44-150 and 81-523 shall be remitted to the State Treasurer for credit to the General Fund;

(2) All workers' compensation insurance taxes paid pursuant to section 44-150 shall be remitted to the State Treasurer for credit to the Compensation Court Cash Fund;

(3) Commencing with the premium and related retaliatory taxes for the taxable year ending December 31, 2001, and for each taxable year thereafter, all premium and related retaliatory taxes imposed by section 44-150 or 77-908 paid by insurers writing health insurance in this state shall be remitted to the Comprehensive Health Insurance Pool Distributive Fund; and

(4) All taxes paid pursuant to section 77-908 for capitation payments made in accordance with the Medical Assistance Act shall be remitted to the Health and Human Services Cash Fund.

Source: Laws 1951, c. 256, § 6, p. 880; Laws 1986, LB 1114, § 13; Laws 1987, LB 302, § 8; Laws 1993, LB 757, § 35; Laws 1996, LB 693, § 8; Laws 1998, LB 1120, § 27; Laws 1999, LB 113, § 3; Laws 2000, LB 1253, § 44; Laws 2002, Second Spec. Sess., LB 9, § 4; Laws 2003, LB 408, § 3; Laws 2006, LB 1248, § 84; Laws 2007, LB296, § 702.

Cross References

Medical Assistance Act, see section 68-901.

ARTICLE 12

PERSONAL PROPERTY, WHERE AND HOW LISTED

Section	
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77-1250.04.	Taxation of air carriers; money and credits; surrender to Tax Commissioner.
77-1250.05.	Taxation of air carriers; disposition of funds collected.

77-1201 Tangible personal property; assessment date; listing.

All tangible personal property in this state subject to taxation shall be assessed as of January 1 at 12:01 a.m., which assessment shall be used as a basis of taxation until the next assessment. A complete list of all taxable tangible personal property held or owned on the assessment date shall be made as follows:

(1) Every person shall list all his or her taxable tangible personal property as defined in section 77-105 having tax situs in the State of Nebraska;

(2) The taxable tangible personal property of a minor child shall be listed by the following: (a) His or her guardian; (b) if he or she has no guardian, by his or her parent, if living; and (c) if neither parent is living, by the person having such property in charge;

(3) The taxable tangible personal property of any other person under guardianship, by his or her guardian or, if he or she has no guardian, by the person having charge of such property;

(4) The taxable tangible personal property of a person for whose benefit it is held in trust, by the trustee, and of the estate of a deceased person, by the personal representative or administrator;

- (5) The taxable tangible personal property of corporations the assets of which are in the hands of a receiver, by such a receiver;
- (6) The taxable tangible personal property of corporations, by the president or the proper agent or officer thereof;
- (7) The taxable tangible personal property of a firm or company, by a partner, limited liability company member, or agent thereof;
- (8) The taxable tangible personal property of manufacturers and others in the hands of an agent, by and in the name of such agent; and
- (9) All leased taxable tangible personal property shall be reported, by itemizing each article, by lessor as owner or lessee as agent.

Source: Laws 1903, c. 73, § 28, p. 394; R.S.1913, § 6313; C.S.1922, § 5914; C.S.1929, § 77-1401; Laws 1935, c. 133, § 1, p. 479; Laws 1935, Spec. Sess., c. 14, § 1, p. 89; C.S.Supp.,1941, § 77-1401; R.S.1943, § 77-1201; Laws 1945, c. 186, § 1, p. 577; Laws 1947, c. 251, § 18, p. 815; Laws 1955, c. 288, § 10, p. 906; Laws 1957, c. 327, § 12, p. 1155; Laws 1959, c. 355, § 9, p. 1255; Laws 1959, c. 365, § 1, p. 1284; Laws 1961, c. 377, § 4, p. 1157; Laws 1961, c. 379, § 1, p. 1163; Laws 1965, c. 483, § 1, p. 1559; Laws 1967, c. 501, § 1, p. 1695; Laws 1969, c. 663, § 1, p. 2583; Laws 1979, LB 80, § 110; Laws 1987, LB 508, § 28; Laws 1992, LB 1063, § 92; Laws 1992, Second Spec. Sess., LB 1, § 65; Laws 1993, LB 121, § 494; Laws 1994, LB 884, § 89; Laws 1997, LB 270, § 45; Laws 1997, LB 271, § 48; Laws 2008, LB965, § 3. Operative date April 15, 2008.

77-1202.01 Tax lists; how prepared.

In preparing the tax list, each county assessor shall enter in a separate column, opposite the name of each person, the person's post office address and the number of the school and road districts in which the taxable tangible personal property of such person is assessable.

Source: Laws 1903, c. 73, § 26, p. 393; R.S.1913, § 6311; Laws 1921, c. 133, art. IV, § 5, p. 552; C.S.1922, § 5837; C.S.1929, § 77-405; R.S.1943, § 77-406; R.S.1943, (1986), § 77-406; Laws 1990, LB 821, § 44; Laws 2008, LB965, § 4. Operative date April 15, 2008.

77-1210 Taxable tangible personal property in transit; where listed and assessed.

Taxable tangible personal property in transit shall be listed and assessed in the tax district where the owner resides, but if such property is intended for a business, it shall be listed and assessed in the tax district where the property of such business is required to be listed.

Source: Laws 1903, c. 73, § 36, p. 396; R.S.1913, § 6321; C.S.1922, § 5922; C.S.1929, § 77-1409; R.S.1943, § 77-1210; Laws 2000, LB 968, § 42; Laws 2008, LB965, § 5. Operative date April 15, 2008.

77-1214 Taxable tangible personal property; attempted sale, levy, or removal; notice to treasurer; collection of taxes due; acceleration of due date; issuance of distress warrants.

It shall be the duty of any county assessor, sheriff, constable, city council member, and village trustee to at once inform the county treasurer of the making or attempted making of any sale, levy of attachment, or removal of taxable tangible personal property known to him or her. It shall be the duty of the county treasurer to forthwith proceed with the collection of the tax when such acts become known to him or her in any manner. Any personal property tax shall be due and collectible, including all taxable tangible personal property then assessed upon which the tax shall be computed on the basis of the last preceding levy, and a distress warrant shall be issued when (1) any person attempts to sell all or a substantial part of his or her taxable tangible personal property, (2) a levy of attachment is made upon taxable tangible personal property, or (3) a person attempts to remove or removes taxable tangible personal property from the county.

Source: Laws 1903, c. 73, § 39, p. 397; R.S.1913, § 6324; C.S.1922, § 5925; C.S.1929, § 77-1412; R.S.1943, § 77-1214; Laws 1957, c. 321, § 2, p. 1141; Laws 1959, c. 365, § 5, p. 1286; Laws 1997, LB 270, § 48; Laws 2008, LB965, § 6.
Operative date April 15, 2008.

77-1216 Repealed. Laws 2007, LB 166, § 13.**77-1219 Taxable tangible personal property; assessment certificate; county assessor; duties.**

It shall be the duty of the county assessor, when required by any person, to give a certificate of assessment of taxable tangible personal property showing the amount, kind, location, and net book value of the property assessed, and such certificate shall be evidence of the legal assessment of such property for the year.

Source: Laws 1903, c. 73, § 45, p. 399; R.S.1913, § 6330; C.S.1922, § 5931; C.S.1929, § 77-1418; R.S.1943, § 77-1219; Laws 1947, c. 250, § 15, p. 793; Laws 1947, c. 251, § 22, p. 818; Laws 1977, LB 39, § 215; Laws 1987, LB 508, § 34; Laws 1992, LB 1063, § 97; Laws 1992, Second Spec. Sess., LB 1, § 70; Laws 1997, LB 270, § 49; Laws 2008, LB965, § 7.
Operative date April 15, 2008.

77-1229 Tangible personal property; form of return; time of filing; exemption; procedure.

(1) Every person required by section 77-1201 to list and value taxable tangible personal property shall list such property upon the forms prescribed by the Tax Commissioner. The forms shall be available from the county assessor and when completed shall be signed by each person or his or her agent and be filed with the county assessor. The forms shall be filed on or before May 1 of each year.

(2) Any person seeking a personal property exemption pursuant to subsection (2) of section 77-4105 or the Nebraska Advantage Act shall annually file a copy of the forms required pursuant to section 77-4105 or the act with the county

assessor in each county in which the person is requesting exemption. The copy shall be filed on or before May 1. Failure to timely file the required forms shall cause the forfeiture of the exemption for the tax year. If a taxpayer pursuant to this subsection also has taxable tangible personal property, such property shall be listed and valued as required under subsection (1) of this section.

Source: Laws 1903, c. 73, § 49, p. 399; Laws 1909, c. 111, § 1, p. 437; R.S.1913, § 6336; C.S.1922, § 5938; C.S.1929, § 77-1425; R.S. 1943, § 77-1229; Laws 1947, c. 250, § 16, p. 793; Laws 1947, c. 251, § 26, p. 819; Laws 1959, c. 355, § 16, p. 1260; Laws 1959, c. 365, § 8, p. 1289; Laws 1959, c. 367, § 1, p. 1296; Laws 1969, c. 665, § 1, p. 2587; Laws 1987, LB 508, § 35; Laws 1992, LB 1063, § 98; Laws 1992, Second Spec. Sess., LB 1, § 71; Laws 1995, LB 490, § 92; Laws 1997, LB 270, § 50; Laws 2000, LB 968, § 43; Laws 2005, LB 312, § 5; Laws 2007, LB334, § 52.

Cross References

Nebraska Advantage Act, see section 77-5701.

77-1230 Taxable tangible personal property; amended listing; when required; county assessor; duties; refund; additional tax due.

(1) Whenever a person files an amended federal income tax return or whenever a person's return is changed or corrected by the Internal Revenue Service or other competent authority and the amendment, change, or correction affects the Nebraska adjusted basis of the person's taxable tangible personal property, such person shall file an amended list of taxable tangible personal property subject to taxation with the county assessor. The person shall file the amended list within ninety days after the filing of the amended federal return or within ninety days after the date the change or correction becomes final.

(2) Within the same tax year or the three previous tax years, a person may file an amended list of taxable tangible personal property subject to taxation upon discovery of errors or omissions on his or her filed list.

(3) If an amended list of taxable tangible personal property subject to taxation is filed, the county assessor shall accept or reject the proposed amendment within fifteen days after filing. The county assessor shall notify the person, on a form prescribed by the Property Tax Administrator, of the action taken, the penalty, if any, and the rate of interest. The notice shall also state the person's appeal rights and appeal procedures, which shall be the same as provided in section 77-1233.06. Such notice shall be given by first-class mail addressed to such person's last-known address.

(4) Whenever changes are made to a taxable tangible personal property return pursuant to this section, the county assessor shall correct the assessment roll and tax list, if necessary, to reflect such changes.

(5) If the amendment, change, or correction results in taxable tangible personal property becoming exempt or reduces the net book value of the property for an income tax year, a refund shall be paid pursuant to section 77-1734.01.

(6) If the amendment, change, or correction results in an increase in the net book value of the taxable tangible personal property or makes other tangible personal property taxable, the county assessor shall compute the additional tax due, along with interest, based on the amended listing. Interest shall be

computed from the dates the tax would have been delinquent if the property had been listed on or before May 1 of the appropriate year. If the amended listing is filed within the ninety-day period, no additional penalties shall be added. If the listing is not filed within the ninety-day period, the property shall be subject to a penalty pursuant to subsection (4) of section 77-1233.04.

Source: Laws 1992, LB 1063, § 95; Laws 1992, Second Spec. Sess., LB 1, § 68; Laws 1997, LB 270, § 51; Laws 2008, LB965, § 8.
Operative date April 15, 2008.

77-1233.02 Taxable tangible personal property tax returns; county assessor; duties.

The county assessor with the aid of his or her deputy and assistants shall carefully examine, check, and verify all taxable tangible personal property tax returns. The assessor may make such investigation, examination, and inspection of the property set out in a return and examine under oath the person making the return as to his or her books, records, and papers in order to enable the assessor to determine that all taxable tangible personal property of the taxpayer is listed for taxation at its net book value.

Source: Laws 1947, c. 250, § 39, p. 804; Laws 1987, LB 508, § 9; R.S.Supp.,1988, § 77-409; Laws 1990, LB 821, § 45; Laws 1992, LB 1063, § 101; Laws 1992, Second Spec. Sess., LB 1, § 74; Laws 1997, LB 270, § 52; Laws 2008, LB965, § 9.
Operative date April 15, 2008.

77-1233.03 Assessment of taxable tangible personal property; county assessor; duties.

The county assessor shall have general supervision over and direction of the assessment of all personal property in his or her county. He or she shall advise and instruct all deputies and assistants as to their duties and shall require of them that the assessment of property be uniform throughout the county and that property be assessed as directed by law.

The county assessor may, in extending a value on any item of taxable tangible personal property, reject all values that fall below two dollars and fifty cents and extend all values of two dollars and fifty cents or more to the next higher five dollars or multiples thereof, making all valuations end in zero or five.

Source: Laws 1947, c. 250, § 40, p. 804; Laws 1987, LB 508, § 10; R.S.Supp.,1988, § 77-410; Laws 1990, LB 821, § 46; Laws 2008, LB965, § 10.
Operative date April 15, 2008.

77-1233.04 Taxable tangible personal property tax returns; change in value; omitted property; procedure; penalty; county assessor; duties.

(1) The county assessor shall list and value at net book value any item of taxable tangible personal property omitted from a personal property return of any taxpayer. The county assessor shall change the reported valuation of any item of taxable tangible personal property listed on the return to conform the valuation to net book value. If a taxpayer fails or refuses to file a personal property return, the assessor shall, on behalf of the taxpayer, file a personal property return which shall list and value all of the taxpayer's taxable tangible personal property at net book value. The county assessor shall list or change the

valuation of any item of taxable tangible personal property for the current taxing period and the three previous taxing periods or any taxing period included therein.

(2) The taxable tangible personal property so listed and valued shall be taxed at the same rate as would have been imposed upon the property in the tax district in which the property should have been returned for taxation.

(3) Any valuation added to a personal property return or added through the filing of a personal property return, after May 1 and on or before July 31 of the year the property is required to be reported, shall be subject to a penalty of ten percent of the tax due on the value added.

(4) Any valuation added to a personal property return or added through the filing of a personal property return, on or after August 1 of the year the property is required to be reported, shall be subject to a penalty of twenty-five percent of the tax due on the value added.

(5) Interest shall be assessed upon both the tax and the penalty at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, from the date the tax would have been delinquent until paid.

(6) Whenever valuation changes are made to a personal property return or a personal property return is filed pursuant to this section, the county assessor shall correct the assessment roll and tax list, if necessary, to reflect such changes. Such corrections shall be made for the current taxing period and the three previous taxing periods or any taxing period included therein. If the change results in a decreased taxable valuation on the personal property return and the personal property tax has been paid prior to a correction pursuant to this section, the taxpayer may request a refund of the tax in the same manner prescribed in section 77-1734.01, except that such request shall be made within three years after the date the tax was due.

Source: Laws 1947, c. 250, § 42, p. 805; Laws 1965, c. 474, § 1, p. 1526; Laws 1965, c. 475, § 2, p. 1530; Laws 1967, c. 499, § 1, p. 1692; Laws 1980, LB 834, § 59; Laws 1981, LB 167, § 39; Laws 1984, LB 835, § 4; Laws 1987, LB 508, § 11; R.S.Supp., 1988, § 77-412; Laws 1990, LB 821, § 47; Laws 1992, LB 1063, § 102; Laws 1992, Second Spec. Sess., LB 1, § 75; Laws 1995, LB 490, § 93; Laws 1997, LB 270, § 53; Laws 1999, LB 194, § 12; Laws 2000, LB 968, § 44; Laws 2007, LB166, § 5; Laws 2008, LB965, § 11. Operative date April 15, 2008.

77-1233.06 Taxable tangible personal property tax valuation or penalty; appeal; procedure; collection procedures.

For purposes of section 77-1233.04:

(1) The county assessor shall notify the taxpayer, on a form prescribed by the Tax Commissioner, of the action taken, the penalty, and the rate of interest. The notice shall also state the taxpayer's appeal rights and the appeal procedures. Such notice shall be given by first-class mail addressed to such taxpayer's last-known address. The entire penalty and interest shall be waived if the omission or failure to report any item of taxable tangible personal property was for the reason that the property was timely reported in the wrong tax district;

(2) The taxpayer may appeal the action of the county assessor, either as to the valuation or the penalties imposed, to the county board of equalization within

thirty days after the date of notice. The taxpayer shall preserve his or her appeal by filing a written appeal with the county clerk in the same manner as prescribed for protests in section 77-1502. The action of the county assessor shall become final unless a written appeal is filed within the time prescribed;

(3) The action of the county board of equalization, in an appeal of the penalties imposed, shall be limited to correcting penalties which were wrongly imposed or incorrectly calculated. The county board of equalization shall have no authority to waive or reduce any penalty which was correctly imposed and calculated. The entire penalty and interest on the penalty shall be waived if the omission or failure to report any item of taxable tangible personal property was for the reason that the property was timely reported in the wrong tax district;

(4) Upon ten days' notice to the taxpayer, the county board of equalization shall set a date for hearing the appeal of the taxpayer. The county board of equalization shall make its determination on the appeal within thirty days after the date of hearing. The county clerk shall, within seven days after the determination of the county board, send notice to the taxpayer and the county assessor, on forms prescribed by the Tax Commissioner, of the action of the county board. Appeal may be taken within thirty days after the decision of the county board of equalization to the Tax Equalization and Review Commission; and

(5) Taxes and penalties assessed for the current year, if not delinquent, shall be certified to the county treasurer and collected as if the property had been properly reported for taxation, except that separate tax statements may be mailed. Taxes and penalties assessed for the current year, if delinquent, and taxes and penalties assessed for prior years shall be certified to the county treasurer, and the taxes, penalties, and interest thereon shall be due and collectible immediately upon certification. Collection procedures shall be started immediately regardless of the provisions of any other statute to the contrary.

Source: Laws 1997, LB 270, § 55; Laws 1999, LB 194, § 13; Laws 2007, LB334, § 53; Laws 2008, LB965, § 12.
Operative date April 15, 2008.

77-1234 Violations; duty of officers upon discovery.

It shall be the duty of the county boards and county assessors to notify the county attorney of the proper county of all willful violations of the provisions with respect to listing of taxable tangible personal property for taxation known to them or any of them.

Source: Laws 1903, c. 73, § 54, p. 403; Laws 1909, c. 111, § 1, p. 439; R.S.1913, § 6341; C.S.1922, § 5943; C.S.1929, § 77-1430; R.S. 1943, § 77-1234; Laws 1947, c. 250, § 18, p. 794; Laws 1997, LB 397, § 11; Laws 2004, LB 973, § 16; Laws 2008, LB965, § 13.
Operative date April 15, 2008.

77-1247 Taxation of air carriers; annual report; contents; failure to furnish report or information; penalty; waiver.

(1) Each air carrier, as defined in section 77-1244, shall on or before June 1 in each year make to the Property Tax Administrator a report, in such form as may be prescribed by the Tax Commissioner, containing the information necessary to determine the value of its flight equipment and the proportion allocated to this state for purposes of taxation as provided in section 77-1246.

For good cause shown, the Property Tax Administrator may allow an extension of time in which to file such report. Such extension shall not exceed thirty days after June 1.

(2) For each day's failure to furnish the report required by subsection (1) of this section or for each day's failure to furnish the information as required on the report, the air carrier may be assessed a penalty in the amount of one hundred dollars, except that the penalty shall not exceed ten thousand dollars. Such penalty shall be collected by the Tax Commissioner and credited to the Department of Revenue Property Assessment Division Cash Fund. The Tax Commissioner, in his or her discretion, may waive all or part of the penalty provided in this section.

Source: Laws 1949, c. 231, § 1, p. 641; Laws 1965, c. 478, § 11, p. 1544; Laws 1986, LB 817, § 8; Laws 1995, LB 490, § 100; Laws 1997, LB 270, § 59; Laws 1999, LB 36, § 19; Laws 2007, LB334, § 54.

77-1249 Taxation of air carriers; tax rate; appeal.

The Property Tax Administrator shall, on or before January 15 each year, establish a tax rate for purposes of taxation against the taxable value as provided in section 77-1248 at a rate which shall be equal to the total property taxes levied in the state divided by the total taxable value of all taxable property in the state as certified pursuant to section 77-1613.01. The date when such tax rate is determined shall be deemed to be the levy date for the property. The Property Tax Administrator shall send to each air carrier a statement showing the taxable value, the tax rate, and the amount of the tax and a statement that the tax is due and payable to the Property Tax Administrator on January 31 next following the levy thereof. If an air carrier feels aggrieved, such carrier may, on or before February 15, file an appeal with the Tax Commissioner. The Tax Commissioner shall act upon the appeal and shall issue a written order mailed to the carrier within seven days after the date of the order. The order may be appealed within thirty days after the date of the order to the Tax Equalization and Review Commission in accordance with section 77-5013.

Source: Laws 1949, c. 231, § 3, p. 641; Laws 1965, c. 478, § 12, p. 1544; Laws 1969, c. 669, § 2, p. 2591; Laws 1983, LB 193, § 9; Laws 1992, LB 1063, § 110; Laws 1992, Second Spec. Sess., LB 1, § 83; Laws 1995, LB 490, § 102; Laws 1997, LB 270, § 60; Laws 2000, LB 968, § 45; Laws 2004, LB 973, § 17; Laws 2007, LB334, § 55.

Cross References

Tax Equalization and Review Commission Act, see section 77-5001.

77-1249.01 Taxation of air carriers; delinquency; interest; collection.

One-half of the taxes levied and due under sections 77-1249 and 77-1250 shall become delinquent March 1, and the second half on July 1, next following the date the tax has become due.

All delinquent taxes shall draw interest from the date they become delinquent at a rate equal to the maximum rate of interest allowed per annum under section 45-104.01, as such rate may from time to time be adjusted by the Legislature, and the interest shall be collected and distributed the same as the tax on which the interest accrues. If such taxes and interest due thereon shall

not have been paid on July 1 following the levy thereof, the Tax Commissioner shall collect the same by distress and sale of any property belonging to such delinquent person in like manner as required of county treasurers and county sheriffs in like cases.

Source: Laws 1983, LB 193, § 11; Laws 1989, Spec. Sess., LB 7, § 4; Laws 1995, LB 490, § 103; Laws 1997, LB 270, § 61; Laws 2007, LB334, § 56.

77-1250 Taxation of air carriers; when due; lien; distribution to counties; collection fee.

The tax levied pursuant to section 77-1249 shall, on January 31 next following the date of levy, be a first lien from that date on the personal property, both tangible and intangible, of the person assessed until the liability is satisfied or otherwise released or discharged. Such lien shall be filed and enforced pursuant to the Uniform State Tax Lien Registration and Enforcement Act. The Property Tax Administrator shall remit the tax paid to the State Treasurer, and the tax collected, less a three percent collection fee, shall be distributed to the counties to the credit of the county general fund proportionate to the amount the total property taxes levied in the county bears to the total property taxes levied in the state as a whole, as certified pursuant to section 77-1613.01. The collection fee shall be credited by the State Treasurer to the Department of Revenue Property Assessment Division Cash Fund.

Source: Laws 1949, c. 231, § 4, p. 641; Laws 1965, c. 478, § 13, p. 1544; Laws 1973, LB 132, § 3; Laws 1979, LB 159, § 4; Laws 1979, LB 187, § 203; Laws 1980, LB 599, § 13; Laws 1983, LB 193, § 10; Laws 1986, LB 1027, § 202; Laws 1995, LB 490, § 104; Laws 1997, LB 270, § 62; Laws 1999, LB 36, § 20; Laws 2007, LB334, § 57.

Cross References

Uniform State Tax Lien Registration and Enforcement Act, see section 77-3901.

77-1250.02 Aircraft; owner, lessee, manager of hangar or land, report required; violation; penalty.

The owner, lessee, or manager of any aircraft hangar or land upon which is parked or located any aircraft as defined by section 3-101 shall report by February 1 of each year to the county assessor in the county in which such aircraft hangar or land is located all aircraft as defined by section 3-101 located thereon in such hangar or on such land as of January 1 of each year on a form prescribed by the Tax Commissioner. Any person violating the provisions of this section shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not more than fifty dollars.

Source: Laws 1971, LB 26, § 2; Laws 1995, LB 490, § 105; Laws 2007, LB334, § 58.

77-1250.03 Taxation of air carriers; taxes; delinquent; lien; collection.

If any taxes levied on air carriers as defined in section 77-1244 and interest and penalties due thereon shall not have been paid on July 1, following the levy thereof, the total amount shall be a lien in favor of the State of Nebraska upon all money and credits belonging to such air carriers until the liability therefor is

satisfied or otherwise released or discharged, and it shall be lawful for the Tax Commissioner or his or her designated agent to collect such total amount by issuing a distress warrant and making levy upon all money and credits belonging to such air carriers. Such lien shall be filed and enforced pursuant to the Uniform State Tax Lien Registration and Enforcement Act.

Source: Laws 1959, c. 360, § 2, p. 1277; Laws 1983, LB 193, § 8; Laws 1986, LB 1027, § 201; R.S.1943, (1986), § 77-631.02; Laws 1989, Spec. Sess., LB 7, § 5; Laws 1995, LB 490, § 106; Laws 2007, LB334, § 59.

Cross References

Uniform State Tax Lien Registration and Enforcement Act, see section 77-3901.

77-1250.04 Taxation of air carriers; money and credits; surrender to Tax Commissioner.

Any person or corporation in possession of any such money and credits belonging to air carriers as defined in section 77-1244 upon which levy has been made shall, upon demand of the Tax Commissioner or his or her agent, surrender the same to the Tax Commissioner or his or her agent. If any person or corporation fails or refuses to surrender the same in accordance with the requirements of this section, such person shall be liable to the State of Nebraska in a sum equal to the value of the property or rights not so surrendered but not exceeding the amount of the taxes, interest, and penalties for the collection of which such levy has been made.

Source: Laws 1959, c. 360, § 3, p. 1277; R.S.1943, (1986), § 77-631.03; Laws 1989, Spec. Sess., LB 7, § 6; Laws 1995, LB 490, § 107; Laws 2007, LB334, § 60.

77-1250.05 Taxation of air carriers; disposition of funds collected.

The money realized from any levy under sections 77-1250.03 and 77-1250.04 shall be first applied by the Tax Commissioner toward payment of any costs incurred by virtue of such levy and next to the payment of such taxes, interest, and penalties, and any balance remaining shall then be paid over to the person entitled thereto.

Source: Laws 1959, c. 360, § 4, p. 1277; R.S.1943, (1986), § 77-631.04; Laws 1989, Spec. Sess., LB 7, § 7; Laws 1995, LB 490, § 108; Laws 2007, LB334, § 61.

ARTICLE 13

ASSESSMENT OF PROPERTY

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77-1301 Real property; assessment date.

(1) All real property in this state subject to taxation shall be assessed as of January 1 at 12:01 a.m., which assessment shall be used as a basis of taxation until the next assessment.

(2) The county assessor shall complete the assessment of real property on or before March 19 of each year.

Source: Laws 1903, c. 73, § 105, p. 422; R.S.1913, § 6420; Laws 1921, c. 125, § 1, p. 535; C.S.1922, § 5955; Laws 1925, c. 167, § 1, p. 439; C.S.1929, § 77-1601; Laws 1933, c. 130, § 1, p. 507; C.S.Supp.,1941, § 77-1601; R.S.1943, § 77-1301; Laws 1945, c. 188, § 1, p. 581; Laws 1947, c. 251, § 31, p. 823; Laws 1947, c. 255, § 1, p. 835; Laws 1953, c. 270, § 1, p. 891; Laws 1953, c. 269, § 1, p. 889; Laws 1955, c. 288, § 19, p. 913; Laws 1959, c. 355, § 20, p. 1263; Laws 1959, c. 370, § 1, p. 1301; Laws 1963, c. 450, § 1, p. 1474; Laws 1980, LB 742, § 1; Laws 1984, LB 833, § 1; Laws 1987, LB 508, § 36; Laws 1992, LB 1063, § 114; Laws 1992, Second Spec. Sess., LB 1, § 87; Laws 1997, LB 270, § 63; Laws 1999, LB 194, § 15; Laws 2004, LB 973, § 18.

77-1301.01 Appraisal; standards; establishment by Tax Commissioner; contracts; approval.

The Tax Commissioner shall adopt and promulgate rules and regulations to establish standards for the appraisal of classes or subclasses of real property in a county. The standards established shall require that the appraisal shall be based upon the use of manuals developed pursuant to section 77-1330 and shall arrive at a determination of taxable value on a consistent basis in accordance with the methods prescribed in sections 77-112 and 77-201. The Tax Commissioner shall also establish standards for appraisal contracts which shall, among other provisions, require that all such contracts shall require the use of manuals developed pursuant to section 77-1330. No appraisal contract shall be valid until approved in writing by the Tax Commissioner.

Source: Laws 1963, c. 450, § 2, p. 1474; Laws 1969, c. 672, § 1, p. 2594; Laws 1979, LB 159, § 5; Laws 1985, LB 30, § 3; Laws 1986, LB 817, § 9; Laws 1989, LB 361, § 7; Laws 1991, LB 320, § 3; Laws 1992, LB 1063, § 115; Laws 1992, Second Spec. Sess., LB 1, § 88; Laws 1995, LB 490, § 109; Laws 1997, LB 270, § 64; Laws 2007, LB334, § 62.

77-1303 Assessment roll.

(1) On or before March 19 of each year, the county assessor or county clerk shall make up an assessment roll of the taxable real property in the county.

(2) The county assessor or county clerk shall enter in the proper column, opposite each respective parcel, the name of the owner thereof so far as he or she is able to ascertain the same. The assessment roll shall contain columns in

which may be shown the number of acres or lots and the value thereof, the improvements and the value thereof, the total value of the acres or lots and improvements, and the improvements on leased lands and the value and owner thereof and such other columns as may be required.

Source: Laws 1903, c. 73, § 106, p. 422; Laws 1905, c. 111, § 1, p. 510; R.S.1913, § 6421; Laws 1919, c. 137, § 1, p. 314; C.S.1922, § 5956; C.S.1929, § 77-1602; Laws 1943, c. 175, § 1, p. 609; R.S.1943, § 77-1303; Laws 1945, c. 189, § 1, p. 583; Laws 1947, c. 250, § 22, p. 795; Laws 1947, c. 251, § 32, p. 824; Laws 1951, c. 264, § 1, p. 892; Laws 1953, c. 270, § 2, p. 893; Laws 1955, c. 288, § 20, p. 915; Laws 1959, c. 355, § 21, p. 1265; Laws 1979, LB 187, § 204; Laws 1981, LB 179, § 10; Laws 1987, LB 508, § 42; Laws 1988, LB 842, § 1; Laws 1992, LB 1063, § 118; Laws 1992, Second Spec. Sess., LB 1, § 91; Laws 1997, LB 270, § 65; Laws 1999, LB 194, § 16; Laws 2004, LB 973, § 19; Laws 2005, LB 263, § 7.

77-1311 County assessor; duties.

The county assessor shall have general supervision over and direction of the assessment of all property in his or her county. In addition to the other duties provided by law, the county assessor shall:

- (1) Annually revise the real property assessment for the correction of errors;
- (2) When a parcel has been assessed and thereafter part or parts are transferred to a different ownership, set off and apportion to each its just and equitable portion of the assessment;
- (3) Obey all rules and regulations made under Chapter 77 and the instructions and orders sent out by the Tax Commissioner and the Tax Equalization and Review Commission;
- (4) Examine the records in the office of the register of deeds and county clerk for the purpose of ascertaining whether the property described in producing mineral leases, contracts, and bills of sale, have been fully and correctly listed and add to the assessment roll any property which has been omitted; and
- (5) Prepare the assessment roll as defined in section 77-129 and described in section 77-1303.

Source: Laws 1903, c. 73, § 113, p. 425; Laws 1905, c. 111, § 3, p. 512; Laws 1909, c. 111, § 1, p. 442; Laws 1911, c. 104, § 12, p. 377; R.S.1913, § 6428; Laws 1921, c. 137, § 1, p. 602; C.S.1922, § 5963; C.S.1929, § 77-1609; Laws 1935, c. 133, § 4, p. 481; Laws 1935, Spec. Sess., c. 14, § 5, p. 91; Laws 1939, c. 28, § 17, p. 155; C.S.Supp.,1941, § 77-1609; R.S.1943, § 77-1311; Laws 1947, c. 250, § 24, p. 796; Laws 1951, c. 257, § 2, p. 882; Laws 1959, c. 370, § 2, p. 1303; Laws 1972, LB 1069, § 3; Laws 1979, LB 187, § 205; Laws 1986, LB 1177, § 33; Laws 1990, LB 821, § 49; Laws 1992, LB 719A, § 165; Laws 1994, LB 1275, § 10; Laws 1995, LB 490, § 121; Laws 1997, LB 270, § 67; Laws 1997, LB 397, § 13; Laws 2001, LB 170, § 5; Laws 2003, LB 292, § 11; Laws 2005, LB 263, § 8; Laws 2007, LB334, § 63.

77-1311.02 Plan of assessment; preparation.

The county assessor shall, on or before June 15 each year, prepare a plan of assessment which shall describe the assessment actions the county assessor plans to make for the next assessment year and two years thereafter. The plan shall indicate the classes or subclasses of real property that the county assessor plans to examine during the years contained in the plan of assessment. The plan shall describe all the assessment actions necessary to achieve the levels of value and quality of assessment practices required by law and the resources necessary to complete those actions. The plan shall be presented to the county board of equalization on or before July 31 each year. The county assessor may amend the plan, if necessary, after the budget is approved by the county board. A copy of the plan and any amendments thereto shall be mailed to the Department of Revenue on or before October 31 each year.

Source: Laws 2005, LB 263, § 9; Laws 2007, LB334, § 64.

77-1311.03 County assessor; systematic inspection and review; adjustment required.

On or before March 19 of each year, each county assessor shall conduct a systematic inspection and review by class or subclass of a portion of the taxable real property parcels in the county for the purpose of achieving uniform and proportionate valuations and assuring that the real property record data accurately reflects the property. The county assessor shall adjust the value of all other taxable real property parcels by class or subclass in the county so that the value of all real property is uniform and proportionate. The county assessor shall determine the portion to be inspected and reviewed each year to assure that all parcels of real property in the county have been inspected and reviewed no less frequently than every six years.

Source: Laws 2007, LB334, § 100.

77-1315 Adjustment to real property assessment roll; county assessor; duties; publication.

(1) The county assessor shall, after March 19 and on or before June 1, implement adjustments to the real property assessment roll for actions of the Tax Equalization and Review Commission.

(2) On or before June 1, the county assessor shall notify the owner of record as of May 20 of every item of real property which has been assessed at a value different than in the previous year. Such notice shall be given by first-class mail addressed to such owner's last-known address. It shall identify the item of real property and state the old and new valuation, the date of convening of the county board of equalization, the dates for filing a protest, and the average level of value of all classes and subclasses of real property in the county as determined by the Tax Equalization and Review Commission.

(3) Immediately upon completion of the assessment roll, the county assessor shall cause to be published in a newspaper of general circulation in the county a certification that the assessment roll is complete and notices of valuation changes have been mailed and provide the final date for filing valuation protests with the county board of equalization.

(4) The county assessor shall annually, on or before June 6, post in his or her office and, as designated by the county board, mail to a newspaper of general circulation and to licensed broadcast media in the county the assessment ratios as found in his or her county as determined by the Tax Equalization and

Review Commission and any other statistical measures, including, but not limited to, the assessment-to-sales ratio, the coefficient of dispersion, and the price-related differential.

Source: Laws 1903, c. 73, § 116, p. 427; Laws 1909, c. 111, § 1, p. 444; R.S.1913, § 6431; C.S.1922, § 5966; Laws 1927, c. 179, § 1, p. 519; C.S.1929, § 77-1612; R.S.1943, § 77-1315; Laws 1947, c. 250, § 26, p. 798; Laws 1947, c. 251, § 34, p. 825; Laws 1953, c. 271, § 1, p. 896; Laws 1953, c. 270, § 4, p. 894; Laws 1953, c. 272, § 1, p. 897; Laws 1959, c. 355, § 22, p. 1266; Laws 1959, c. 370, § 4, p. 1305; Laws 1971, LB 209, § 1; Laws 1979, LB 187, § 206; Laws 1984, LB 660, § 1; Laws 1992, LB 1063, § 120; Laws 1992, Second Spec. Sess., LB 1, § 93; Laws 1994, LB 902, § 16; Laws 1995, LB 452, § 18; Laws 1997, LB 270, § 68; Laws 1999, LB 194, § 17; Laws 2001, LB 156, § 1; Laws 2001, LB 170, § 6; Laws 2002, LB 994, § 12; Laws 2004, LB 973, § 20; Laws 2005, LB 261, § 2.

Cross References

For date of convening the board of equalization, see section 77-1502.

77-1315.01 Overvaluation or undervaluation; county assessor; report.

After March 19 and on or before July 25 or on or before August 10 in counties that have adopted a resolution to extend the deadline for hearing protests under section 77-1502, the county assessor shall report to the county board of equalization any overvaluation or undervaluation of any real property. The county board of equalization shall consider the report in accordance with section 77-1504.

The current year's assessed valuation of any real property shall not be changed by the county assessor after March 19 except by action of the Tax Equalization and Review Commission or the county board of equalization.

Source: Laws 1997, LB 270, § 69; Laws 1999, LB 194, § 18; Laws 2004, LB 973, § 21; Laws 2005, LB 261, § 3; Laws 2005, LB 283, § 1.

77-1317 Real property; assessment; omitted lands; correction; exceptions.

It shall be the duty of the county assessor to report to the county board of equalization all real property in his or her county that, for any reason, was omitted from the assessment roll for the current year, after March 19, or any former year. The assessment shall be made by the county board of equalization in accordance with sections 77-1504 and 77-1507. After county board of equalization action pursuant to section 77-1504 or 77-1507, the county assessor shall correct the assessment and tax rolls as provided in section 77-1613.02. No real property shall be assessed for any prior year under this section when such real property has changed ownership otherwise than by will, inheritance, or gift.

Source: Laws 1903, c. 73, § 118, p. 428; R.S.1913, § 6433; C.S.1922, § 5968; C.S.1929, § 77-1614; R.S.1943, § 77-1317; Laws 1947, c. 250, § 28, p. 798; Laws 1949, c. 232, § 1, p. 643; Laws 1992, LB 1063, § 121; Laws 1992, Second Spec. Sess., LB 1, § 94; Laws 1997, LB 270, § 71; Laws 1999, LB 194, § 19; Laws 2004, LB 973, § 22.

77-1318 Real property taxes; back interest and penalties; when; appeal.

All taxes charged under section 77-1317 shall be exempt from any back interest or penalty and shall be collected in the same manner as other taxes levied upon real estate, except for taxes charged on improvements to real property made after September 1, 1980. Interest at the rate provided in section 77-207 and the following penalties and interest on penalties for late reporting or failure to report such improvements pursuant to section 77-1318.01 shall be collected in the same manner as other taxes levied upon real property. The penalty for late reporting or failure to report improvements made to real property after September 1, 1980, shall be as follows: (1) A penalty of twelve percent of the tax due on the improvements for each taxing period for improvements voluntarily filed or reported after March 19 has passed; and (2) a penalty of twenty percent of the tax due on improvements for each taxing period for improvements not voluntarily reported for taxation purposes after March 19 has passed. Interest at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, shall be assessed upon such penalty from the date of delinquency of the tax until paid. No penalty excluding interest shall be charged in excess of one thousand dollars per year. For purposes of this section, improvement shall mean any new construction of or change to an item of real property as defined in section 77-103.

Any additional taxes, penalties, or interest on penalties imposed pursuant to this section may be appealed in the same manner as appeals are made under section 77-1233.06.

Source: Laws 1903, c. 73, § 119, p. 428; R.S.1913, § 6434; C.S.1922, § 5969; C.S.1929, § 77-1615; R.S.1943, § 77-1318; Laws 1980, LB 689, § 2; Laws 1984, LB 835, § 7; Laws 1987, LB 508, § 43; Laws 1990, LB 821, § 51; Laws 1997, LB 270, § 72; Laws 1999, LB 194, § 20; Laws 2004, LB 973, § 23.

77-1327 Legislative intent; Property Tax Administrator; sales file; studies; powers and duties.

(1) It is the intent of the Legislature that accurate and comprehensive information be developed by the Property Tax Administrator and made accessible to the taxing officials and property owners in order to ensure the uniformity and proportionality of the assessments of real property valuations in the state in accordance with law and to provide the statistical and narrative reports pursuant to section 77-5027.

(2) All transactions of real property for which the statement required in section 76-214 is filed shall be available for development of a sales file by the Property Tax Administrator. All transactions with stated consideration of more than one hundred dollars or upon which more than two dollars and twenty-five cents in documentary stamp taxes are paid shall be considered sales. All sales shall be deemed to be arm's length transactions unless determined to be otherwise under professionally accepted mass appraisal techniques. The Department of Revenue shall not overturn a determination made by a county assessor regarding the qualification of a sale unless the department reviews the sale and determines through the review that the determination made by the county assessor is incorrect.

(3) The Property Tax Administrator annually shall make and issue comprehensive assessment ratio studies of the average level of assessment, the degree of assessment uniformity, and the overall compliance with assessment requirements for each major class of real property subject to the property tax in each county. The comprehensive assessment ratio studies shall be developed in compliance with professionally accepted mass appraisal techniques and shall employ such statistical analysis as deemed appropriate by the Property Tax Administrator, including measures of central tendency and dispersion. The comprehensive assessment ratio studies shall be based upon the sales file as developed in subsection (2) of this section and shall be used by the Property Tax Administrator for the analysis of the level of value and quality of assessment for purposes of section 77-5027 and by the Property Tax Administrator in establishing the adjusted valuations required by section 79-1016. Such studies may also be used by assessing officials in establishing assessed valuations.

(4) For purposes of determining the level of value of agricultural and horticultural land subject to special valuation under sections 77-1343 to 77-1348, the Property Tax Administrator shall annually make and issue a comprehensive study developed in compliance with professionally accepted mass appraisal techniques to establish the level of value if in his or her opinion the level of value cannot be developed through the use of the comprehensive assessment ratio studies developed in subsection (3) of this section.

(5) The Property Tax Administrator may require assessors and other taxing officials to report data on the assessed valuation and other features of the property assessment for such periods and in such form and content as the Property Tax Administrator shall deem appropriate. The Property Tax Administrator shall so construct and maintain the system used to collect and analyze the data to enable him or her to make intracounty comparisons of assessed valuation, including school districts, as well as intercounty comparisons of assessed valuation, including school districts. The Property Tax Administrator shall include analysis of real property sales pursuant to land contracts and similar transfers at the time of execution of the contract or similar transfer.

Source: Laws 1969, c. 622, § 3, p. 2513; Laws 1979, LB 187, § 207; Laws 1980, LB 834, § 61; Laws 1992, LB 719A, § 166; Laws 1994, LB 1275, § 11; Laws 1995, LB 452, § 19; Laws 1995, LB 490, § 124; Laws 1999, LB 36, § 29; Laws 1999, LB 194, § 21; Laws 2001, LB 170, § 7; Laws 2002, LB 994, § 14; Laws 2005, LB 40, § 8; Laws 2007, LB334, § 65.

77-1330 Property Tax Administrator and Tax Commissioner; guides for assessors; prepare; issue; failure to implement guide; corrective measures; procedures; cost; payment; State Treasurer; duties; removal of county assessor or deputy from office; appeal.

(1) The Property Tax Administrator and Tax Commissioner shall prepare, issue, and annually revise guides for county assessors in the form of property tax laws, rules, regulations, manuals, and directives. The Property Tax Administrator and Tax Commissioner may issue such directives without the necessity of compliance with the terms of the Administrative Procedure Act relating to the promulgation of rules and regulations. The assessment and appraisal function performed by counties shall comply with the standards, and county assessors shall continually use the materials in the performance of their duties. The

standards shall not require the implementation of a specific computer software or hardware system if the existing software or system produces data and reports in compliance with the standards.

(2) The Property Tax Administrator, or his or her agent or representative, may examine or cause to have examined any books, papers, records, or memoranda of any county relating to the assessment of property to determine compliance with the laws, rules, regulations, manuals, and directives described in subsection (1) of this section. Such production of records shall not include the photocopying of records between January 1 and April 1. Failure to provide such records to the Property Tax Administrator may constitute grounds for the suspension of the assessor's certificate of any county assessor who willfully fails to make requested records available to the Property Tax Administrator.

(3) After an examination the Property Tax Administrator shall provide a written report of the results to the county assessor and county board. If the examination indicates a failure to meet the standards contained in the laws, rules, regulations, manuals, and directives, the Property Tax Administrator shall, in the report, set forth the facts and cause of such failures as well as corrective measures the county or county assessor may implement to correct those failures.

(4) After the issuance of the report of the results of the examination, the Property Tax Administrator may seek to order a county or county assessor to take corrective measures to remedy any failure to comply with the materials described in subsection (1) of this section. Such corrective orders may only be issued after written notice and a hearing before the Tax Commissioner conducted at least ten days after the issuance of the written notice of hearing. The performance of such corrective measures shall be implemented by the county to which the order is issued. If the county fails to implement such corrective measures, the Property Tax Administrator may seek to suspend the assessment function of the county under the terms of subsection (5) of this section and shall implement the corrective measures pursuant to subsection (6) of this section. The performance of such corrective measures shall be a charge on the county, and upon completion, the Property Tax Administrator shall notify the county board of the cost and make demand for such cost. If payment is not received within one hundred twenty days after the start of the next fiscal year, the Tax Commissioner shall report such fact to the State Treasurer. The State Treasurer shall immediately make payment to the Department of Revenue for the costs incurred by the department for such corrective measures. The payment shall be made out of any money to which such county may be entitled under Chapter 77, articles 27 and 35, and Chapter 66, articles 4 and 6.

(5) If, within one year from the service of the order, the measures in the corrective order have not been taken, the Tax Commissioner (a) may, at any time during the continuance of such failure, issue an order requiring the county assessor and county board to show cause why the authority of the county with respect to assessments or any matter related thereto should not be suspended, (b) shall set a time and place at which the Tax Commissioner or his or her representative shall hear the county assessor and county board on the question of compliance by the county assessor or county with the laws, rules, regulations, manuals, directives, or corrective orders described in this section, and (c) after such hearing shall determine whether and to what extent the assessment function of the county shall be so suspended. Such hearing shall be held at least ten days after the issuance of such notice in the county.

(6) During the continuance of a suspension pursuant to subsection (5) of this section, the Property Tax Administrator shall succeed to the authority and duties from which the county has been suspended and shall exercise and perform the same. Such exercise and performance shall be a charge on the suspended county. The suspension shall continue until the Tax Commissioner finds that the conditions responsible for the failure to meet the minimum standards contained in the laws, rules, regulations, manuals, and directives have been corrected.

(7) The Property Tax Administrator, subject to rules and regulations to be published and furnished to every county assessor and county board, shall have the power to petition the Tax Commissioner to invalidate the certificate of any assessor or deputy assessor who willfully fails or refuses to diligently perform his or her duties in accordance with the laws, rules, regulations, manuals, and orders issued by the Tax Commissioner governing the assessment of property and the duties of each assessor and deputy assessor. No certificate shall be revoked or suspended except after notice and a hearing before the Tax Commissioner or his or her designee. Such hearing shall be held at least ten days after the issuance of such notice in the county. Prior to revocation, a one-year probationary period, subject to oversight by the Tax Commissioner, shall be imposed. At the end of the one-year probationary period, a second hearing shall be held. If assessment practices have improved, the probationary period shall end and no revocation shall be made. If assessment practices have not improved, the assessor certificate shall be revoked. If during the probationary period, the assessor continues to willfully fail or refuse to diligently perform his or her duties, the Tax Commissioner may immediately hold the second hearing. If the county assessor certificate of a person serving as assessor or deputy assessor is revoked, such person shall be removed from office by the Tax Commissioner, the office shall be declared vacant, and such person shall not be eligible to hold that office for a period of five years after the date of removal. The Tax Commissioner shall mail a copy of his or her written order to the affected party within seven days after the date of the order.

(8) All hearings described in this section shall be governed by the Administrative Procedure Act. Any county aggrieved by a determination of the Tax Commissioner after a hearing pursuant to subsections (4) and (5) of this section or alleging that its suspension is no longer justified or any assessor or deputy assessor whose county assessor certificate has been revoked may appeal within thirty days after the date of the written order of the Tax Commissioner to the Tax Equalization and Review Commission in accordance with section 77-5013.

Source: Laws 1969, c. 622, § 6, p. 2514; Laws 1979, LB 159, § 7; Laws 1981, LB 479, § 1; Laws 1984, LB 833, § 3; Laws 1985, LB 271, § 14; Laws 1995, LB 490, § 126; Laws 1999, LB 36, § 30; Laws 1999, LB 194, § 22; Laws 2004, LB 973, § 24; Laws 2007, LB334, § 66.

Cross References

Administrative Procedure Act, see section 84-920.

Tax Equalization and Review Commission Act, see section 77-5001.

77-1331 Property Tax Administrator; tax records; duties.

Pursuant to rules and regulations, the Property Tax Administrator shall, on or before July 1, 2007, develop, maintain, and enforce a uniform statewide

structure for record identification codes, property record cards, property record files, and other administrative reports required for the administration of the property assessment process. The Property Tax Administrator shall not require the use of specific computer software or hardware if an existing system produces data and reports in compliance with the rules and regulations of the Tax Commissioner.

Source: Laws 1969, c. 622, § 7, p. 2514; Laws 1971, LB 155, § 1; Laws 1995, LB 490, § 127; Laws 2000, LB 968, § 46; Laws 2005, LB 263, § 10; Laws 2007, LB334, § 67.

77-1333 Rent-restricted housing projects; county assessor; perform income-approach calculation; owner; duties.

(1) The county assessor shall perform an income-approach calculation for all rent-restricted housing projects constructed to allow an allocation of low-income housing tax credits under section 42 of the Internal Revenue Code and approved by the Nebraska Investment Finance Authority when considering the assessed valuation to place on the property for each assessment year. The income-approach calculation shall be consistent with any rules and regulations adopted and promulgated by the Tax Commissioner and shall comply with professionally accepted mass appraisal techniques. Any low-income housing tax credits authorized under section 42 of the Internal Revenue Code that were granted to owners of the project shall not be considered income for purposes of the calculation but may be considered in determining the capitalization rate to be used when capitalizing the income stream. The county assessor, in determining the actual value of any specific property, may consider other methods of determining value that are consistent with professionally accepted mass appraisal methods described in section 77-112.

(2) The owner of a rent-restricted housing project shall file a statement with the county assessor on or before October 1 of each year that details income and expense data for the prior year, a description of any land-use restrictions, and such other information as the county assessor may require.

Source: Laws 2005, LB 263, § 6; Laws 2007, LB334, § 68.

Cross References

Nebraska Investment Finance Authority Act, see section 58-201.

77-1334 Property Tax Administrator; inspections, investigations, and studies; administration of tax laws.

The Property Tax Administrator may make such inspections, investigations, and studies as may be necessary for the adequate administration of his or her responsibilities pursuant to the provisions of sections 77-701 to 77-706 and 77-1327 to 77-1342. Such inspections, investigations, and studies may be made in cooperation with other state agencies, and, in connection therewith, the Property Tax Administrator may utilize reports and data of other state agencies.

Source: Laws 1969, c. 622, § 10, p. 2515; Laws 1995, LB 490, § 130; Laws 1999, LB 36, § 31; Laws 2007, LB334, § 69.

77-1338 Values established; effect.

The county and all political subdivisions within the county shall be bound by the values established by the county assessor and equalized by the county board

of equalization and the Tax Equalization and Review Commission for all property subject to its taxing power.

Source: Laws 1969, c. 622, § 14, p. 2517; Laws 1979, LB 187, § 208; Laws 1992, LB 1063, § 122; Laws 1992, Second Spec. Sess., LB 1, § 95; Laws 1994, LB 902, § 17; Laws 1997, LB 397, § 15; Laws 2005, LB 261, § 4.

77-1339 Joint or cooperative performance of assessment function; two or more contiguous counties; agreement; contents; approval by Tax Commissioner.

(1) Any two or more contiguous counties may enter into an agreement for joint or cooperative performance of the assessment function.

(2) Such agreement shall provide for:

(a) The division, merger, or consolidation of administrative functions between or among the parties, or the performance thereof by one county on behalf of all the parties;

(b) The financing of the joint or cooperative undertaking;

(c) The rights and responsibilities of the parties with respect to the direction and supervision of work to be performed under the agreement;

(d) The duration of the agreement and procedures for amendment or termination thereof; and

(e) Any other necessary or appropriate matters.

(3) The agreement may provide for the suspension of the powers and duties of the office of county assessor in any one or more of the parties.

(4) Unless the agreement provides for the performance of the assessment function by the assessor of one county for and on behalf of all other counties party thereto, the agreement shall prescribe the manner of electing the assessor, and the employees of the office, who shall serve pursuant to the agreement. Each county party to the agreement shall be represented in the procedure for choosing such assessor. No person shall be appointed assessor pursuant to an agreement who could not be so appointed for a single county. Except to the extent made necessary by the multicounty character of the assessment agency, qualifications for employment as assessor or in the assessment agency and terms and conditions of work shall be similar to those for the personnel of a single county assessment agency. Any county may include in any one or more of its employee benefit programs an assessor serving pursuant to an agreement made under this section and the employees of the assessment agency. As nearly as practicable, such inclusion shall be on the same basis as for similar employees of a single county only. An agreement providing for the joint or cooperative performance of the assessment function may provide for such assessor and employee coverage in county employee benefit programs.

(5) No agreement made pursuant to the provisions of this section shall take effect until it has been approved in writing by the Tax Commissioner.

(6) Copies of any agreement made pursuant to the provisions of this section, and of any amendment thereto, shall be filed in the office of the Tax Commissioner and county board of the counties involved.

Source: Laws 1969, c. 622, § 15, p. 2517; Laws 1995, LB 490, § 132; Laws 2007, LB334, § 70.

77-1340 County assessment function by Property Tax Administrator; procedure; cost; effect.

(1) The county board of a county may, by resolution, request the Property Tax Administrator to assume the duties, responsibilities, and authority of the county assessor and to perform the same in and for the county. Such a resolution must be adopted on or before October 31, 2006, and every other year thereafter.

(2) If the Property Tax Administrator finds that direct state performance of the duties, responsibilities, and authority of the county assessor will be either (a) necessary or desirable for the economic and efficient performance thereof or (b) necessary or desirable for improving the quality of assessment in the state, he or she may recommend assumption of such duties, responsibilities, and authority. The Tax Commissioner shall decide whether to recommend assumption and deliver such recommendation to the Governor and the Legislature by December 15, 2006, and every other year thereafter.

(3) The Tax Commissioner may recommend assuming the duties, responsibilities, and authority of the county assessor or reject assuming such duties, responsibilities, and authority. If the Tax Commissioner rejects the request, the assessment function shall not be transferred and the county may make another request.

(4) Upon a recommendation by the Tax Commissioner that the assumption of the assessment function should be undertaken according to the criteria in subsection (2) of this section, the Tax Commissioner shall request from the Legislature a sufficient appropriation in the next regular session of the Legislature following the recommendation to assume the assessment function. If the appropriation is not made, the Tax Commissioner shall notify the county on or before July 1 that the assessment function will not be undertaken. If a sufficient appropriation is made, the Tax Commissioner shall notify the county on or before July 1 that the assessment function will be undertaken beginning the next following July 1.

(5) If the Tax Commissioner recommends assumption of the assessment function and the Legislature makes an appropriation which the Tax Commissioner determines is sufficient to undertake the assumption, then commencing on the second July 1 after the adoption of the resolution by the county board, (a) the Property Tax Administrator shall undertake and perform the assessment function and all other duties and functions of the county assessor's office, including appraisal and reappraisal, (b) the office and functions of the county assessor shall be suspended, and (c) the performance of the assessment function by the Property Tax Administrator shall be deemed performance by the county assessor. Upon the assumption of the assessment function by the Property Tax Administrator, the term of office of the incumbent county assessor shall terminate and the county need no longer elect a county assessor pursuant to section 32-519. At that time, the county assessor and the employees of the county assessor's office shall become state employees with the status of newly hired employees except as provided in section 77-1340.02. No transferred county assessor or employee shall incur a loss of income or the right to participate in state-sponsored benefits as a result of becoming a state employee with the status of a newly hired employee pursuant to this section.

Source: Laws 1969, c. 622, § 16, p. 2519; Laws 1995, LB 490, § 133; Laws 1996, LB 1085, § 53; Laws 1997, LB 269, § 37; Laws 2002, LB 994, § 15; Laws 2005, LB 291, § 1; Laws 2007, LB334, § 71.

77-1342 Department of Revenue Property Assessment Division Cash Fund; created; use; investment.

There is hereby created a fund to be known as the Department of Revenue Property Assessment Division Cash Fund to which shall be credited all money received by the Department of Revenue for services performed for county and multicounty assessment districts, for charges for publications, manuals, and lists, as an assessor's examination fee authorized by section 77-421, and under the provisions of sections 60-3,202, 77-684, and 77-1250. The fund shall be used to carry out any duties and responsibilities of the department. The county or multicounty assessment district shall be billed by the department for services rendered. Reimbursements to the department shall be credited to the fund, and expenditures therefrom shall be made only when such funds are available. The department shall only bill for the actual amount expended in performing the service.

The fund shall not, at the close of each year, be lapsed to the General Fund. Any money in the Department of Revenue Property Assessment Division 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.

Any money in the Department of Property Assessment and Taxation Cash Fund on July 1, 2007, shall be transferred to the Department of Revenue Property Assessment Division Cash Fund on such date.

Source: Laws 1969, c. 622, § 18, p. 2519; Laws 1971, LB 158, § 1; Laws 1971, LB 53, § 8; Laws 1973, LB 132, § 4; Laws 1985, LB 273, § 38; Laws 1989, Spec. Sess., LB 7, § 8; Laws 1992, LB 1063, § 123; Laws 1992, Second Spec. Sess., LB 1, § 96; Laws 1994, LB 1066, § 82; Laws 1995, LB 490, § 134; Laws 1997, LB 270, § 75; Laws 1997, LB 271, § 50; Laws 1999, LB 36, § 32; Laws 2001, LB 170, § 8; Laws 2002, LB 1310, § 9; Laws 2003, LB 563, § 42; Laws 2005, LB 274, § 272; Laws 2007, LB334, § 72.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

77-1343 Agricultural or horticultural land; terms, defined.

The purpose of sections 77-1343 to 77-1348 is to provide a special valuation for qualified agricultural or horticultural land so that the current assessed valuation of the land for property tax purposes is the value that the land would have without regard to the value the land would have for other purposes or uses. For purposes of sections 77-1343 to 77-1348:

- (1) Agricultural or horticultural land means that land as defined in section 77-1359;
- (2) Applicant means an owner or lessee;
- (3) Lessee means a person leasing agricultural or horticultural land from a state or governmental subdivision which is an owner that is subject to taxation under section 77-202.11;
- (4) Owner means an owner of record of agricultural or horticultural land or the purchaser of agricultural or horticultural land under a contract for sale;

(5) Recapture valuation means the actual value of the land pursuant to section 77-112; and

(6) Special valuation means the value that the land would have for agricultural or horticultural purposes or uses without regard to the actual value the land would have for other purposes or uses.

Source: Laws 1974, LB 359, § 1; Laws 1983, LB 26, § 1; Laws 1985, LB 271, § 15; Laws 1989, LB 361, § 9; Laws 2000, LB 968, § 48; Laws 2001, LB 170, § 9; Laws 2002, LB 994, § 16; Laws 2004, LB 973, § 25; Laws 2006, LB 808, § 27.

77-1344 Agricultural or horticultural land; special valuation; when applicable.

(1) Agricultural or horticultural land which has an actual value as defined in section 77-112 reflecting purposes or uses other than agricultural or horticultural purposes or uses shall be assessed as provided in subsection (3) of section 77-201 if the land meets the qualifications of this subsection and an application for such special valuation is filed and approved pursuant to section 77-1345. In order for the land to qualify for special valuation all of the following criteria shall be met: (a) The land is located outside the corporate boundaries of any sanitary and improvement district, city, or village except as provided in subsection (2) of this section; and (b) the land is agricultural or horticultural land.

(2) Special valuation may be applicable to agricultural or horticultural land included within the corporate boundaries of a city or village if the land is subject to a conservation or preservation easement as provided in the Conservation and Preservation Easements Act and the governing body of the city or village approves the agreement creating the easement.

(3) The eligibility of land for the special valuation provisions of this section shall be determined each year as of January 1, but if the land so qualified becomes disqualified on or before December 31 of that year, it shall be valued at its recapture value.

(4) The special valuation placed on such land by the county assessor under this section shall be subject to equalization by the county board of equalization and the Tax Equalization and Review Commission.

(5) Recapture value shall be determined only through tax year 2008. The recapture valuation placed on such land by the county assessor under this section shall be subject to equalization by the county board of equalization and the Tax Equalization and Review Commission.

Source: Laws 1974, LB 359, § 2; Laws 1983, LB 26, § 2; Laws 1985, LB 271, § 16; Laws 1989, LB 361, § 10; Laws 1991, LB 320, § 5; Laws 1996, LB 934, § 2; Laws 1996, LB 1039, § 1; Laws 1997, LB 270, § 76; Laws 1998, LB 611, § 3; Laws 2000, LB 968, § 49; Laws 2001, LB 170, § 10; Laws 2004, LB 973, § 26; Laws 2005, LB 261, § 5; Laws 2006, LB 808, § 28; Laws 2007, LB 166, § 6.

Cross References

Conservation and Preservation Easements Act, see section 76-2,118.

77-1345 Agricultural or horticultural lands; special valuation; application.

(1) An applicant seeking special valuation under section 77-1344 shall make application to the county assessor on or before June 30 of the first year in which such valuation is requested.

(2)(a) The application shall be made upon forms prescribed by the Tax Commissioner and available from the county assessor and shall include such information as may reasonably be required to determine the eligibility of the applicant and the land.

(b) The application shall be signed by any one of the following:

(i) The applicant;

(ii) Any person of legal age duly authorized in writing to sign an application on behalf of the applicant; or

(iii) The guardian or conservator of the applicant or the executor or administrator of the applicant's estate.

(c) The assessor shall not approve an application signed by a person whose authority to sign is not a matter of public record in the county unless there is filed with the assessor a true copy of the deed, contract of sale, power of attorney, lease, or other appropriate instrument evidencing the signer's qualification pursuant to subdivision (2)(b) of this section.

(3) If the county board of equalization takes action pursuant to section 77-1504 or 77-1507, the applicant may file an application for special valuation within thirty days after the mailing of the valuation notice issued by the county board of equalization pursuant to section 77-1504 or 77-1507.

Source: Laws 1974, LB 359, § 3; Laws 1983, LB 26, § 3; Laws 1985, LB 271, § 17; Laws 1997, LB 397, § 16; Laws 2000, LB 968, § 50; Laws 2002, LB 994, § 17; Laws 2004, LB 973, § 27; Laws 2006, LB 808, § 29; Laws 2007, LB334, § 73.

77-1345.01 Agricultural or horticultural lands; special valuation; approval or denial; protest; appeal; failure to give notice; effect.

(1) On or before July 15 in the year of application, the county assessor shall approve or deny the application for special valuation filed pursuant to section 77-1345. On or before July 22, the county assessor shall issue notice of approval or denial.

(2) If the application is approved by the county assessor, the land shall be valued as provided in section 77-1344 and, on or before July 22, the county board of equalization shall send a property valuation notice for special value and recapture value to the owner and, if not the same, the applicant. Within thirty days after the mailing of the notice, a written protest of the special value or recapture value may be filed.

(3)(a) If the application is denied by the assessor, a written protest of the denial of the application may be filed within thirty days after the mailing of the denial.

(b) If the denial of an application for special valuation is reversed on appeal and the application is approved, the land shall be valued as provided in section 77-1344 and the county board of equalization shall send the property valuation notice for special value and recapture value to the owner and, if not the same, the applicant or his or her successor in interest, within fourteen days after the

date of the final order. Within thirty days after the mailing of the notice, a written protest of the special value or recapture value may be filed.

(4) If the county board of equalization takes action pursuant to section 77-1504 or 77-1507 and the applicant filed an application for special valuation pursuant to subsection (3) of section 77-1345, the county assessor shall approve or deny the application within fifteen days after the filing of the application and issue notice of the approval or denial as prescribed in subsection (1) of this section. If the application is denied by the county assessor, a written protest of the denial may be filed within thirty days of the mailing of the denial.

(5) The assessor shall mail notice of any action taken by him or her on an application to the owner and the applicant if different than the owner.

(6) All provisions of section 77-1502 except dates for filing of a protest, the period for hearing protests, and the date for mailing notice of the county board of equalization's decision are applicable to any protest filed pursuant to this section.

(7) The county board of equalization shall decide any protest filed pursuant to this section within thirty days after the filing of the protest.

(8) The clerk shall mail a copy of any decision made by the county board of equalization on a protest filed pursuant to this section to the owner and the applicant if different than the owner within seven days after the board's decision.

(9) Any decision of the county board of equalization may be appealed to the Tax Equalization and Review Commission, in accordance with section 77-5013, within thirty days after the date of the decision.

(10) If a failure to give notice as prescribed by this section prevented timely filing of a protest or appeal provided for in this section, any applicant may petition the Tax Equalization and Review Commission in accordance with section 77-5013, on or before December 31 of each year, to determine whether the land will receive special valuation for that year, to determine special value for that year or years, or for 2009 and prior years to determine recapture value for that year.

Source: Laws 2000, LB 968, § 51; Laws 2004, LB 973, § 28; Laws 2005, LB 15, § 4; Laws 2005, LB 263, § 11; Laws 2006, LB 808, § 30; Laws 2008, LB965, § 14.

Operative date April 15, 2008.

Cross References

Tax Equalization and Review Commission Act, see section 77-5001.

77-1346 Agricultural or horticultural lands; eligibility for special valuation; rules and regulations.

The Tax Commissioner shall adopt and promulgate rules and regulations to be used by county assessors in determining eligibility for special valuation under section 77-1344 and in determining the special valuation of such land for agricultural or horticultural purposes under section 77-1344.

Source: Laws 1974, LB 359, § 4; Laws 1985, LB 271, § 18; Laws 1989, LB 361, § 11; Laws 1995, LB 490, § 135; Laws 2000, LB 968, § 52; Laws 2007, LB334, § 74.

77-1347 Agricultural or horticultural lands; special valuation; disqualification.

Upon approval of an application, the county assessor shall value the land as provided in section 77-1344 until the land becomes disqualified for such valuation by:

- (1) Written notification by the applicant or his or her successor in interest to the county assessor to remove such special valuation;
- (2) Sale or transfer to an ownership making it exempt from property taxation;
- (3) Sale or transfer to the state or its political subdivisions, unless the land continues to qualify as agricultural or horticultural land;
- (4) Except as provided in subsection (2) of section 77-1344, inclusion of the land within the corporate boundaries of any sanitary and improvement district, city, or village; or
- (5) The land no longer qualifying as agricultural or horticultural land.

Source: Laws 1974, LB 359, § 5; Laws 1983, LB 26, § 4; Laws 1985, LB 271, § 19; Laws 1989, LB 361, § 12; Laws 2000, LB 968, § 53; Laws 2001, LB 170, § 11; Laws 2002, LB 994, § 18; Laws 2005, LB 263, § 12; Laws 2006, LB 808, § 31.

77-1347.01 Agricultural or horticultural lands; special valuation; disqualification; procedure; protest; decision; appeal.

At any time, the county assessor may determine that land no longer qualifies for special valuation pursuant to sections 77-1344 and 77-1347. If land is deemed disqualified, the county assessor shall send a written notice of the determination to the applicant or owner within fifteen days after his or her determination, including the reason for the disqualification. A protest of the county assessor's determination may be filed with the county board of equalization within thirty days after the mailing of the notice. The county board of equalization shall decide the protest within thirty days after the filing of the protest. The county clerk shall, within seven days after the county board of equalization's final decision, mail to the protester written notification of the board's decision. The decision of the county board of equalization may be appealed to the Tax Equalization and Review Commission in accordance with section 77-5013 within thirty days after the date of the decision. The valuation notice relating to the land subject to the county assessor's disqualification notice shall be sent in accordance with subsection (2) of section 77-1315 and the valuation may be protested pursuant to section 77-1502.

Source: Laws 2006, LB 808, § 32; Laws 2007, LB166, § 7.

77-1348 Agricultural or horticultural land; special valuation; disqualification; effect.

- (1) For tax years 2007 and 2008, whenever land which has received special valuation becomes disqualified for such special valuation pursuant to section 77-1347.01, the land shall be subject to taxation at its recapture value for the year in which it became disqualified, except that a parcel disqualified solely due to the revision to the definition of agricultural land and horticultural land in section 77-1359 by Laws 2006, LB 808, shall be subject to taxation at its actual value for the year in which it became disqualified. Additionally, the assessor shall add to the tax extended against the land on the respective property tax

rolls, to be collected and distributed in the same manner as other taxes levied upon real property, a tax amount equal to the sum of the following:

(a)(i) If the land becomes disqualified in 2007, the total amount of additional tax had the land been valued at eighty percent of its actual value for the preceding two years or the number of years in which special valuation was in effect if fewer than two years, except that no additional tax shall be added to the tax roll for any preceding years if the parcel was disqualified solely due to the revision to the definition of agricultural land and horticultural land in section 77-1359 by Laws 2006, LB 808; and

(ii) If the land becomes disqualified in 2008, the total amount of additional tax had the land been valued at seventy-five percent of its recapture value for the preceding year if special valuation was in effect, except that no additional tax shall be added to the tax roll for any preceding years if the parcel was disqualified solely due to the revision to the definition of agricultural land and horticultural land in section 77-1359 by Laws 2006, LB 808.

For tax years beginning in 2009, the disqualification of land for special valuation shall not result in additional taxes; and

(b) Interest upon the amounts of additional tax from each year included in subdivision (1)(a) of this section at the rate of six percent from the dates at which such additional taxes would have been payable if no special valuation had been in effect through sixty days after the notice sent pursuant to subsection (1) of this section. Upon expiration of the sixty days, the additional taxes and interest shall be delinquent and interest shall accrue at the rate provided in section 45-104.01 until paid.

(2) In cases when the designation of special valuation is removed as a result of a sale or transfer described in subdivision (2) or (3) of section 77-1347 other than an acquisition described in subsection (3) of this section, the lien for such increased taxes and interest shall attach as of the day preceding such sale or transfer.

(3) The provisions of subsection (1) of this section do not apply if:

(a) The land was acquired by eminent domain;

(b) The land is owned by a public entity and is disqualified from special valuation because it is being used or is being developed for use in a public purpose or is exchanged for other property to be used or developed for use in a public purpose; or

(c) The land is donated to an organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code or to the state or its political subdivisions and will be used by the organization, state, or political subdivision for a public, educational, religious, charitable, or cemetery purpose under section 77-202.

Source: Laws 1974, LB 359, § 6; Laws 1983, LB 26, § 5; Laws 1985, LB 271, § 20; Laws 1989, LB 361, § 13; Laws 1996, LB 1039, § 2; Laws 2000, LB 968, § 54; Laws 2002, LB 994, § 19; Laws 2004, LB 973, § 29; Laws 2006, LB 808, § 33; Laws 2007, LB 166, § 8.

77-1355 Greenbelt Advisory Committee; established; members; terms; duties; expenses.

(1) The Greenbelt Advisory Committee is established to assist and advise the Property Tax Administrator in developing uniform and proportionate special

valuation of agricultural land and horticultural land which is subject to land-use controls provided for in sections 77-1343 to 77-1348. The advisory committee shall provide advice to the Tax Commissioner and the Legislature on rules and regulations under section 77-1346 and methods and practices of state and local assessing officials for such special valuation. The Tax Commissioner shall respond to the recommendations of the advisory committee and explain the basis for approval or rejection of recommendations.

(2) The advisory committee shall consist of the following members appointed by the Governor:

- (a) Two active farmers;
- (b) An active rancher;
- (c) A real property appraiser with expertise in the appraisal of agricultural land and horticultural land;
- (d) A professor of agricultural economics at the University of Nebraska Institute of Agriculture and Natural Resources;
- (e) An elected county assessor or a designee of the county assessor; and
- (f) An elected county commissioner or supervisor.

The members shall serve for terms of four years, except that the Governor shall designate three of the initial members to serve for two-year terms. The members shall select a chairperson from the advisory committee's membership. The advisory committee shall meet at least once annually.

(3) The advisory committee shall develop recommendations on:

- (a) When using comparable sales analysis for purposes of establishing the special valuation under sections 77-1343 to 77-1348, how such information may be gathered from other counties and locations within a county;
- (b) When using an income capitalization approach for such special valuation, the income and expense information to be used and the appropriate method of gathering such information;
- (c) When using the income capitalization approach, the approved methods of determining the capitalization rate, including methods of gathering valid comparable sales for purposes of determining the capitalization rate on comparable agricultural land and horticultural land; and
- (d) Any further revisions to sections 77-1343 to 77-1348 as the committee deems important for uniform enforcement of such sections and uniform special valuation of agricultural land and horticultural land.

(4) Methods and recommendations developed by the advisory committee shall provide for an annually updated analysis based on a three-year average of the information used. The advisory committee may develop recommendations for valuation methods which provide for special valuation of land used for specialized agricultural and horticultural crop production which is unique or localized to a specific area. The recommendations shall be provided by October 1 each year.

(5) The Property Tax Administrator shall provide administrative staff support and information as requested by the advisory committee so long as provision of staff support and information does not impair the ability of the Property Tax Administrator to carry out other statutory obligations.

(6) Members shall be reimbursed for actual and necessary expenses pursuant to sections 81-1174 to 81-1177.

Source: Laws 2000, LB 1124, § 1; Laws 2001, LB 170, § 12; Laws 2005, LB 261, § 6; Laws 2006, LB 778, § 71; Laws 2006, LB 808, § 34; Laws 2007, LB166, § 9; Laws 2007, LB334, § 75.

77-1359 Agricultural and horticultural land; legislative findings; terms, defined.

The Legislature finds and declares that agricultural land and horticultural land shall be a separate and distinct class of real property for purposes of assessment. The assessed value of agricultural land and horticultural land shall not be uniform and proportionate with all other real property, but the assessed value shall be uniform and proportionate within the class of agricultural land and horticultural land.

For purposes of sections 77-1359 to 77-1363:

(1) Agricultural land and horticultural land means a parcel of land, excluding any building or enclosed structure and the land associated with such building or enclosed structure located on the parcel, which is primarily used for agricultural or horticultural purposes, including wasteland lying in or adjacent to and in common ownership or management with other agricultural land and horticultural land;

(2) Agricultural or horticultural purposes means used for the commercial production of any plant or animal product in a raw or unprocessed state that is derived from the science and art of agriculture, aquaculture, or horticulture. Agricultural or horticultural purposes includes the following uses of land:

(a) Land retained or protected for future agricultural or horticultural purposes under a conservation easement as provided in the Conservation and Preservation Easements Act except when the parcel or a portion thereof is being used for purposes other than agricultural or horticultural purposes; and

(b) Land enrolled in a federal or state program in which payments are received for removing such land from agricultural or horticultural production;

(3) Farm home site means not more than one acre of land contiguous to a farm site which includes an inhabitable residence and improvements used for residential purposes, and such improvements include utility connections, water and sewer systems, and improved access to a public road; and

(4) Farm site means the portion of land contiguous to land actively devoted to agriculture which includes improvements that are agricultural or horticultural in nature, including any uninhabitable or unimproved farm home site.

Source: Laws 1985, LB 271, § 4; Laws 1986, LB 817, § 11; Laws 1988, LB 1207, § 3; Laws 1989, LB 361, § 14; Laws 1991, LB 320, § 7; Laws 1996, LB 934, § 3; Laws 1997, LB 270, § 77; Laws 2000, LB 419, § 1; Laws 2006, LB 808, § 35; Laws 2008, LB777, § 1. Operative date January 1, 2009.

Cross References

Conservation and Preservation Easements Act, see section 76-2,118.

77-1360.01 Repealed. Laws 2006, LB 808, § 52.

77-1361 Repealed. Laws 2006, LB 808, § 52.

77-1362 Repealed. Laws 2006, LB 808, § 52.**77-1363 Agricultural and horticultural land; classes and subclasses.**

Agricultural land and horticultural land shall be divided into classes and subclasses of real property under section 77-103.01, including, but not limited to, irrigated cropland, dryland cropland, grassland, wasteland, nurseries, feedlots, and orchards, so that the categories reflect uses appropriate for the valuation of such land according to law. Classes shall be inventoried by subclasses of real property based on soil classification standards developed by the Natural Resources Conservation Service of the United States Department of Agriculture as converted into land capability groups by the Property Tax Administrator. County assessors shall utilize and implement soil surveys in the assessment year after the soil survey maps become available from the Natural Resources Conservation Service of the United States Department of Agriculture. Nothing in this section shall be construed to limit the classes and subclasses of real property that may be used by county assessors or the Tax Equalization and Review Commission to achieve more uniform and proportionate valuations.

Source: Laws 1985, LB 271, § 8; Laws 1988, LB 1207, § 5; Laws 1989, LB 361, § 17; Laws 1991, LB 320, § 9; Laws 1994, LB 902, § 19; Laws 1995, LB 490, § 139; Laws 1997, LB 270, § 81; Laws 1999, LB 403, § 7; Laws 2001, LB 170, § 15; Laws 2004, LB 973, § 30; Laws 2006, LB 808, § 36; Laws 2006, LB 1115, § 31.

77-1374 Improvements on leased public lands; assessment; collection of tax.

Improvements on leased public lands shall be assessed, together with the value of the lease, to the owner of the improvements as real property. On or before March 1, following any construction thereof or any change in the improvements made on or before January 1, the owner of the improvements shall file with the county assessor an assessment application on a form prescribed by the Tax Commissioner. The taxes imposed on the improvements shall be collected in the same manner as in all other cases of collection of taxes on real property.

Source: Laws 1903, c. 73, § 35, p. 396; R.S.1913, § 6320; C.S.1922, § 5921; C.S.1929, § 77-1408; R.S.1943, § 77-1209; Laws 1963, c. 447, § 1, p. 1471; Laws 1974, LB 969, § 1; Laws 1987, LB 508, § 30; R.S.1943, (1990), § 77-1209; Laws 1992, LB 1063, § 111; Laws 1992, Second Spec. Sess., LB 1, § 84; Laws 1997, LB 270, § 82; Laws 2007, LB334, § 76.

77-1376 Improvements on leased lands; how assessed; notice.

Improvements on leased lands, other than leased public lands, shall be assessed to the owner of the leased lands unless before March 1, following any construction thereof or change in the improvements made on or before January 1, the owner of the leased lands or the lessee thereof files with the county assessor, on a form prescribed by the Tax Commissioner, a request stating that specifically designated improvements on such leased lands are the property of the lessee. The improvements shall be assessed as real property, and the taxes imposed on the improvements shall be collected by levy and sale of the interest of the owner in the same manner as in all other cases of the collection of taxes

on real property. When the request is filed by the owner of the leased lands, notice shall be given by the county assessor to the lessee at the address on the request.

Source: Laws 1963, c. 434, § 1, p. 1451; Laws 1985, LB 268, § 27; Laws 1987, LB 508, § 32; R.S.1943, (1990), § 77-1209.03; Laws 1992, LB 1063, § 113; Laws 1992, Second Spec. Sess., LB 1, § 86; Laws 1995, LB 490, § 143; Laws 1997, LB 270, § 84; Laws 2007, LB334, § 77.

77-1378 Repealed. Laws 2005, LB 261, § 13.

77-1379 Repealed. Laws 2005, LB 261, § 13.

77-1380 Repealed. Laws 2005, LB 261, § 13.

77-1381 Repealed. Laws 2005, LB 261, § 13.

77-1381.01 Repealed. Laws 2005, LB 261, § 13.

77-1382 Repealed. Laws 2005, LB 261, § 13.

77-1383 Repealed. Laws 2005, LB 261, § 13.

77-1384 Repealed. Laws 2005, LB 261, § 13.

77-1385 Historically significant real property; qualification.

The following real property shall qualify as historically significant real property for purposes of the historic rehabilitation valuation authorized by section 77-1391 pursuant to the authority granted to the Legislature under subdivision (12) of Article VIII, section 2, of the Constitution of Nebraska:

(1) Real property individually listed in the National Register of Historic Places;

(2) Real property within a district listed in the National Register of Historic Places that is historically significant as determined by the State Historic Preservation Officer and approved under section 77-1387;

(3) Real property individually designated pursuant to a landmark ordinance or resolution that has been approved by the State Historic Preservation Officer pursuant to section 77-1386; and

(4) Real property within a district designated pursuant to a landmark ordinance or resolution that has been approved by the State Historic Preservation Officer pursuant to section 77-1386 that is historically significant as determined by the State Historic Preservation Officer and approved under section 77-1387.

Source: Laws 2005, LB 66, § 1.

77-1386 Historically significant real property; landmark ordinance or resolution; approval.

(1) A city, village, or county shall request the State Historic Preservation Officer's approval of any landmark ordinance or resolution which designates individual properties or districts before any such individual properties or historically significant properties within such districts receive historic rehabilitation valuation authorized by section 77-1391. The following documentation shall accompany the request:

- (a) A copy of the ordinance or resolution for which approval is requested;
- (b) A list, including the common addresses and common written boundary descriptions of all individual properties and historic districts designated or proposed to be designated under the ordinance or resolution;
- (c) A description and statement of historical significance for all designated individual properties and historic districts, which includes representative photographic views; and
- (d) A map indicating the location of individual landmarks and historic districts.

(2) Within forty-five days after receipt of the request and documentation, the State Historic Preservation Officer shall approve the ordinance or resolution if the documentation indicates compliance with the criteria for designation of landmarks and historic districts established by the United States Department of the Interior for the inclusion of properties in the National Register of Historic Places, 36 C.F.R. 60, as such regulation existed on January 1, 2005, and if the ordinance or resolution contains provisions for the following:

- (a) Authorization for historic preservation under section 19-903;
- (b) A statement of purpose;
- (c) Establishment of a historic review commission which:
 - (i) Has no fewer than five members;
 - (ii) Has demonstrated expertise in the disciplines of history, architectural history, historic architecture, architecture, community planning, real estate, neighborhood conservation, historic preservation, or related fields;
 - (iii) Has staggered terms of office for members; and
 - (iv) Holds meetings at regular intervals at least four times a year;
- (d) A process and criteria for designation of landmarks and historic districts that are consistent with those established by the United States Department of the Interior for the inclusion of properties in the National Register of Historic Places, 36 C.F.R. 60, as such regulation existed on January 1, 2005;
- (e) A definition of actions that merit review by the historic review commission, which shall include demolitions and major alterations;
- (f) Standards and criteria for review of actions within the jurisdiction of the historic review commission; and
- (g) Procedural due process, such as notification, a hearing, and an appeal procedure.

Source: Laws 2005, LB 66, § 2.

77-1387 Historically significant real property; application by property owner; approval.

(1) A property owner or the legally designated representative of the property owner may submit an application to the State Historic Preservation Officer for a determination of whether the property owner's real property is qualified to receive historic rehabilitation valuation authorized by section 77-1391 on a form prescribed by the State Historic Preservation Officer. The application shall contain at least the following information:

- (a) The address and location of the property;
- (b) A map showing the location of the property;

(c) Clear, current black and white or color photographs showing principal views of the property;

(d) Designation authority, whether under the National Register of Historic Places or a landmark ordinance or resolution; and

(e) If it is historically significant and located within a district listed in the National Register of Historic Places or designated under an ordinance or resolution that has been approved by the State Historic Preservation Officer under section 77-1386, the name of the district and a statement describing the contribution of the property to the significance of the district.

(2) Within thirty days after the receipt of an application, the State Historic Preservation Officer shall determine whether an individual property is eligible to be listed in the National Register of Historic Places and is therefor eligible for historic rehabilitation valuation. The State Historic Preservation Officer may extend the deadline up to an additional forty-five days if he or she determines that a site inspection is necessary.

(3) Within thirty days after the receipt of an application, the State Historic Preservation Officer shall determine whether a property located within a district on the National Register of Historic Places or designated under an ordinance or resolution that has been approved by the State Historic Preservation Officer under section 77-1386 is of historic significance to the district pursuant to the criteria in 36 C.F.R. 67.5, as such regulation existed on January 1, 2005, and inform the applicant of the decision in writing. The State Historic Preservation Officer may extend the deadline up to an additional forty-five days if he or she determines that a site inspection is necessary.

(4) Property shall not be eligible for historic rehabilitation valuation if the property has received a final certificate of rehabilitation within the twelve years prior to application.

Source: Laws 2005, LB 66, § 3.

77-1388 Historically significant real property; preliminary certificate of rehabilitation; filing with State Historic Preservation Officer.

(1) The owner of historically significant real property described in section 77-1385 may apply for a preliminary certificate of rehabilitation on a form prescribed by the State Historic Preservation Officer. The application shall be filed with the State Historic Preservation Officer prior to beginning rehabilitation. The application shall contain at least the following information:

(a) The address or location of the historically significant real property;

(b) Documentation of the cost of the rehabilitation, including estimated cost of architectural fees if applicable;

(c) A certification from the county assessor stating the assessed valuation of the historically significant real property that was last certified by the county assessor pursuant to section 13-509 or as finally determined if appealed;

(d) A description of the historic condition of the historically significant real property, when possible, and condition of the historically significant real property immediately prior to the rehabilitation; and

(e) A detailed description of the proposed rehabilitation work, including plans and specifications, if applicable.

(2) Within thirty days after receipt of an application for a preliminary certificate of rehabilitation, the State Historic Preservation Officer shall issue a preliminary certificate of rehabilitation to the applicant and transmit a copy to the county assessor if he or she determines that:

(a) The proposed work meets the Standards for Rehabilitation as described in 36 C.F.R. 67.7, as such regulation existed on January 1, 2005; and

(b) The work is a substantial rehabilitation.

(3) The State Historic Preservation Officer may extend the deadline up to an additional forty-five days if he or she determines that a site inspection is necessary. The State Historic Preservation Officer shall determine the length of the rehabilitation period, which shall not exceed two years unless the State Historic Preservation Officer finds (a) it is economically infeasible to complete the rehabilitation in two years or (b) the magnitude of the project is such that a good faith attempt to complete the rehabilitation in two years would not succeed. The certificate shall identify the rehabilitation period.

(4) The State Historic Preservation Officer shall issue a preliminary certificate of rehabilitation to the owner if (a) the property was determined to be qualified for historic preservation valuation pursuant to subsection (2) of section 77-1387, (b) the proposed rehabilitation meets the Standards for Rehabilitation as described in 36 C.F.R. 67.7, as such regulation existed on January 1, 2005, and (c) the proposed rehabilitation is a substantial rehabilitation. The State Historic Preservation Officer shall transmit a copy of the preliminary certificate of rehabilitation to the county assessor within seven days after issuance of the certificate to the owner.

(5) For purposes of this section, substantial rehabilitation means interior or exterior rehabilitation work that preserves the historically significant real property in a manner that significantly improves its condition and that costs an amount equal to or greater than twenty-five percent of the assessed valuation certified by the county assessor and contained in the application.

Source: Laws 2005, LB 66, § 4.

77-1389 Historically significant real property; preliminary certificate of rehabilitation; filing with city, village, or county.

(1) A city, village, or county may receive and recommend approval of applications for preliminary certificates of rehabilitation within its corporate boundaries pursuant to subsection (4) of this section.

(2) Prior to exercising authority under subsection (1) of this section, a city, village, or county shall request the approval of the State Historic Preservation Officer. The request shall be accompanied by assurances that the city, village, or county:

(a) Enforces laws for the designation of historically significant real property;

(b) Has a landmark ordinance or resolution that has been approved under section 77-1386;

(c) Maintains a historic review commission which has been approved by the State Historic Preservation Officer;

(d) Maintains a system for the survey and inventory of historically significant real property; and

(e) Maintains a system for reviewing applications for certifications of rehabilitations substantially the same as that provided in section 77-1388.

(3) Within forty-five days after the receipt of the request and the assurances, the State Historic Preservation Officer shall approve the city, village, or county to exercise authority under subsection (1) of this section.

(4)(a) The owner of historically significant real property described in section 77-1385 may apply for a preliminary certificate of rehabilitation on a form prescribed by the State Historic Preservation Officer. The application shall be filed with the city, village, or county prior to beginning rehabilitation, and the city, village, or county shall forward the application to the State Historic Preservation Officer with the following information:

(i) Certification that the real property is designated pursuant to a landmark ordinance or resolution or is in a district so designated; and

(ii) Any comments or recommendations on the application.

(b) The State Historic Preservation Officer shall process the application in accordance with subsection (4) of section 77-1388.

Source: Laws 2005, LB 66, § 5.

77-1390 Historically significant real property; final certificate of rehabilitation; issuance.

Upon completion of the rehabilitation the owner shall provide the following information to the State Historic Preservation Officer to obtain a final certificate of rehabilitation:

(1) Documentation of the dates on which construction commenced and was completed;

(2) Clear, current black and white or color photographs showing the completed rehabilitation work, the appearance of the structure immediately prior to the rehabilitation, and, if possible, the historic appearance of the historically significant real property;

(3) A written description of the original condition of the historically significant real property;

(4) A written description of the present condition of the historically significant real property; and

(5) A written description and, if applicable, final plans and specifications of the rehabilitation.

The State Historic Preservation Officer shall issue a final certificate of rehabilitation to the owner if the rehabilitation meets the Standards for Rehabilitation as described in 36 C.F.R. 67.7, as such regulation existed on January 1, 2005, and transmit a copy to the county assessor within seven days after issuance of the certificate to the owner.

Source: Laws 2005, LB 66, § 6.

77-1391 Historically significant real property; valuation.

(1) Commencing January 1, 2006, for all real property for which a final certificate of rehabilitation has been issued, the valuation for purposes of assessment shall be no more than the base-year valuation for eight years following issuance of the final certificate of rehabilitation.

(2) For the four years following the expiration of the eight-year period specified in subsection (1) of this section, the valuation for purposes of the assessment shall be as follows:

(a) For the first year, the base-year valuation plus twenty-five percent of the difference in the base-year valuation and the current year actual value;

(b) For the second year, the base-year valuation plus fifty percent of the difference in the base-year valuation and the current year actual value;

(c) For the third year, the base-year valuation plus seventy-five percent of the difference in the base-year valuation and the current year actual value; and

(d) For the fourth year, the current year actual value.

(3) For purposes of sections 77-1385 to 77-1394, base-year valuation means the assessed valuation of the historically significant real property in the assessment year the preliminary certificate of rehabilitation was issued as certified in subdivision (1)(c) of section 77-1388 or as finally determined if appealed.

(4) If, during the eight-year period and the four-year period specified in subsections (1) and (2) of this section, the State Historic Preservation Officer determines that historically significant real property for which a final certificate of rehabilitation has been issued (a) has been the subject of repair, renovation, remodeling, or improvement but not in accordance with the Standards for Rehabilitation as described in 36 C.F.R. 67.7, as such regulation existed on January 1, 2005, (b) is no longer of historical significance to a qualified historic district, or (c) no longer possesses the qualifications for listing in the National Register of Historic Places, he or she shall revoke the final certificate of rehabilitation by written notice to the owner and transmit a copy of the revocation to the county assessor.

(5) Upon disqualification of any real property receiving base-year valuation under sections 77-1385 to 77-1394, the county assessor shall change the value of such property to its actual value in the assessment year following the revocation of the final certificate of rehabilitation.

Source: Laws 2005, LB 66, § 7.

77-1392 Historically significant real property; Tax Commissioner; rules and regulations.

The Tax Commissioner may adopt and promulgate rules and regulations regarding the base-year valuation of historically significant real property.

Source: Laws 2005, LB 66, § 8; Laws 2007, LB334, § 78.

77-1393 Historically significant real property; State Historic Preservation Officer; rules and regulations.

The State Historic Preservation Officer may adopt and promulgate rules and regulations to carry out sections 77-1385 to 77-1394, including, but not limited to, provisions that:

(1) Preclude the issuance of a conditional, preliminary, or final certificate of rehabilitation for any owner-occupied single family residence if thirty percent or more of the dwelling space is new construction outside the existing structure;

(2) Specify what costs are eligible to meet the twenty-five percent minimum specified costs and make ineligible those costs attributable to new construction outside the existing structure; and

(3) Allow the issuance of a certificate of rehabilitation for a condominium.

Source: Laws 2005, LB 66, § 9.

77-1394 Historically significant real property; protests; procedure; appeal.

(1) Any decision of the State Historic Preservation Officer under sections 77-1385 to 77-1394 may be protested to the State Historic Preservation Officer within thirty days after the mailing of the written notice. If a protest is not filed, the action of the State Historic Preservation Officer shall be final. If a protest is filed, the State Historic Preservation Officer shall hear the protest within fourteen days after receipt of the protest.

(2) The State Historic Preservation Officer, within seven days after his or her final decision, shall mail written notice of his or her final decision to the owner and the county assessor of the county in which the real property is located.

(3) Any owner aggrieved by a final decision of the State Historic Preservation Officer may appeal the final decision to the district court within thirty days after mailing of the final decision by the State Historic Preservation Officer. The county assessor may appeal a final decision of the State Historic Preservation Officer to the district court within thirty days after mailing of the final decision by the State Historic Preservation Officer. The thirty-day period for filing such an appeal commences to run from the date of the mailing of the final decision. Upon receiving a copy of the final order on an appeal filed with the district court, the State Historic Preservation Officer shall mail a copy of the final order to the county assessor of the county in which the real property is located.

Source: Laws 2005, LB 66, § 10.

ARTICLE 15

EQUALIZATION BY COUNTY BOARD

Section	
77-1501.	County board of equalization; who constitutes; meetings; county officials; duties.
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77-1501 County board of equalization; who constitutes; meetings; county officials; duties.

The county board shall constitute the county board of equalization. The county board of equalization shall fairly and impartially equalize the values of

all items of real property in the county so that all real property is assessed uniformly and proportionately.

The county assessor shall attend all meetings of the county board of equalization when such meetings pertain to the assessment or exemption of real and personal property. The county treasurer or designated county official pursuant to section 23-186 shall attend all meetings of the county board of equalization involving the exemption of motor vehicles from the motor vehicle tax. All records of the county assessor's office shall be available for the inspection and consideration of the county board of equalization. The county clerk, deputy, or designee pursuant to section 23-1302 shall attend all meetings of the county board of equalization and shall make a record of the proceedings of the county board of equalization.

Source: Laws 1903, c. 73, § 120, p. 428; R.S.1913, § 6436; C.S.1922, § 5971; C.S.1929, § 77-1701; R.S.1943, § 77-1501; Laws 1953, c. 273, § 1, p. 898; Laws 1997, LB 270, § 85; Laws 1999, LB 194, § 23; Laws 2005, LB 762, § 2.

77-1502 Board; protests; report; notification.

(1) The county board of equalization shall meet for the purpose of reviewing and deciding written protests filed pursuant to this section beginning on or after June 1 and ending on or before July 25 of each year. Protests regarding real property shall be signed and filed after the county assessor's completion of the real property assessment roll required by section 77-1315 and on or before June 30. For protests of real property, a protest shall be filed for each parcel. Protests regarding taxable tangible personal property returns filed pursuant to section 77-1229 from January 1 through May 1 shall be signed and filed on or before June 30. The county board in a county with a population of more than one hundred thousand inhabitants based upon the most recent federal decennial census may adopt a resolution to extend the deadline for hearing protests from July 25 to August 10. The resolution must be adopted before July 25 and it will affect the time for hearing protests for that year only. By adopting such resolution, such county waives any right to petition the Tax Equalization and Review Commission for adjustment of a class or subclass of real property under section 77-1504.01 for that year.

(2) Each protest shall be signed and filed in triplicate with the county clerk of the county where the property is assessed. The protest shall contain or have attached a statement of the reason or reasons why the requested change should be made and a description of the property to which the protest applies. If the property is real property, a description of each parcel shall be provided. If the property is tangible personal property, a physical description of the property under protest shall be provided. If the protest does not contain or have attached the statement of the reason or reasons for the protest or the description of the property, the protest shall be dismissed by the county board of equalization.

(3) No hearing of the county board of equalization on a protest filed under this section shall be held before a single commissioner or supervisor.

(4) The county clerk or county assessor shall prepare a separate report on each protest. The report shall include (a) a description of the property to which the protest applies, (b) any recommendation of the county assessor for action on the protest, (c) if a referee is used, the recommendation of the referee, (d) the date the county board of equalization heard the protest, (e) the decision

made by the county board of equalization, (f) the date of the decision, and (g) the date notice of the decision was mailed to the protester. The report shall contain, or have attached to it, a statement, signed by the chairperson of the county board of equalization, describing the basis upon which the board's decision was made. The report shall have attached to it a copy of that portion of the property record file which substantiates calculation of the protested value unless the county assessor certifies to the county board of equalization that a copy is maintained in either electronic or paper form in his or her office. One copy of the report, if prepared by the county clerk, shall be given to the county assessor on or before August 2. The county assessor shall have no authority to make a change in the assessment rolls until there is in his or her possession a report which has been completed in the manner specified in this section. If the county assessor deems a report submitted by the county clerk incomplete, the county assessor shall return the same to the county clerk for proper preparation.

(5) On or before August 2, or on or before August 18 in a county that has adopted a resolution to extend the deadline for hearing protests, the county clerk shall mail to the protester written notice of the board's decision. The notice shall contain a statement advising the protester that a report of the board's decision is available at the county clerk's or county assessor's office, whichever is appropriate, and that a copy of the report may be used to complete an appeal to the Tax Equalization and Review Commission.

Source: Laws 1903, c. 73, § 121, p. 428; Laws 1905, c. 112, § 1, p. 515; Laws 1909, c. 112, § 1, p. 444; Laws 1911, c. 104, § 14, p. 379; R.S.1913, § 6437; C.S.1922, § 5972; C.S.1929, § 77-1702; R.S. 1943, § 77-1502; Laws 1947, c. 251, § 36, p. 826; Laws 1949, c. 233, § 1, p. 644; Laws 1953, c. 274, § 1, p. 899; Laws 1959, c. 355, § 25, p. 1267; Laws 1959, c. 371, § 1, p. 1307; Laws 1961, c. 377, § 6, p. 1158; Laws 1961, c. 384, § 1, p. 1177; Laws 1972, LB 1342, § 1; Laws 1975, LB 312, § 1; Laws 1984, LB 660, § 2; Laws 1986, LB 174, § 1; Laws 1986, LB 817, § 13; Laws 1987, LB 508, § 44; Laws 1992, LB 1063, § 124; Laws 1992, Second Spec. Sess., LB 1, § 97; Laws 1994, LB 902, § 21; Laws 1995, LB 452, § 23; Laws 1995, LB 490, § 147; Laws 1997, LB 270, § 86; Laws 2003, LB 292, § 12; Laws 2004, LB 973, § 33; Laws 2005, LB 283, § 2; Laws 2005, LB 299, § 1; Laws 2006, LB 808, § 37; Laws 2008, LB965, § 15.

Operative date April 15, 2008.

77-1504 Equalization of property; board; powers and duties; protest; procedure; notice of decision.

The county board of equalization may meet on or after June 1 and on or before July 25, or on or before August 10 if the board has adopted a resolution to extend the deadline for hearing protests under section 77-1502, to consider and correct the current year's assessment of any real property which has been undervalued or overvalued. The board shall give notice of the assessed value to the record owner or agent at his or her last-known address.

The county board of equalization in taking action pursuant to this section may only consider the report of the county assessor pursuant to section 77-1315.01.

Action of the county board of equalization pursuant to this section shall be for the current assessment year only.

The action of the county board of equalization may be protested to the board within thirty days after the mailing of the notice required by this section. If no protest is filed, the action of the board shall be final. If a protest is filed, the county board of equalization shall hear the protest in the manner prescribed in section 77-1502, except that all protests shall be heard and decided on or before September 15 or on or before September 30 if the county has adopted a resolution to extend the deadline for hearing protests under section 77-1502. Within seven days after the county board of equalization's final decision, the county clerk shall mail to the protester written notice of the decision. The notice shall contain a statement advising the protester that a report of the decision is available at the county clerk's or county assessor's office, whichever is appropriate, and that a copy of the report may be used to complete an appeal to the Tax Equalization and Review Commission.

The action of the county board of equalization upon a protest filed pursuant to this section may be appealed to the Tax Equalization and Review Commission on or before October 15 or on or before October 30 if the county has adopted a resolution to extend the deadline for hearing protests under section 77-1502.

Source: Laws 1903, c. 73, § 121, p. 428; Laws 1905, c. 112, § 1, p. 515; Laws 1909, c. 112, § 1, p. 444; Laws 1911, c. 104, § 14, p. 379; R.S.1913, § 6437; C.S.1922, § 5972; C.S.1929, § 77-1702; R.S. 1943, § 77-1504; Laws 1947, c. 251, § 37, p. 826; Laws 1979, LB 187, § 210; Laws 1984, LB 835, § 11; Laws 1987, LB 508, § 46; Laws 1988, LB 1207, § 8; Laws 1989, LB 361, § 21; Laws 1991, LB 320, § 11; Laws 1992, LB 1063, § 126; Laws 1992, Second Spec. Sess., LB 1, § 99; Laws 1994, LB 902, § 22; Laws 1995, LB 452, § 25; Laws 1995, LB 490, § 149; Laws 1997, LB 270, § 88; Laws 1998, LB 1104, § 10; Laws 1999, LB 194, § 25; Laws 2005, LB 263, § 13; Laws 2005, LB 283, § 3; Laws 2006, LB 808, § 38; Laws 2007, LB167, § 2.

77-1504.01 Adjustment to class or subclass of real property; procedure.

(1) Unless the county has adopted a resolution to extend the deadline for hearing protests under section 77-1502, after completion of its actions and based upon the hearings conducted pursuant to sections 77-1502 and 77-1504, a county board of equalization may petition the Tax Equalization and Review Commission to consider an adjustment to a class or subclass of real property within the county. Petitions must be filed with the commission on or before July 26.

(2) The commission shall hear and take action on a petition filed by a county board of equalization on or before August 10. Hearings held pursuant to this section may be held by means of videoconference. The burden of proof is on the petitioning county to show that failure to make an adjustment would result in values that are not equitable and in accordance with the law. At the hearing the commission may receive testimony from any interested person.

(3) After a hearing the commission shall, within the powers granted in section 77-5023, enter its order based on evidence presented to it at such hearing and the hearings held pursuant to section 77-5022 for that year. The

order shall specify the percentage increase or decrease and the class or subclass of real property affected or any corrections or adjustments to be made to the class or subclass of real property affected. When issuing an order to adjust a class or subclass of real property, the commission may exclude individual properties from that order whose value has already been adjusted by a county board of equalization in the same manner as the commission directs in its order. On or before August 10 of each year, the commission shall send its order by certified mail to the county assessor and by regular mail to the county clerk and chairperson of the county board.

(4) The county assessor shall make the specified changes to each item of property in the county as directed by the order of the commission. In implementing such order, the county assessor shall adjust the values of the class or subclass that is the subject of the order. For properties that have already received an adjustment from the county board of equalization, an additional adjustment may be made so that total adjustments made are equal to the commission's ordered adjustment and no additional adjustment shall be made applying the commission's order, but such an exclusion from the commission's order shall not preclude adjustments to those properties for corrections or omissions. The county assessor of the county adjusted by an order of the commission shall recertify the abstract of assessment to the Property Tax Administrator on or before August 20.

Source: Laws 1995, LB 452, § 26; Laws 1997, LB 397, § 22; Laws 1998, LB 306, § 22; Laws 1999, LB 140, § 1; Laws 1999, LB 194, § 26; Laws 2000, LB 968, § 58; Laws 2003, LB 291, § 2; Laws 2004, LB 973, § 34; Laws 2005, LB 283, § 4; Laws 2008, LB965, § 16. Operative date April 15, 2008.

77-1507 Board; duties; addition of omitted property; clerical errors; protest; procedure.

(1) The county board of equalization may meet at any time for the purpose of assessing any omitted real property that was not reported to the county assessor pursuant to section 77-1318.01 and for correction of clerical errors as defined in section 77-128 that result in a change of assessed value. The county board of equalization shall give notice of the assessed value of the real property to the record owner or agent at his or her last-known address. For real property which has been omitted in the current year, the county board of equalization shall not send notice pursuant to this section on or before June 1.

Protests of the assessed value proposed for omitted real property pursuant to this section or a correction for clerical errors shall be filed with the county board of equalization within thirty days after the mailing of the notice. All provisions of section 77-1502 except dates for filing a protest, the period for hearing protests, and the date for mailing notice of the county board of equalization's decision are applicable to any protest filed pursuant to this section.

(2) The county clerk shall, within seven days after the board's final decision, send:

(a) For protested action, a notification to the protester of the board's final action advising the protester that a report of the board's final decision is available at the county clerk's or county assessor's office, whichever is appro-

priate, and that a copy of the report may be used to complete an appeal to the Tax Equalization and Review Commission; and

(b) For protested and nonprotested action, a report to the Property Tax Administrator which shall state the description of the property, the reason such property was not assessed pursuant to section 77-1301, and a statement of the board's justification for its action. A copy of the report shall be available for public inspection in the office of the county clerk.

(3) The action of the county board of equalization upon a protest filed pursuant to this section may be appealed to the Tax Equalization and Review Commission within thirty days after the board's final decision.

(4) Improvements to real property which were properly reported to the county assessor pursuant to section 77-1318.01 for the current year and were not added to the assessment roll by the county assessor on or before March 19 shall only be added to the assessment roll by the county board of equalization from June 1 through July 25. In counties that have adopted a resolution to extend the deadline for hearing protests under section 77-1502, the deadline of July 25 shall be extended to August 10.

Source: Laws 1903, c. 73, § 121, p. 428; Laws 1905, c. 112, § 1, p. 515; Laws 1909, c. 112, § 1, p. 444; Laws 1911, c. 104, § 14, p. 379; R.S.1913, § 6437; C.S.1922, § 5972; C.S.1929, § 77-1702; R.S. 1943, § 77-1507; Laws 1987, LB 508, § 48; Laws 1995, LB 490, § 150; Laws 1997, LB 270, § 89; Laws 1999, LB 194, § 27; Laws 2005, LB 263, § 14; Laws 2005, LB 283, § 5; Laws 2006, LB 808, § 39.

77-1507.01 Failure to give notice; effect.

Any person otherwise having a right to appeal may petition the Tax Equalization and Review Commission in accordance with section 77-5013, on or before December 31 of each year, to determine the actual value, special value, or recapture value of real property for that year if a failure to give notice prevented timely filing of a protest or appeal provided for in sections 77-1501 to 77-1510.

Source: Laws 2005, LB 15, § 5; Laws 2007, LB167, § 3.

77-1510 Board; appeals, how taken.

Any action of the county board of equalization pursuant to section 77-1502 may be appealed to the Tax Equalization and Review Commission in accordance with section 77-5013 on or before August 24 or on or before September 10 if the county has adopted a resolution to extend the deadline for hearing protests under section 77-1502.

Source: Laws 1903, c. 73, § 124, p. 430; R.S.1913, § 6440; C.S.1922, § 5975; C.S.1929, § 77-1705; R.S.1943, § 77-1510; Laws 1947, c. 251, § 38, p. 827; Laws 1959, c. 371, § 2, p. 1308; Laws 1969, c. 673, § 1, p. 2597; Laws 1979, LB 187, § 213; Laws 1986, LB 174, § 2; Laws 1988, LB 1207, § 10; Laws 1989, LB 653, § 3; Laws 1989, LB 762, § 1; Laws 1991, LB 732, § 141; Laws 1991, LB 829, § 9; Laws 1992, LB 360, § 35; Laws 1992, LB 1063, § 128; Laws 1992, Second Spec. Sess., LB 1, § 101; Laws 1992,

Fourth Spec. Sess., LB 1, § 15; Laws 1995, LB 452, § 27; Laws 1995, LB 490, § 151; Laws 1996, LB 1040, § 4; Laws 1997, LB 270, § 90; Laws 1997, LB 397, § 23; Laws 2001, LB 170, § 18; Laws 2001, LB 465, § 2; Laws 2003, LB 291, § 3; Laws 2004, LB 973, § 35; Laws 2005, LB 283, § 6.

77-1510.01 Board; powers; costs and fees.

After the Tax Equalization and Review Commission obtains exclusive jurisdiction of an appeal from a decision, order, determination, or action of a county board of equalization pursuant to section 77-5013, the board shall have no power or authority to compromise, settle, or otherwise change the decision, order, determination, or action it has taken. The board may, with approval of the Tax Equalization and Review Commission, offer to confess judgment for part of the value claimed or part of the causes involved in the action. If (1) the appellant is present and refuses to accept such confession of judgment in full of the appellant's demands against the board in such action or the appellant fails to attend having had reasonable notice that the offer would be made, its terms, and the time of making it and (2) at hearing the appellant does not obtain more relief than was offered to be confessed, the appellant shall pay all the costs and fees the board incurred after making the offer. The offer shall not be deemed to be an admission of the cause of action or relief to which the appellant is entitled, and the offer shall not be given in evidence at the hearing.

Source: Laws 1989, LB 653, § 4; Laws 1995, LB 490, § 152; Laws 2004, LB 973, § 36.

77-1514 Abstracts of property assessment rolls; prepared by county assessor; file with Tax Commissioner.

The county assessor shall prepare abstracts of the property assessment rolls of locally assessed property of his or her county on forms prescribed and furnished by the Tax Commissioner. The county assessor shall file the real property abstract with the Property Tax Administrator on or before March 19 and the personal property abstract on or before June 15. The abstracts shall show the taxable value of real or personal property in the county as determined by the county assessor and any other information as required by the Property Tax Administrator. The Property Tax Administrator, upon written request from the county assessor, may for good cause shown extend the final filing due date for the real property abstract and the statutory deadlines provided in section 77-5027. The Property Tax Administrator may extend the statutory deadline in section 77-5028 for a county if the deadline is extended for that county.

Source: Laws 1903, c. 73, § 125, p. 431; R.S.1913, § 6442; C.S.1922, § 5977; C.S.1929, § 77-1707; R.S.1943, § 77-1514; Laws 1945, c. 190, § 1, p. 590; Laws 1947, c. 251, § 39, p. 827; Laws 1959, c. 371, § 4, p. 1309; Laws 1987, LB 508, § 49; Laws 1992, LB 1063, § 129; Laws 1992, Second Spec. Sess., LB 1, § 102; Laws 1994, LB 902, § 24; Laws 1995, LB 452, § 28; Laws 1995, LB 490, § 155; Laws 1997, LB 270, § 91; Laws 1999, LB 194, § 28; Laws 2000, LB 968, § 59; Laws 2004, LB 973, § 37; Laws 2005, LB 15, § 6; Laws 2005, LB 261, § 7; Laws 2007, LB334, § 79.

77-1515 Repealed. Laws 2006, LB 808, § 51.**ARTICLE 16****LEVY AND TAX LIST**

Section

- 77-1601.02. Property tax request; procedure.
 77-1606. County tax levy; appeal by taxpayer; when taken; does not suspend collection.
 77-1607. Repealed. Laws 2004, LB 973, § 72.
 77-1608. County tax levy; appeal by taxpayer; proceedings.
 77-1609. Repealed. Laws 2004, LB 973, § 72.
 77-1610. Return of taxes paid; correction of tax rolls.
 77-1613.01. Certification by county official to Tax Commissioner; contents.
 77-1613.02. Tax list; corrections; prohibited acts; violation; penalty.
 77-1613.03. Repealed. Laws 2006, LB 808, § 51.
 77-1613.04. Assessment roll and tax list; corrections.
 77-1614. Tax list; consolidated tax; how entered.
 77-1623. Judgments against public corporations; failure or refusal of corporate authorities to levy; action against officers; mandamus.
 77-1624. Taxes delinquent five or more years; collection; receipts; proration; remittance of state taxes to State Treasurer; how credited.

77-1601.02 Property tax request; procedure.

(1) The property tax request for the prior year shall be the property tax request for the current year for purposes of the levy set by the county board of equalization in section 77-1601 unless the governing body of the county, municipality, school district, learning community, sanitary and improvement district, natural resources district, educational service unit, or community college passes by a majority vote a resolution or ordinance setting the tax request at a different amount. Such resolution or ordinance shall only be passed after a special public hearing called for such purpose is held and after notice is published in a newspaper of general circulation in the area of the political subdivision at least five days prior to the hearing. The hearing notice shall contain the following information: The dollar amount of the prior year's tax request and the property tax rate that was necessary to fund that tax request; the property tax rate that would be necessary to fund last year's tax request if applied to the current year's valuation; and the proposed dollar amount of the tax request for the current year and the property tax rate that will be necessary to fund that tax request. Any resolution setting a tax request under this section shall be certified and forwarded to the county clerk on or before October 13 of the year for which the tax request is to apply.

(2) Any levy which is not in compliance with this section and section 77-1601 shall be construed as an unauthorized levy under section 77-1606.

Source: Laws 1996, LB 693, § 10; Laws 1996, LB 1085, § 55; Laws 1997, LB 269, § 43; Laws 1998, LB 306, § 24; Laws 2001, LB 797, § 3; Laws 2006, LB 1024, § 5.

77-1606 County tax levy; appeal by taxpayer; when taken; does not suspend collection.

Any taxpayer may appeal from the action of the county board of equalization in making the levy, if in the judgment of such taxpayer the levy is for an unlawful or unnecessary purpose or in excess of the requirements of a political

subdivision, to the Tax Equalization and Review Commission in accordance with section 77-5013 within thirty days after the county board of equalization's action. The appeal shall set forth the levy appealed from and the amount or extent to which the appellant claims the levy is for an unlawful or unnecessary purpose or in excess of the requirements of a political subdivision, and to that extent and no further shall such levy be affected by such appeal. It shall not be necessary for such taxpayer to appear before the county board of equalization at the time of the making of the levy or prior thereto in order to entitle him or her to such appeal.

No appeal shall in any manner suspend the collection of any tax, nor the duties of the officers relating thereto during the pendency of the appeal, however, all taxes received based on the appealed levy or portion thereof appealed shall be kept by the treasurer in a special fund without distribution. The commission shall give notice of the appeal to the county board of equalization, county clerk, county assessor, and county treasurer of each county in which the tax is levied. The county board of equalization, county clerk, county assessor, or county treasurer shall not be charged with notice of the appeal until notice is served by the commission.

Source: Laws 1907, c. 101, § 1, p. 352; R.S.1913, § 6456; Laws 1915, c. 109, § 1, p. 256; Laws 1921, c. 136, § 1, p. 599; C.S.1922, § 5979; Laws 1927, c. 176, § 1, p. 514; Laws 1929, c. 181, § 1, p. 639; C.S.1929, § 77-1801; Laws 1931, c. 137, § 1, p. 381; Laws 1933, c. 133, § 1, p. 510; Laws 1935, c. 52, § 1, p. 179; Laws 1937, c. 172, § 1, p. 679; C.S.Supp.,1941, § 77-1801; R.S.1943, § 77-1606; Laws 1947, c. 250, § 34, p. 801; Laws 1995, LB 490, § 158; Laws 1997, LB 269, § 44; Laws 2004, LB 973, § 38.

Cross References

For time of notice of appeal, see sections 23-135 and 23-136.

77-1607 Repealed. Laws 2004, LB 973, § 72.

77-1608 County tax levy; appeal by taxpayer; proceedings.

The Tax Equalization and Review Commission shall hear the appeal and determine whether or not the levy appealed from or any part thereof is for an unlawful or unnecessary purpose or in excess of the requirements of the political subdivision. The decision of the commission shall be certified to the county assessor, county clerk, and county treasurer of each county in which the tax was levied to revise all tax records to reflect the corrected levy.

Source: Laws 1907, c. 101, § 1, p. 352; R.S.1913, § 6456; Laws 1915, c. 109, § 1, p. 256; Laws 1921, c. 136, § 1, p. 599; C.S.1922, § 5979; Laws 1927, c. 176, § 1, p. 514; Laws 1929, c. 181, § 1, p. 639; C.S.1929, § 77-1801; Laws 1931, c. 137, § 1, p. 381; Laws 1933, c. 133, § 1, p. 510; Laws 1935, c. 52, § 1, p. 179; Laws 1937, c. 172, § 1, p. 679; C.S.Supp.,1941, § 77-1801; R.S.1943, § 77-1608; Laws 1947, c. 250, § 35, p. 802; Laws 1997, LB 269, § 46; Laws 2004, LB 973, § 39.

77-1609 Repealed. Laws 2004, LB 973, § 72.

77-1610 Return of taxes paid; correction of tax rolls.

If the tax books have been delivered to the county treasurer for collection of the taxes before the determination of the appeal by the Tax Equalization and Review Commission, then the county treasurer shall, upon receipt of the certified final decision of the commission, distribute or return to the taxpayers in accordance with such decision the appropriate amount of taxes paid and held pursuant to section 77-1606 and, if necessary, correct the tax rolls in his or her office to conform to such decision unless a further appeal is taken, in which case the county treasurer shall hold the taxes until the final determination of the appeal and thereupon distribute or return the same in conformity to such decision and, if necessary, correct the tax rolls.

Source: Laws 1907, c. 101, § 1, p. 352; R.S.1913, § 6456; Laws 1915, c. 109, § 1, p. 256; Laws 1921, c. 136, § 1, p. 599; C.S.1922, § 5979; Laws 1927, c. 176, § 1, p. 514; Laws 1929, c. 181, § 1, p. 639; C.S.1929, § 77-1801; Laws 1931, c. 137, § 1, p. 381; Laws 1933, c. 133, § 1, p. 510; Laws 1935, c. 52, § 1, p. 179; Laws 1937, c. 172, § 1, p. 679; C.S.Supp.,1941, § 77-1801; R.S.1943, § 77-1610; Laws 1991, LB 732, § 143; Laws 1992, LB 360, § 37; Laws 1997, LB 269, § 48; Laws 1998, LB 306, § 26; Laws 2004, LB 973, § 40.

77-1613.01 Certification by county official to Tax Commissioner; contents.

The county assessor or county clerk shall certify to the Property Tax Administrator, on or before December 1 of each year, the total taxable valuation and the Certificate of Taxes Levied. The certificate shall be used for statistical purposes and shall specify the information necessary to determine the total taxable value, tax levies, and total property taxes requested by the political subdivisions for the current year on forms prescribed and furnished by the Tax Commissioner. The certificate shall include for each political subdivision a statement of the amount of property taxes sought and the tax levy made for (1) the payment of principal or interest on bonds issued by the political subdivision and (2) all other purposes.

Source: Laws 1913, c. 173, § 1, p. 525; R.S.1913, § 6389; Laws 1921, c. 133, art. VI, § 15, p. 560; C.S.1922, § 5853; C.S.1929, § 77-515; R.S.1943, § 77-628; Laws 1949, c. 227, § 3, p. 632; Laws 1951, c. 259, § 2, p. 885; Laws 1965, c. 478, § 4, p. 1541; Laws 1983, LB 193, § 3; Laws 1985, LB 268, § 24; R.S.1943, (1986), § 77-628; Laws 1989, Spec. Sess., LB 7, § 3; Laws 1991, LB 829, § 10; Laws 1992, LB 719A, § 172; Laws 1995, LB 490, § 159; Laws 1996, LB 1362, § 7; Laws 1997, LB 269, § 50; Laws 1998, LB 306, § 28; Laws 2001, LB 275, § 1; Laws 2007, LB334, § 80.

77-1613.02 Tax list; corrections; prohibited acts; violation; penalty.

The county assessor or county clerk shall correct the assessment and tax rolls after action of the county board of equalization. Each correction shall be made in triplicate, each set of triplicate forms being consecutively numbered, and there shall be entered upon such form all data pertaining to the assessment which is to be corrected. The correction shall show all additions and reductions, the amount of tax added or reduced, with the reason therefor, and the page or pages of the tax rolls upon which such change is to be made. The original copy shall be delivered to the county treasurer, the duplicate copy to

the county clerk, and the triplicate copy shall remain in the office of the county assessor. The county assessor or county clerk shall provide upon demand a listing showing each entry and sorted by tax year. The county treasurer shall thereupon correct the tax roll to conform to the correction copy and all changes shall be made in red ink, drawing a line through the original or erroneous figures, but not erasing the same. No county assessor shall reduce or increase the valuation of any property, real or personal, without the approval of the county board of equalization. Any county assessor who shall willfully reduce or increase the valuation of any property, without the approval of the county board of equalization, as provided in this section, shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not less than twenty dollars nor more than one hundred dollars.

Source: Laws 1921, c. 133, art. XI, § 6, p. 592; C.S.1922, § 5903; C.S.1929, § 77-1006; Laws 1939, c. 100, § 1, p. 457; C.S.Supp.,1941, § 77-1006; R.S.1943, § 77-519; Laws 1947, c. 250, § 12, p. 791; Laws 1951, c. 261, § 1, p. 887; R.S.1943, (1986), § 77-519; Laws 1995, LB 490, § 160; Laws 1997, LB 270, § 93; Laws 2007, LB166, § 10.

77-1613.03 Repealed. Laws 2006, LB 808, § 51.

77-1613.04 Assessment roll and tax list; corrections.

The county assessor after July 25, or after August 10 in counties that have adopted a resolution to extend the deadline for hearing protests under section 77-1502, and with approval of the county board of equalization shall correct the assessment roll and the tax list, if necessary, in the case of a clerical error as defined in section 77-128 that results in a change in the value of the real property. Clerical errors that do not result in a change of value on the assessment roll may be corrected at any time by the county assessor. All corrections to the tax list shall be made as provided in section 77-1613.02.

Source: Laws 1999, LB 194, § 30; Laws 2005, LB 283, § 7.

77-1614 Tax list; consolidated tax; how entered.

All taxes which are uniform, throughout any precinct, township, school district, learning community, village, city, county, or other taxing subdivision of a county, shall be formed into a single tax, be entered upon the tax list in a double column, and be denominated a consolidated tax.

Source: Laws 1903, c. 73, § 140, p. 438; R.S.1913, § 6460; Laws 1921, c. 158, § 1, p. 649; C.S.1922, § 5983; C.S.1929, § 77-1805; Laws 1933, c. 136, § 2, p. 517; C.S.Supp.,1941, § 77-1805; Laws 1943, c. 175, § 3(1), p. 611; R.S.1943, § 77-1614; Laws 1957, c. 334, § 1, p. 1168; Laws 1997, LB 270, § 94; Laws 2006, LB 1024, § 6.

77-1623 Judgments against public corporations; failure or refusal of corporate authorities to levy; action against officers; mandamus.

If any such corporate authorities, whose duty it is, under the provisions of sections 77-1601 to 77-1624, to so levy and collect the tax necessary to pay off any such judgment, fail, refuse, or neglect to make provision for the immediate payment of such judgments, after request made by the owner or any person having an interest therein, such officers shall become personally liable to pay

such judgments, and the party or parties interested may have an action against such defaulting officers to recover the money due on the judgment, or he, she, or they having such interest may apply to the district court of the county in which the judgment is obtained, or to the judge thereof in vacation, for a writ of mandamus to compel the proper officers to proceed to collect the necessary amount of money to pay off such indebtedness, as provided in such sections. When a proper showing is made by the applicant for the writ, it shall be the duty of the district court or judge, as the case may be, to grant and issue the writ to the delinquents, and the proceedings to be had in the premises shall conform to the rules and practice of the court, and the laws in such cases made and provided.

Source: Laws 1867 (Ter.), § 5, p. 13; R.S.1913, § 6468; C.S.1922, § 5991; C.S.1929, § 77-1813; R.S.1943, § 77-1623; Laws 1995, LB 490, § 162; Laws 2004, LB 973, § 41.

77-1624 Taxes delinquent five or more years; collection; receipts; proration; remittance of state taxes to State Treasurer; how credited.

It shall be the duty of the county treasurer for each and every county, when collecting personal and real estate taxes being delinquent five years or more, to receipt for such taxes on a receipt for the fifth delinquent year. Such taxes so collected shall be prorated in proportion to the levies applicable for the year levied. All state taxes when collected shall be remitted to the State Treasurer and by him or her credited to the fund or funds for which the levy or levies were made, and all county funds when collected shall be placed to the credit of the county general fund; all municipal, school district, learning community, township, precinct, and special funds shall be entered in separate columns. All taxes so consolidated shall be paid in order of priority of delinquency.

Source: Laws 1913, c. 235, § 1, p. 738; R.S.1913, § 6469; C.S.1922, § 5992; C.S.1929, § 77-1814; R.S.1943, § 77-1624; Laws 1963, c. 454, § 1, p. 1480; Laws 2006, LB 1024, § 7.

ARTICLE 17

COLLECTION OF TAXES

- Section
- 77-1702. Collection of taxes; medium of payment.
- 77-1704.01. Collection of taxes; notice or receipt; statement; contents.
- 77-1708. Collection of taxes; county treasurer; cash book.
- 77-1719.03. Collection of taxes, personal; distress warrant; acceptance of partial payment.
- 77-1734.01. Refund of tax paid; claim; verification required; county board approval.
- 77-1735. Illegal tax paid; claim for refund; procedure.
- 77-1736.06. Property tax refund; procedure.
- 77-1749. Collection of taxes; settlement of county treasurer; credit for delinquent taxes; audit of treasurer's books.
- 77-1750. Collection of taxes; settlement of county treasurer; adjustment with county clerk; order by county board.
- 77-1763. Collection of taxes; failure to make settlement with state; suit by Tax Commissioner.
- 77-1766. Collection of taxes; suit by aggrieved municipal corporations.
- 77-1772. Collection of taxes; interest on delinquent taxes; distribution.
- 77-1775. Tax paid as result of clerical error, misunderstanding, or mistake; refund or credit; procedure.

Section

77-1783.01. Corporate taxes; corporate officer or employee; personal liability; collection procedure.

77-1784. Electronic filings; electronic fund transfers; required; when; penalty.

77-1702 Collection of taxes; medium of payment.

State warrants are receivable for the amount payable into the state treasury on account of tax levied for general state purposes. County warrants are receivable for the amount payable into the county treasury for general purposes. City warrants shall be received for the city general tax, village warrants for the village general tax, and town warrants for the town general tax. State, city, village, or township taxes, levied for other special purposes, may be paid by warrants drawn and payable out of the particular fund on account of which they are tendered. Lawful money of the United States, checks, drafts, credit cards, charge cards, debit cards, money orders, electronic funds transfers, or other bills of exchange may be accepted in payment of any state, county, village, township, school district, learning community, or other governmental subdivision tax, levy, excise, duty, custom, toll, penalty, fine, license, fee, or assessment of whatever kind or nature, whether general or special.

Source: Laws 1903, c. 73, § 145, p. 440; R.S.1913, § 6474; C.S.1922, § 5997; C.S.1929, § 77-1902; R.S.1943, § 77-1702; Laws 1959, c. 353, § 3, p. 1245; Laws 1965, c. 492, § 1, p. 1578; Laws 1997, LB 70, § 5; Laws 2002, LB 994, § 21; Laws 2006, LB 1024, § 8.

77-1704.01 Collection of taxes; notice or receipt; statement; contents.

(1) The county treasurer shall include with each tax notice or receipt to every taxpayer the following information:

(a) The total amount of aid from state sources appropriated to the county and each city, village, and school district in the county;

(b) The net amount of property taxes to be levied by the county and each city, village, school district, and learning community in the county; and

(c) Beginning with tax year 2000, for real property, the amount of taxes reflected on the statement that are levied by the county, city, village, school district, learning community, and other subdivisions for the tax year and for the immediately past year on the same parcel.

(2) The necessary form for furnishing the information required by subdivisions (1)(a) and (b) of this section shall be prescribed by the Department of Revenue. The necessary information required by subdivision (1)(a) of this section shall be furnished to the county treasurer by the Department of Revenue prior to October 1 of each year. The form prescribed by the Department of Revenue shall contain the following statement:

THE AMOUNT OF STATE FUNDS SHOWN ABOVE WOULD HAVE BEEN ADDITIONAL PROPERTY TAXES IF NOT ALLOCATED TO THE COUNTY, CITY, VILLAGE, AND SCHOOL DISTRICT BY THE LEGISLATURE.

Source: Laws 1972, LB 674, § 1; Laws 1995, LB 490, § 163; Laws 1997, LB 270, § 98; Laws 1999, LB 881, § 8; Laws 2006, LB 1024, § 9.

77-1708 Collection of taxes; county treasurer; cash book.

The county treasurer is required to keep a cash book in which he or she shall enter an account of all money received, specifying in proper columns provided for that purpose the date of payment, the number of the receipt issued therefor, and on account of what fund or funds the same was paid, whether state, county, school, learning community, road, sinking fund or otherwise, each in separate columns, and the total amount for which the receipt was given in another column. The treasurer shall keep the account of money received for and on account of taxes separate and distinct from money received on any other account. He or she shall also keep the account of money received for and on account of taxes levied and assessed for any one year separate and distinct from those levied and assessed for any other year. All entries in the cash book of money received for taxes shall be in the numerical order of the receipts issued therefor.

Source: Laws 1903, c. 73, § 151, p. 443; Laws 1913, c. 185, § 1, p. 561; R.S.1913, § 6480; C.S.1922, § 6003; C.S.1929, § 77-1908; Laws 1937, c. 167, § 33, p. 661; Laws 1937, c. 171, § 1, p. 678; Laws 1939, c. 98, § 33, p. 448; Laws 1941, c. 157, § 33, p. 632; C.S.Supp.,1941, § 77-1908; R.S.1943, § 77-1708; Laws 2006, LB 1024, § 10.

77-1719.03 Collection of taxes, personal; distress warrant; acceptance of partial payment.

In any case where any distress warrant includes taxes for one year or more, the sheriff may, in his or her discretion, accept partial payment and shall pay the same, as received, to the county treasurer, who shall accept the same and receipt the sheriff therefor. Pursuant to section 77-1704.02, the county treasurer may accept the partial payment and hold such amounts until the accumulated payments are sufficient to pay the full amount of the delinquency for one year and any interest, penalties, or other charges due to the delinquency. Notwithstanding any partial payment, the sheriff shall make levy and return thereof, on the distress warrant, as required by law.

Source: Laws 1903, c. 73, § 155, p. 444; Laws 1911, c. 106, § 1, p. 385; R.S.1913, § 6484; C.S.1922, § 6011; C.S.1929, § 77-1916; Laws 1943, c. 181, § 2, p. 628; R.S.1943, § 77-1719; Laws 1947, c. 259, § 2(4), p. 848; Laws 1963, c. 456, § 1, p. 1482; Laws 2005, LB 18, § 1.

77-1734.01 Refund of tax paid; claim; verification required; county board approval.

(1) In the case of an amended federal income tax return or whenever a person's return is changed or corrected by the Internal Revenue Service or other competent authority that decreases the Nebraska adjusted basis of the person's taxable tangible personal property, the county treasurer shall refund that portion of the tax paid that is in excess of the amount due after the amendment or correction.

(2) In case of payment made of any property taxes or any payments in lieu of taxes with respect to property as a result of a clerical error or honest mistake or misunderstanding, on the part of a county or other political subdivision of the state or any taxpayer, the county treasurer to whom the tax was paid shall refund that portion of the tax paid as a result of the clerical error or honest

mistake or misunderstanding. A claim for a refund pursuant to this section shall be made in writing to the county treasurer to whom the tax was paid within three years after the date the tax was due or within ninety days after filing the amended return or the correction becomes final.

(3) Before the refund is made, the county treasurer shall receive verification from the county assessor or other taxing official that such error or mistake was made or the amended return was filed or the correction made, and the claim for refund shall be submitted to the county board. Upon verification, the county board shall approve the claim. The refund shall be made in the manner prescribed in section 77-1736.06. Such refund shall not have a dispositional effect on any similar refund for another taxpayer. This section may not be used to challenge the valuation of property, the equalization of property, or the constitutionality of a tax.

Source: Laws 1957, c. 336, § 1, p. 1173; Laws 1959, c. 373, § 1, p. 1312; Laws 1961, c. 385, § 1, p. 1179; Laws 1977, LB 245, § 1; Laws 1988, LB 819, § 1; Laws 1989, LB 762, § 2; Laws 1991, LB 829, § 12; Laws 1992, LB 719A, § 174; Laws 1999, LB 194, § 32; Laws 2008, LB965, § 17.
Operative date April 15, 2008.

77-1735 Illegal tax paid; claim for refund; procedure.

(1) Except as provided in subsection (2) of this section, if a person makes a payment to any county or other political subdivision of any property tax or any payment in lieu of tax with respect to property and claims the tax or any part thereof is illegal for any reason other than the valuation or equalization of the property, he or she may, at any time within thirty days after such payment, make a written claim for refund of the payment from the county treasurer to whom paid. The county treasurer shall immediately forward the claim to the county board. If the payment is not refunded within ninety days thereafter, the claimant may sue the county board for the amount so claimed. Upon the trial, if it is determined that such tax or any part thereof was illegal, judgment shall be rendered therefor and such judgment shall be collected in the manner prescribed in section 77-1736.06. If the tax so claimed to be illegal was not collected for all political subdivisions in a consolidated tax district and if a suit is brought to recover the tax paid or a part thereof, the plaintiff in such action shall join as defendants in a single suit as many of the political subdivisions as he or she seeks recovery from by stating in the petition a claim against each such political subdivision as a separate cause of action. For purposes of this section, illegal shall mean a tax levied for an unauthorized purpose or as a result of fraudulent conduct on the part of the taxing officials. A person shall not be entitled to a refund pursuant to this section of any property tax paid or any payment in lieu of tax unless the person has filed a claim with the county treasurer or prevailed in an action against the county. If a county refuses to make a refund, a person shall not be entitled to a refund unless he or she prevails in an action against the county on such claim even if another person has successfully challenged a similar tax or payment.

(2) For property valued by the state, for purposes of a claim for refund pursuant to this section, the Tax Commissioner shall perform the functions of the county treasurer and county board. Upon approval of the claim by the Tax Commissioner or a court of competent jurisdiction, the Tax Commissioner shall

certify the amount of the refund to the county treasurer to whom this tax was paid or distributed. The refund shall be made in the manner prescribed in section 77-1736.06.

Source: Laws 1903, c. 73, § 162, p. 447; R.S.1913, § 6491; C.S.1922, § 6018; C.S.1929, § 77-1923; R.S.1943, § 77-1735; Laws 1955, c. 297, § 2, p. 931; Laws 1967, c. 505, § 1, p. 1702; Laws 1977, LB 245, § 2; Laws 1984, LB 835, § 15; Laws 1989, LB 762, § 3; Laws 1991, LB 829, § 13; Laws 1992, Fourth Spec. Sess., LB 1, § 16; Laws 1995, LB 490, § 166; Laws 2007, LB334, § 81.

Cross References

Recovery of payments made under tax statutes adjudged unconstitutional, time for bringing action for, see section 25-208.

77-1736.06 Property tax refund; procedure.

The following procedure shall apply when making a property tax refund:

(1) Within thirty days of the entry of a final nonappealable order, an unprotested determination of a county assessor, an unappealed decision of a county board of equalization, or other final action requiring a refund of real or personal property taxes paid or, for property valued by the state, within thirty days of a recertification of value by the Property Tax Administrator pursuant to section 77-1775 or 77-1775.01, the county assessor shall determine the amount of refund due the person entitled to the refund, certify that amount to the county treasurer, and send a copy of such certification to the person entitled to the refund. Within thirty days from the date the county assessor certifies the amount of the refund, the county treasurer shall notify each political subdivision of its respective share of the refund, except that for any political subdivision whose share of the refund is two hundred dollars or less, the county board may waive this notice requirement. Notification shall be by first-class mail, postage prepaid, to the last-known address of record of the political subdivision. The county treasurer shall pay the refund from funds in his or her possession belonging to any political subdivision which received any part of the tax or penalty being refunded. If sufficient funds are not available or the political subdivision, within thirty days of the mailing of the notice by the county treasurer if applicable, certifies to the county treasurer that a hardship would result and create a serious interference with its governmental functions if the refund of the tax or penalty is paid, the county treasurer shall register the refund or portion thereof which remains unpaid as a claim against such political subdivision and shall issue the person entitled to the refund a receipt for the registration of the claim. The certification by a political subdivision declaring a hardship shall be binding upon the county treasurer;

(2) The refund of a tax or penalty or the receipt for the registration of a claim made or issued pursuant to this section shall be satisfied in full as soon as practicable and in no event later than five years from the date the final order or other action approving a refund is entered. The governing body of the political subdivision shall make provisions in its budget for the amount of any refund or claim to be satisfied pursuant to this section. If a receipt for the registration of a claim is given:

(a) Such receipt shall be applied to satisfy any tax levied or assessed by that political subdivision next falling due from the person holding the receipt after the sixth next succeeding levy is made on behalf of the political subdivision following the final order or other action approving the refund; and

(b) To the extent the amount of such receipt exceeds the amount of such tax liability, the unsatisfied balance of the receipt shall be paid and satisfied within the five-year period prescribed in this subsection from a combination of a credit against taxes anticipated to be due to the political subdivision during such period and cash payment from any funds expected to accrue to the political subdivision pursuant to a written plan to be filed by the political subdivision with the county treasurer no later than thirty days after the claim against the political subdivision is first reduced by operation of a credit against taxes due to such political subdivision.

If a political subdivision fails to fully satisfy the refund or claim prior to the sixth next succeeding levy following the entry of a final nonappealable order or other action approving a refund, interest shall accrue on the unpaid balance commencing on the sixth next succeeding levy following such entry or action at the rate set forth in section 45-103;

(3) The county treasurer shall mail the refund or the receipt by first-class mail, postage prepaid, to the last-known address of the person entitled thereto. Multiple refunds to the same person may be combined into one refund or credit. If a refund is not claimed by June 1 of the year following the year of mailing, the refund shall be canceled and the resultant amount credited to the various funds originally charged;

(4) When the refund involves property valued by the state, the Tax Commissioner shall be authorized to negotiate a settlement of the amount of the refund or claim due pursuant to this section on behalf of the political subdivision from which such refund or claim is due. Any political subdivision which does not agree with the settlement terms as negotiated may reject such terms, and the refund or claim due from the political subdivision then shall be satisfied as set forth in this section as if no such negotiation had occurred;

(5) In the event that the Legislature appropriates state funds to be disbursed for the purposes of satisfying all or any portion of any refund or claim, the Tax Commissioner shall order the county treasurer to disburse such refund amounts directly to the persons entitled to the refund in partial or total satisfaction of such persons' claims. The county treasurer shall disburse such amounts within forty-five days after receipt thereof; and

(6) If all or any portion of the refund is reduced by way of settlement or forgiveness by the person entitled to the refund, the proportionate amount of the refund that was paid by an appropriation of state funds shall be reimbursed by the county treasurer to the State Treasurer within forty-five days after receipt of the settlement agreement or receipt of the forgiven refund. The amount so reimbursed shall be credited to the General Fund.

Source: Laws 1991, LB 829, § 15; Laws 1992, LB 1063, § 138; Laws 1992, Second Spec. Sess., LB 1, § 111; Laws 1993, LB 555, § 1; Laws 1995, LB 490, § 167; Laws 2007, LB334, § 82; Laws 2008, LB965, § 18.

Operative date April 15, 2008.

77-1749 Collection of taxes; settlement of county treasurer; credit for delinquent taxes; audit of treasurer's books.

The Tax Commissioner and other proper authority or person shall in his or her final settlement with the treasurer allow him or her credit for the amount so certified, but if the Tax Commissioner or other proper authority or person

shall have reason to believe that the amount stated in the certificate is not correct, or that the allowance was illegally made, he or she shall return the same for correction. When it appears to be necessary in the opinion of the Tax Commissioner or other proper authority or person, he or she shall designate and appoint some competent person to examine the treasurer's books and statement of settlement, and the person so designated and appointed shall have access to the treasurer's books and papers appertaining to such treasurer's office or settlement for the purpose of making such examination.

Source: Laws 1903, c. 73, § 174, p. 453; R.S.1913, § 6502; C.S.1922, § 6030; C.S.1929, § 77-1935; R.S.1943, § 77-1749; Laws 1995, LB 490, § 169; Laws 2007, LB334, § 83.

77-1750 Collection of taxes; settlement of county treasurer; adjustment with county clerk; order by county board.

In all cases when the adjustment is made with the county clerk, the county board shall, at the first session thereafter, examine such settlement and if found correct shall enter an order to that effect. If any omission or error is found, the board shall cause the same to be corrected and a correct statement of the facts in the case forwarded to the Tax Commissioner and other proper authority or person who shall correct and adjust the treasurer's accounts accordingly.

Source: Laws 1903, c. 73, § 175, p. 453; R.S.1913, § 6503; C.S.1922, § 6031; C.S.1929, § 77-1936; R.S.1943, § 77-1750; Laws 1995, LB 490, § 170; Laws 2007, LB334, § 84.

77-1763 Collection of taxes; failure to make settlement with state; suit by Tax Commissioner.

Upon the failure of any county treasurer to make settlement with the Tax Commissioner, the Tax Commissioner shall sue the treasurer and his or her surety upon the bond of such treasurer, or sue the treasurer in such form as may be necessary, and take all such proceedings, either upon such bond or otherwise, as may be necessary to protect the interest of the state.

Source: Laws 1903, c. 73, § 187, p. 457; R.S.1913, § 6515; C.S.1922, § 6043; C.S.1929, § 77-1948; R.S.1943, § 77-1763; Laws 1995, LB 490, § 172; Laws 2007, LB334, § 85.

77-1766 Collection of taxes; suit by aggrieved municipal corporations.

Cities, towns, villages, or corporate authorities or persons aggrieved may prosecute suit against any treasurer, or other officer collecting or receiving funds for their use, upon his or her bond, in the name of the State of Nebraska, for their use in any court of competent jurisdiction, whether the bond has been put in suit at the instance of the Tax Commissioner or not. Cities, towns, villages, and other corporate authorities or persons shall have the same right in any suits or proceedings in their behalf as is provided in case of suits by or on behalf of the state.

Source: Laws 1903, c. 73, § 189, p. 457; R.S.1913, § 6517; C.S.1922, § 6045; C.S.1929, § 77-1950; R.S.1943, § 77-1766; Laws 1995, LB 490, § 173; Laws 2007, LB334, § 86.

77-1772 Collection of taxes; interest on delinquent taxes; distribution.

Interest collected upon delinquent county, city, village, school district, or learning community taxes shall be credited on the books and distributed among the various governmental subdivisions and municipal corporations in the same proportion as the principal of the taxes is credited and distributed.

Source: Laws 1933, c. 132, § 1, p. 509; C.S.Supp.,1941, § 77-1957; R.S.1943, § 77-1772; Laws 1947, c. 261, § 1, p. 850; Laws 2006, LB 1024, § 11.

77-1775 Tax paid as result of clerical error, misunderstanding, or mistake; refund or credit; procedure.

(1) In case of payment of any taxes upon property valued by the state made as a result of a clerical error or honest mistake or misunderstanding, except as to valuation or equalization, on the part of the taxing officials of the state or the taxpayer, the taxpayer shall make a written claim for a credit or refund of the tax paid within two years from the date the tax was due. The claim shall set forth the amount of the overpayment and the reasons therefor.

(2) The Tax Commissioner may approve or disapprove the claim in whole or part without a hearing. The Tax Commissioner shall grant a hearing prior to taking any action on a claim for refund or credit if requested in writing by the taxpayer when the claim is filed or prior to any action being taken on the claim by the Tax Commissioner. The written order of the Tax Commissioner shall be mailed to the claimant within seven days after the date of the order. If the claim is denied in whole or part, the taxpayer may appeal within thirty days after the date of the written order of the Tax Commissioner to the Tax Equalization and Review Commission in accordance with section 77-5013.

(3) Upon approval of the claim by the Tax Commissioner, the Tax Commissioner shall certify the amount of the refund or credit to the county treasurer to whom the tax was paid or distributed. If only valuation was previously certified to a county or counties, then the Tax Commissioner shall certify the value resulting from the written order to the official who received the original valuation which was changed by the written order. The refund shall be made in the manner prescribed in section 77-1736.06. The ordering of a refund or credit pursuant to this section shall not have a dispositional effect on any similar claim for refund or credit made by another taxpayer.

Source: Laws 1983, LB 193, § 12; Laws 1988, LB 352, § 157; Laws 1989, LB 762, § 5; Laws 1991, LB 829, § 17; Laws 1995, LB 490, § 174; Laws 2004, LB 973, § 42; Laws 2007, LB334, § 87.

Cross References

Tax Equalization and Review Commission Act, see section 77-5001.

77-1783.01 Corporate taxes; corporate officer or employee; personal liability; collection procedure.

(1) Any officer or employee with the duty to collect, account for, or pay over any taxes imposed upon a corporation or with the authority to decide whether the corporation will pay taxes imposed upon a corporation shall be personally liable for the payment of such taxes in the event of willful failure on his or her part to have a corporation perform such act. Such taxes shall be collected in the same manner as provided under the Uniform State Tax Lien Registration and Enforcement Act.

(2) Within sixty days after the day on which the notice and demand are made for the payment of such taxes, any officer or employee seeking to challenge the Tax Commissioner's determination as to his or her personal liability for the corporation's unpaid taxes may petition for a redetermination. The petition may include a request for the redetermination of the personal liability of the corporate officer or employee, the redetermination of the amount of the corporation's unpaid taxes, or both. If a petition for redetermination is not filed within the sixty-day period, the determination becomes final at the expiration of the period.

(3) If the requirements prescribed in subsection (2) of this section are satisfied, the Tax Commissioner shall abate collection proceedings and shall grant the officer or employee an oral hearing and give him or her ten days' notice of the time and place of such hearing. The Tax Commissioner may continue the hearing from time to time as necessary.

(4) Any notice required under this section shall be served personally or by mail in the manner provided in section 77-27,135.

(5) If the Tax Commissioner determines that further delay in the collection of such taxes from the officer or employee will jeopardize future collection proceedings, nothing in this section shall prevent the immediate collection of such taxes.

(6) For purposes of this section:

(a) Corporation shall mean any corporation and any other entity that is taxed as a corporation under the Internal Revenue Code;

(b) Taxes shall mean all taxes and additions to taxes including interest and penalties imposed under the revenue laws of this state which are administered by the Tax Commissioner; and

(c) Willful failure shall mean that failure which was the result of an intentional, conscious, and voluntary action.

Source: Laws 1996, LB 1041, § 5; Laws 2008, LB914, § 6.
Operative date January 1, 2009.

Cross References

Uniform State Tax Lien Registration and Enforcement Act, see section 77-3901.

77-1784 Electronic filings; electronic fund transfers; required; when; penalty.

(1) The Tax Commissioner may accept electronic filing of applications, returns, and any other document required to be filed with the Tax Commissioner.

(2) The Tax Commissioner may use electronic fund transfers to collect any taxes, fees, or other amounts required to be paid to or collected by the Tax Commissioner or to pay any refunds of such amounts.

(3) The Tax Commissioner may adopt rules and regulations to establish the criteria for acceptability of filing documents and making payments electronically. The criteria may include requirements for electronic signatures, the type of tax for which electronic filings or payments will be accepted, the method of transfer, or minimum amounts which may be transferred. The Tax Commissioner may refuse to accept any electronic filings or payments that do not meet the criteria established.

(4) For payments due after January 1, 2006, the Tax Commissioner may require the use of electronic fund transfers for any taxes, fees, or amounts required to be paid to or collected by the Tax Commissioner for any taxpayer who made payments exceeding twenty thousand dollars for a tax program in the prior year for that tax program. The requirement to make electronic fund transfers may be phased in as deemed necessary by the Tax Commissioner. Notice of the requirement to make electronic fund transfers shall be provided at least three months prior to the date the first electronic payment is required to be made.

(5) Any person who fails to make a required payment by electronic fund transfer shall be subject to a penalty of one hundred dollars for each required payment that was not made by electronic fund transfer. The penalty provided by this section shall be in addition to all other penalties and applies even if payment by some other method is timely made. The Tax Commissioner may waive the penalty provided in this section upon a showing of good cause.

(6) The use of electronic filing of documents and electronic fund transfers shall not change the rights of any party from the rights such party would have if a different method of filing or payment were used. Until criteria for electronic signatures are adopted under subsection (3) of this section, the document produced during the electronic filing of a taxpayer's information with the state shall be prima facie evidence for all purposes that the taxpayer's signature accompanied the taxpayer's information in the electronic transmission.

Source: Laws 1987, LB 523, § 42; Laws 1995, LB 134, § 1; Laws 2000, LB 1251, § 1; Laws 2005, LB 216, § 2.

ARTICLE 18

COLLECTION OF DELINQUENT REAL PROPERTY TAXES BY SALE OF REAL PROPERTY

Section

- 77-1819. Real property taxes; certificate of purchase; form.
77-1834. Real property taxes; issuance of treasurer's tax deed; notice to owner or encumbrancer by publication.
77-1839. Real property taxes; issuance of tax deed by county treasurer; form.
77-1843. Real property taxes; treasurer's tax deed; proof required to defeat tax title.

77-1819 Real property taxes; certificate of purchase; form.

The certificate shall be substantially in the following form: COUNTY TREASURER'S CERTIFICATE OF TAX SALE. State of Nebraska ... County, ss: I, ... treasurer of the county of ..., in the State of Nebraska, do hereby certify that the following described real estate in such county and state: (describe the same) was, on the ... day of ... 20..., duly sold by me in the manner provided by law for the delinquent taxes for the years(list years).... thereon, amounting to ... dollars, including interest thereon, and costs allowed by law, to ... for the sum of ... dollars. I further certify that unless redemption is made of such real estate in the manner provided by law, the ..., heirs or assigns will be entitled to a deed therefor on and after the ... day of ... A.D. 20..., on surrender of this certificate, and compliance with the provisions required by law.

In witness whereof, I have hereunto set my hand this ... day of ... A.D. 20....

(L.S.), Treasurer.

Source: Laws 1903, c. 73, § 209, p. 464; R.S.1913, § 6537; C.S.1922, § 6065; C.S.1929, § 77-2017; R.S.1943, § 77-1819; Laws 2004, LB 813, § 32.

77-1834 Real property taxes; issuance of treasurer’s tax deed; notice to owner or encumbrancer by publication.

If the person in whose name the title to the real property appears of record in the office of the register of deeds in the county or if the encumbrancer in whose name an encumbrance on the real property appears of record in the office of the register of deeds in the county cannot, upon diligent inquiry, be found, then such purchaser or his or her assignee shall publish the notice in some newspaper published in the county and having a general circulation in the county or, if no newspaper is printed in the county, then in a newspaper published in this state nearest to the county in which the real property is situated.

Source: Laws 1903, c. 73, § 215, p. 467; R.S.1913, § 6543; C.S.1922, § 6071; C.S.1929, § 77-2023; R.S.1943, § 77-1834; Laws 1992, LB 1063, § 160; Laws 1992, Second Spec. Sess., LB 1, § 133; Laws 2003, LB 319, § 3; Laws 2008, LB893, § 1.
Effective date July 18, 2008.

Cross References

Provisions for mailing copy of notice, see sections 25-520.01 to 25-520.03.

77-1839 Real property taxes; issuance of tax deed by county treasurer; form.

The conveyance provided by section 77-1838 shall be substantially in the following form:

Whereas, at a sale of real estate for the nonpayment of taxes, made in the county of on the day of A.D. 20...., the following described real estate situated in such county: (here describe real estate conveyed) was sold to for the delinquent taxes of the year and, Whereas, the same not having been redeemed from such sale, and it appearing that the holder of the certificate of purchase of such real estate has complied with the laws of the State of Nebraska, necessary to entitle to a deed of such real estate, Now, Therefore, I, county treasurer of the county of, in consideration of the premises, and by virtue of the statutes of the State of Nebraska in such cases made and provided, do hereby grant and convey unto, his or her heirs and assigns, forever, the real estate hereinbefore described, subject, however, to any redemption provided by law.

Given under my hand and official seal this day of A.D. 20....

. County Treasurer.

State of Nebraska County, ss.

On this day of A.D. 20...., before me a in and for such county, personally appeared the above named treasurer of such county, personally known to me to be the treasurer of such county, at the date of the execution of the foregoing conveyance, and to be the identical person whose name is affixed to, and who

executed the conveyance as treasurer of such county, and acknowledged the execution of the same to be his or her voluntary act and deed as treasurer of such county, for the purposes therein expressed.

Witness my hand and official seal the day and year last above written.

.....
.....

Source: Laws 1903, c. 73, § 218, p. 469; R.S.1913, § 6546; C.S.1922, § 6074; C.S.1929, § 77-2026; R.S.1943, § 77-1839; Laws 2004, LB 813, § 33.

77-1843 Real property taxes; treasurer’s tax deed; proof required to defeat tax title.

In all controversies and suits involving the title to real property claimed and held under and by virtue of a deed made substantially by the treasurer in the manner provided by sections 77-1831 to 77-1842, the person claiming the title adverse to the title conveyed by such deed shall be required to prove, in order to defeat the title, either (1) that the real property was not subject to taxation for the years or year named in the deed; (2) that the taxes had been paid before the sale; (3) that the property has been redeemed from the sale according to the provisions of sections 77-1201 to 77-1219, 77-1229 to 77-1236, 77-1301 to 77-1318.01, 77-1501 to 77-1514, 77-1601 to 77-1618, 77-1701 to 77-1710, 77-1716 to 77-1738, 77-1740 to 77-1767, and 77-1801 to 77-1855, and that such redemption was had or made for the use and benefit of persons having the right of redemption under the laws of this state; or (4) that there had been an entire omission to list or assess the property, or to levy the taxes, or to sell the property.

Source: Laws 1903, c. 73, § 221, p. 471; R.S.1913, § 6549; C.S.1922, § 6077; C.S.1929, § 77-2029; R.S.1943, § 77-1843; Laws 2006, LB 808, § 40.

ARTICLE 19

COLLECTION OF DELINQUENT REAL ESTATE TAXES THROUGH COURT PROCEEDINGS

Section

- 77-1914. Foreclosure proceedings; confirmation of sale; release of real property.
- 77-1917. Foreclosure proceedings; redemption; subsequent taxes paid; conditions.
- 77-1933. Repealed. Laws 2006, LB 1024, § 115.

77-1914 Foreclosure proceedings; confirmation of sale; release of real property.

Upon confirmation of the sale, the clerk of the district court shall certify to the county treasurer the year or years of the taxes for which the real property was sold. The county treasurer shall thereupon cancel the taxes for such years, and the proceedings shall operate as a release of such real property from all liens for the taxes included on the real property. The delivery of the sheriff’s deed shall pass title to the purchaser free and clear of all liens and interests of

all persons who were parties to the proceedings, who received service of process, and over whom the court had jurisdiction.

Source: Laws 1943, c. 176, § 14, p. 618; R.S.1943, § 77-1914; Laws 1992, LB 1063, § 175; Laws 1992, Second Spec. Sess., LB 1, § 148; Laws 2008, LB893, § 2.
Effective date July 18, 2008.

77-1917 Foreclosure proceedings; redemption; subsequent taxes paid; conditions.

(1) Any person entitled to redeem real property may do so at any time prior to the institution of foreclosure proceedings by paying the county treasurer for the use of such holder of a tax sale certificate or his or her heirs or assigns the sum mentioned in his or her certificate, with interest thereon at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, from the date of purchase to the date of redemption, together with all other taxes subsequently paid, whether for any year or years previous or subsequent to the sale, and interest thereon at the same rate from the date of such payment to the date of redemption.

(2) Any person entitled to redeem real property may do so at any time after the decree of foreclosure and before the final confirmation of the sale by paying to the clerk of the district court the amount found due against the property, with interest and costs to the date of redemption and, in addition thereto, when the real property has been sold at sheriff's sale to a purchaser other than the plaintiff, any subsequent taxes paid by such purchaser, as shown by tax receipts filed by such purchaser with the clerk of the district court, with interest at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, from the date or dates of payment of such taxes, and also interest on the purchase price at the same rate, for the use of the purchaser, from the date of sale to the date of redemption. During the pendency of a foreclosure action any person entitled to redeem any lot or parcel may do so by paying to the court the amount due with interest and costs, including attorney's fees, provided for in section 77-1909, if requested in the foreclosure complaint. Within thirty days after receipt of payment of all amounts due, the holder of the tax sale certificate shall dismiss its claim in the foreclosure proceeding with respect to any redeemed tax sale certificate. The holder of the tax sale certificate shall be required to provide the county treasurer with written notice that a foreclosure suit has been instituted and provide the county treasurer with an affidavit setting forth the costs incurred in the foreclosure action and indicating whether attorney's fees were requested in the foreclosure complaint.

(3) The person redeeming any lot or parcel shall be required to provide the county treasurer with an appropriate receipt evidencing the payment to the court of the amount due with interest and costs and the holder of the tax sale certificate shall file with the county treasurer notice of its dismissal of the claim in the foreclosure proceeding.

Source: Laws 1943, c. 176, § 17, p. 619; R.S.1943, § 77-1917; Laws 1945, c. 194, § 1, p. 597; Laws 1971, LB 743, § 1; Laws 1979, LB 84, § 5; Laws 1981, LB 167, § 47; Laws 1992, LB 1063, § 178; Laws

INHERITANCE TAX

§ 77-2005

1992, Second Spec. Sess., LB 1, § 151; Laws 1997, LB 486, § 1; Laws 2002, LB 876, § 85; Laws 2008, LB893, § 3.
Effective date July 18, 2008.

Cross References

For redemption from foreclosure generally, see section 25-1530.

77-1933 Repealed. Laws 2006, LB 1024, § 115.

ARTICLE 20

INHERITANCE TAX

Section

- 77-2004. Inheritance tax; rate; transfer to immediate relatives; exemption.
77-2005. Inheritance tax; rate; transfer to remote relatives.
77-2006. Inheritance tax; rate; other transfers.
77-2010. Inheritance tax; when due; interest; bond; failure to file; penalty.
77-2014. Inheritance tax; payment by personal representative or trustee; where paid; receipt for tax; proper county, defined; tax apportioned among counties.
77-2019. Inheritance tax; appraisal; appointment of appraisers.
77-2040. Inheritance tax; estate tax; decedent dying after December 31, 1982; provisions applicable; changes applicable January 1, 2008.

77-2004 Inheritance tax; rate; transfer to immediate relatives; exemption.

In the case of a father, mother, grandfather, grandmother, brother, sister, son, daughter, child or children legally adopted as such in conformity with the laws of the state where adopted, any lineal descendant, any lineal descendant legally adopted as such in conformity with the laws of the state where adopted, any person to whom the deceased for not less than ten years prior to death stood in the acknowledged relation of a parent, or the spouse or surviving spouse of any such persons, the rate of tax shall be one percent of the clear market value of the property in excess of forty thousand dollars received by each person. Any interest in property, including any interest acquired in the manner set forth in section 77-2002, which may be valued at a sum less than forty thousand dollars shall not be subject to tax. In addition the homestead allowance, exempt property, and family maintenance allowance shall not be subject to tax. Interests passing to the surviving spouse by will, in the manner set forth in section 77-2002, or in any other manner shall not be subject to tax.

Source: Laws 1901, c. 54, § 1, p. 414; Laws 1905, c. 117, § 1, p. 523; Laws 1907, c. 103, § 1, p. 356; R.S.1913, § 6622; C.S.1922, § 6153; Laws 1923, c. 187, § 1, p. 430; C.S.1929, § 77-2201; Laws 1931, c. 132, § 1, p. 371; C.S.Supp.,1941, § 77-2201; R.S. 1943, § 77-2004; Laws 1951, c. 267, § 3, p. 900; Laws 1953, c. 282, § 2, p. 914; Laws 1957, c. 337, § 1, p. 1174; Laws 1965, c. 497, § 1, p. 1585; Laws 1975, LB 481, § 31; Laws 1976, LB 585, § 4; Laws 1977, LB 456, § 1; Laws 1982, LB 480, § 4; Laws 1988, LB 845, § 1; Laws 1997, LB 16, § 1; Laws 2007, LB502, § 1.

77-2005 Inheritance tax; rate; transfer to remote relatives.

In the case of an uncle, aunt, niece, or nephew related to the deceased by blood or legal adoption, or other lineal descendant of the same, or the spouse or surviving spouse of any of such persons, the rate of tax shall be thirteen percent of the clear market value of the property received by each person in

excess of fifteen thousand dollars. If the clear market value of the beneficial interest is fifteen thousand dollars or less, it shall not be subject to tax.

Source: Laws 1901, c. 54, § 1, p. 414; Laws 1905, c. 117, § 1, p. 523; Laws 1907, c. 103, § 1, p. 356; R.S.1913, § 6622; C.S.1922, § 6153; Laws 1923, c. 187, § 1, p. 430; C.S.1929, § 77-2201; Laws 1931, c. 132, § 1, p. 371; C.S.Supp.,1941, § 77-2201; R.S. 1943, § 77-2005; Laws 1947, c. 262, § 1, p. 851; Laws 1951, c. 267, § 4, p. 900; Laws 1959, c. 353, § 5, p. 1245; Laws 1965, c. 497, § 2, p. 1586; Laws 1976, LB 585, § 5; Laws 2007, LB502, § 2.

77-2006 Inheritance tax; rate; other transfers.

In all other cases the rate of tax shall be eighteen percent on the clear market value of the beneficial interests in excess of ten thousand dollars. Such rates of tax shall be applied to the clear market value of the beneficial interests in excess of ten thousand dollars received by each person. If the clear market value of the beneficial interest is ten thousand dollars or less, it shall not be subject to any tax.

Source: Laws 1901, c. 54, § 1, p. 414; Laws 1905, c. 117, § 1, p. 523; Laws 1907, c. 103, § 1, p. 356; R.S.1913, § 6622; C.S.1922, § 6153; Laws 1923, c. 187, § 1, p. 430; C.S.1929, § 77-2201; Laws 1931, c. 132, § 1, p. 371; C.S.Supp.,1941, § 77-2201; R.S. 1943, § 77-2006; Laws 1947, c. 262, § 2, p. 851; Laws 1965, c. 497, § 3, p. 1586; Laws 1988, LB 845, § 2; Laws 2007, LB502, § 3.

77-2010 Inheritance tax; when due; interest; bond; failure to file; penalty.

All taxes imposed by sections 77-2001 to 77-2037, unless otherwise herein provided for, shall be due and payable twelve months after the date of the death of the decedent, and interest at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, shall be charged and collected on any unpaid taxes due from the date the same became payable, and in all cases in which the personal representatives or trustees do not pay such tax within twelve months from the death of the decedent, they shall be required to give bond in the form and to the effect prescribed in section 77-2009 for the payment of the tax together with interest. In addition, for failure to file an appropriate proceeding for the determination of the tax within twelve months after the date of the death of the decedent there shall be added to the amount due a penalty of five percent per month, up to a maximum penalty of twenty-five percent of the unpaid taxes due.

Source: Laws 1901, c. 54, § 3, p. 416; Laws 1911, c. 107, § 1, p. 386; R.S.1913, § 6624; C.S.1922, § 6155; C.S.1929, § 77-2203; R.S. 1943, § 77-2010; Laws 1951, c. 267, § 5, p. 901; Laws 1976, LB 585, § 10; Laws 1978, LB 650, § 29; Laws 1981, LB 167, § 48; Laws 2007, LB502, § 4.

77-2014 Inheritance tax; payment by personal representative or trustee; where paid; receipt for tax; proper county, defined; tax apportioned among counties.

(1) Every sum of money retained by an executor, administrator, or trustee, or paid into his or her hands for any tax on any property, shall be paid by him or her within thirty days thereafter to the county treasurer of the proper county, and the county treasurer shall give, and every executor, administrator, or trustee shall take a receipt from him or her of such payments.

(2)(a) For purposes of this section, proper county shall mean the county of the decedent's residence, except (i) when the decedent had an interest in real property located in a county other than his or her residence at the time of the death of the decedent, the words proper county shall mean the county in which the real property is situated, or (ii) when the decedent had an interest in personal property subject to being listed and assessed for personal property taxation at the time of the death of the decedent, the words proper county shall mean the county where the property is listed and assessed.

(b) When the decedent is a nonresident, proper county shall mean the county provided in subdivisions (2)(a)(i) and (2)(a)(ii) of this section and, as to any other property which may be subject to Nebraska inheritance taxation, the county where such property is located.

(3) The total inheritance tax assessed against the estate shall be apportioned among the counties in the ratio that the value of the gross property subject to tax and not subject to tax under sections 77-2004, 77-2006, and 77-2007.04 located in each county bears to the gross value of all property subject to tax and not subject to tax under sections 77-2004, 77-2006, and 77-2007.04.

(4) Questions that may arise as to the proper place to list and assess such personal property for the purposes of sections 77-2001 to 77-2037 shall be determined pursuant to procedure set forth in sections 77-2018.01 to 77-2027.

Source: Laws 1901, c. 54, § 6, p. 417; Laws 1905, c. 117, § 1, p. 525; R.S.1913, § 6627; C.S.1922, § 6158; C.S.1929, § 77-2206; R.S. 1943, § 77-2014; Laws 1953, c. 282, § 6, p. 916; Laws 1976, LB 585, § 13; Laws 2007, LB364, § 1.

77-2019 Inheritance tax; appraisal; appointment of appraisers.

In order to fix the value of property subject to the payment of the inheritance tax, the county judge may appoint a clerk magistrate or some other competent person, or the clerk magistrate may appoint a competent person, as appraiser as often as or whenever occasion may require, except that when real estate is to be appraised by a competent person other than a county judge or a clerk magistrate, the county judge or clerk magistrate shall appoint a credentialed real property appraiser, but if the county judge or clerk magistrate finds that no credentialed real property appraiser is a disinterested freeholder of the county, some other competent person may be appointed.

Source: Laws 1901, c. 54, § 11, p. 418; Laws 1907, c. 104, § 1, p. 359; R.S.1913, § 6632; Laws 1915, c. 113, § 1, p. 262; C.S.1922, § 6163; C.S.1929, § 77-2211; R.S.1943, § 77-2019; Laws 1949, c. 242, § 2, p. 657; Laws 1976, LB 585, § 16; Laws 1987, LB 601, § 9; Laws 1990, LB 1153, § 63; Laws 1991, LB 203, § 57; Laws 1994, LB 1107, § 50; Laws 2006, LB 778, § 72.

77-2040 Inheritance tax; estate tax; decedent dying after December 31, 1982; provisions applicable; changes applicable January 1, 2008.

Sections 77-2002 to 77-2004 and 77-2102 shall become operative on December 31, 1982, and shall apply to all property which passes from a decedent dying after such date. Sections 77-2001, 77-2032, and 77-2106 shall become operative on July 17, 1982. The changes made in sections 77-2004 to 77-2006 by Laws 2007, LB 502, apply to all property which passes from a decedent dying on or after January 1, 2008. The changes made to section 77-2010 by Laws 2007, LB 502, apply to decedents dying on or after January 1, 2008.

Source: Laws 1982, LB 480, § 8; Laws 2007, LB502, § 5.

ARTICLE 21

ESTATE AND GENERATION-SKIPPING TRANSFER TAX

Section

- 77-2101.01. Estate tax; amount.
- 77-2101.02. Generation-skipping transfer tax; amount.
- 77-2101.03. Tax; calculation.
- 77-2103. Repealed. Laws 2005, LB 499, § 3.
- 77-2115. Tax; records confidential; exception; penalty.

77-2101.01 Estate tax; amount.

(1) In addition to the inheritance taxes imposed by the laws of the State of Nebraska, there is levied and imposed an estate or excise tax for all decedents dying before January 1, 2007, upon the transfer of the estate of every resident decedent and upon the value of any interest in Nebraska real estate and tangible personal property situated in Nebraska of a nonresident decedent.

(2) For decedents dying before January 1, 2003, the amount of such tax shall be the maximum state tax credit allowance upon the tax imposed by Chapter 11 of the Internal Revenue Code reduced by the lesser of (a) the aggregate amount of all estate, inheritance, legacy, or succession taxes paid to any state or territory, the District of Columbia, or any possession of the United States in respect of any property subject to such tax or (b) the sum of (i) the amount determined by multiplying the maximum state tax credit allowance with respect to the taxable transfer by the percentage which the gross value of the transferred property not situated in Nebraska bears to the gross value of the transferred property and (ii) the amount of Nebraska inheritance taxes paid.

(3) For all decedents dying on or after January 1, 2003, and before January 1, 2007, (a) for the estate of every resident decedent, the amount of such tax shall be the amount calculated in section 77-2101.03 reduced by the percentage which the gross value of the transferred property not situated in Nebraska bears to the gross value of the transferred property minus the amount of Nebraska inheritance taxes paid, and (b) for the estate of every nonresident decedent, the amount of such tax shall be the amount calculated in section 77-2101.03 multiplied by the percentage which the gross value of the transferred property situated in Nebraska bears to the gross value of the transferred property minus the amount of Nebraska inheritance taxes paid.

Source: Laws 1955, c. 302, § 2, p. 941; Laws 1976, LB 585, § 24; Laws 1978, LB 650, § 31; Laws 1992, LB 1004, § 3; Laws 1995, LB 574, § 68; Laws 2002, LB 905, § 2; Laws 2005, LB 499, § 1; Laws 2007, LB367, § 6.

77-2101.02 Generation-skipping transfer tax; amount.

For all generation-skipping transfers occurring before January 1, 2007, there is hereby imposed a generation-skipping transfer tax upon the generation-skipping transfer or distribution of property of every resident of this state and upon the generation-skipping transfer of Nebraska real estate and tangible personal property situated in Nebraska by a nonresident. The amount of the generation-skipping transfer tax shall be the amount calculated in section 77-2101.03 reduced by the lesser of (1) the aggregate amount of all transfer taxes paid to any state or territory, the District of Columbia, or any possession of the United States in respect of any property subject to the generation-skipping transfer tax or (2) the amount determined by multiplying the amount calculated in section 77-2101.03 with respect to the taxable transfer by the percentage which the gross value of the transferred property not situated in Nebraska bears to the gross value of the transferred property.

Source: Laws 1992, LB 1004, § 4; Laws 1993, LB 345, § 12; Laws 1995, LB 574, § 69; Laws 2002, LB 905, § 3; Laws 2007, LB367, § 7.

77-2101.03 Tax; calculation.

(1) For decedents dying on or after January 1, 2003, and before July 1, 2003, the tax on the Nebraska taxable estate shall be the greater of the maximum state tax credit allowance upon the tax imposed under Chapter 11 of the Internal Revenue Code or the amount provided in the following table:

Nebraska taxable estate

At least	But less than	Tax =	+	%	Of Excess Over
\$ 0	\$ 40,000	\$ 0		0	\$ 0
40,000	90,000	0		.8	40,000
90,000	140,000	400		1.6	90,000
140,000	240,000	1,200		2.4	140,000
240,000	440,000	3,600		3.2	240,000
440,000	640,000	10,000		4	440,000
640,000	840,000	18,000		4.8	640,000
840,000	1,040,000	27,600		5.6	840,000
1,040,000	1,540,000	38,800		6.4	1,040,000
1,540,000	2,040,000	70,800		7.2	1,540,000
2,040,000	2,540,000	106,800		8	2,040,000
2,540,000	3,040,000	146,800		8.8	2,540,000
3,040,000	3,540,000	190,800		9.6	3,040,000
3,540,000	4,040,000	238,800		10.4	3,540,000
4,040,000	5,040,000	290,800		11.2	4,040,000
5,040,000	6,040,000	402,800		12	5,040,000
6,040,000	7,040,000	522,800		12.8	6,040,000
7,040,000	8,040,000	650,800		13.6	7,040,000
8,040,000	9,040,000	786,800		14.4	8,040,000
9,040,000	10,040,000	930,800		15.2	9,040,000
10,040,000		1,082,800		16	10,040,000

(2) For decedents dying on or after July 1, 2003, and before January 1, 2007, the tax on the Nebraska taxable estate shall be the greater of the maximum state tax credit allowance upon the tax imposed under Chapter 11 of the Internal Revenue Code or the amount provided in the following table:

Nebraska taxable estate

At least	But less than	Tax =	+	%	Of Excess Over
\$ 0	\$ 100,000	\$ 0		5.6	\$ 0
100,000	500,000	5,600		6.4	100,000
500,000	1,000,000	31,200		7.2	500,000
1,000,000	1,500,000	67,200		8	1,000,000
1,500,000	2,000,000	107,200		8.8	1,500,000
2,000,000	2,500,000	151,200		9.6	2,000,000
2,500,000	3,000,000	199,200		10.4	2,500,000
3,000,000	3,500,000	251,200		11.2	3,000,000
3,500,000	4,000,000	307,200		12	3,500,000
4,000,000	5,000,000	367,200		12.8	4,000,000
5,000,000	6,000,000	495,200		13.6	5,000,000
6,000,000	7,000,000	631,200		14.4	6,000,000
7,000,000	8,000,000	775,200		15.2	7,000,000
8,000,000	9,000,000	927,200		16	8,000,000
9,000,000		1,087,200		16.8	9,000,000

(3) Taxable generation-skipping transfers shall be taxed at a rate of sixteen percent of the Nebraska taxable transfer.

Source: Laws 2002, LB 905, § 4; Laws 2003, LB 283, § 2; Laws 2003, LB 759, § 2; Laws 2004, LB 1034, § 1; Laws 2007, LB367, § 8.

77-2103 Repealed. Laws 2005, LB 499, § 3.

77-2115 Tax; records confidential; exception; penalty.

(1) If the Tax Commissioner or any official or employee of the Tax Commissioner, the State Treasurer, or the Department of Administrative Services makes known in any manner the value of any estate or any particular set forth or disclosed in any report, state tax return, federal tax return, or other tax information required to be filed with the Tax Commissioner under the provisions of Nebraska's transfer tax laws, except so far as may be necessary for the enforcement and collection of the transfer tax provided for by the laws of this state, such person shall be guilty of a Class I misdemeanor.

(2) Federal tax returns, copies of such returns, and return information as defined under section 6103(d) of the Internal Revenue Code and state transfer tax returns and inheritance tax returns which are required to be filed with the Tax Commissioner for the enforcement of the inheritance and transfer tax laws of this state shall be deemed to be confidential by the Tax Commissioner.

(3) Nothing in this section shall be construed to prohibit:

(a) The delivery or inspection of such returns or tax information by:

(i) The personal representative or legal representative of the decedent's estate or representative of the transferor;

(ii) The county attorney of the county in which the decedent's or transferor's property is located;

(iii) The judge of the county court in which the decedent's or transferor's property is located; or

(iv) The Attorney General's office or other legal representative of the Tax Commissioner when such returns or tax information are relevant to any action or proceeding instituted by or against the transferor or the personal or legal representative of the decedent's estate or transferor;

(b) The furnishing of such information to the United States Government or to other states allowing similar privileges to the Tax Commissioner; or

(c) The publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof.

Source: Laws 1984, LB 962, § 3; Laws 1992, LB 1004, § 19; Laws 1995, LB 574, § 72; Laws 2005, LB 216, § 3.

ARTICLE 22

WARRANTS

Section

77-2201. Warrants; payment; order of presentation.

77-2202. Warrants; registration; form of record.

77-2201 Warrants; payment; order of presentation.

All warrants upon the State Treasurer or the treasurer of any county, city, school district, learning community, or other municipal corporation shall be paid in the order of their presentation therefor.

Source: Laws 1871, § 1, p. 113; Laws 1895, c. 67, § 1, p. 240; R.S.1913, § 6642; C.S.1922, § 6173; C.S.1929, § 77-2401; R.S.1943, § 77-2201; Laws 2006, LB 1024, § 12.

77-2202 Warrants; registration; form of record.

The State Treasurer and the treasurer of every county, city, school district, learning community, or other municipal corporation shall keep a warrant register, which register shall show in columns arranged for that purpose the number, the date, and the amount of each warrant presented and registered, the particular fund upon which the same is drawn, the date of presentation, the name and address of the person in whose name the warrant is registered, the date of payment, the amount of interest, and the total amount paid thereon, with the date when notice to the person in whose name such warrant is registered is mailed.

Source: Laws 1871, § 2, p. 114; Laws 1895, c. 67, § 2, p. 240; R.S.1913, § 6643; C.S.1922, § 6174; C.S.1929, § 77-2402; R.S.1943, § 77-2202; Laws 2006, LB 1024, § 13.

ARTICLE 23

DEPOSIT AND INVESTMENT OF PUBLIC FUNDS

(a) GENERAL PROVISIONS

Section

77-2365.01. Funds of state or political subdivisions; deposit with qualifying mutual financial institutions; conditions.

77-2365.02. Funds of state or political subdivisions; investment in certificates of deposit and timed deposits; conditions.

77-2366. Funds of state or political subdivisions; deposit with capital stock financial institutions; conditions.

(b) PUBLIC FUNDS DEPOSIT SECURITY ACT

77-2387. Terms, defined.

(a) GENERAL PROVISIONS

77-2365.01 Funds of state or political subdivisions; deposit with qualifying mutual financial institutions; conditions.

(1)(a) Notwithstanding any other provision of law, any local ordinance, regulation, or resolution, or any rule or regulation to the contrary, the funds of this state or any political subdivision of the state may be deposited, by the appropriate custodians of such funds, with qualifying mutual financial institutions to the same extent and subject to the same terms, conditions, and limitations, including collateralization required, if any, as may be otherwise provided for the deposit of such funds in banks and capital stock financial institutions. In making such a deposit of public funds, it shall not be necessary for the state or any political subdivision to become an owner of any interest in the qualifying mutual financial institution or to acquire voting rights therein, and a qualifying mutual financial institution is authorized and empowered to receive public funds under these conditions. Qualifying mutual financial institution means a state or federal mutual building and loan association, a state or federal mutual savings and loan association, a state or federal mutual savings bank, or a state or federal mutual organized bank, which has a main chartered office in this state, any branch thereof in this state, or any branch in this state of a qualifying mutual financial institution which maintained a main chartered office in this state prior to becoming a branch of such qualifying mutual financial institution, which, by its charter and bylaws, restricts the rights of the state or a political subdivision as an account holder as follows:

(i) Interest in the qualifying mutual financial institution is limited to the withdrawal value of the state's or the political subdivision's account;

(ii) The state or the political subdivision has no voting rights in the qualifying mutual financial institution; and

(iii) The state or the political subdivision has no entitlement to any distribution of assets upon voluntary or involuntary liquidation, dissolution, or winding up of the affairs of the qualifying mutual financial institution.

(b) To the extent any deposit in any bank is:

(i) Required to be subject to check or draft, then such deposit may be subject to order; and

(ii) Required to be made, maintained, or otherwise dealt with by reference to the capital of any bank, then it may be so made, maintained, or dealt with by reference to the capital or net worth of such qualifying mutual financial institution, and if by reference to the undivided profits, capital notes, debentures, or other capital items of any bank, then to any unimpaired reserves, capital notes, and debentures or comparable capital items of such qualifying mutual financial institution.

(2) To the extent the state or a political subdivision is or may ever be required by law to deposit funds in a bank, the state or political subdivision shall, to the same extent and subject to the same terms, conditions, and limitations, including collateralization required, be required to make deposits in a qualifying mutual financial institution on the same basis.

(3) The restriction in subdivision (1)(a)(iii) of this section shall not apply to the interest of the state or political subdivision in any security required by law to be furnished by the qualifying mutual financial institution.

(4) A qualifying mutual financial institution that amends its charter or bylaws in such a manner that it no longer meets the restrictions set forth in subdivisions (1)(a)(i) through (iii) of this section shall immediately give notice that it is no longer a qualifying mutual financial institution to the custodial official, as that term is defined in section 77-2387, of every state and political subdivision depositor, and that the state or political subdivision must immediately withdraw its deposits.

(5) This section shall be applied in a manner consistent with the intention of the Legislature which is to provide for the deposit of funds of the state or any political subdivision in qualifying mutual financial institutions.

Source: Laws 2001, LB 362, § 1; Laws 2003, LB 175, § 13; Laws 2004, LB 999, § 48.

77-2365.02 Funds of state or political subdivisions; investment in certificates of deposit and timed deposits; conditions.

Notwithstanding any other provision of law, to the extent that the funds of this state or any political subdivision of this state may be invested, by the appropriate custodian of such funds, in certificates of deposit or time deposits with banks, capital stock financial institutions, or qualifying mutual financial institutions, such authorization shall include the investment of funds in certificates of deposit and time deposits in accordance with the following conditions:

(1) The bank, capital stock financial institution, or qualifying mutual financial institution in this state through which the investment of funds is initially made arranges for the deposit of a portion or all of such funds in one or more certificates of deposit or time deposits with other banks, capital stock financial institutions, or qualifying mutual financial institutions located in the United States;

(2) Each such certificate of deposit or time deposit is fully insured by the Federal Deposit Insurance Corporation;

(3) The bank, capital stock financial institution, or qualifying mutual financial institution through which the investment of funds was initially made acts as a custodian for the state or political subdivision with respect to any such certificate of deposit or time deposit issued for the account of the state or political subdivision; and

(4) At the same time that the funds are deposited into and such certificates of deposit or time deposits are issued by other banks, capital stock financial institutions, or qualifying mutual financial institutions, the bank, capital stock financial institution, or qualifying mutual financial institution through which the investment of funds in certificates of deposit or time deposits was initially made receives an amount of deposits from customers of other banks, capital stock financial institutions, or qualifying mutual financial institutions located in the United States which is equal to or greater than the amount of the investment of funds in certificates of deposit or time deposits initially made by the state or political subdivision.

Source: Laws 2004, LB 999, § 51.

77-2366 Funds of state or political subdivisions; deposit with capital stock financial institutions; conditions.

(1) Notwithstanding any other provision of law, any local ordinance or regulation, or any rule or regulation to the contrary, the funds of this state or any political subdivision of the state may be deposited, by the appropriate custodians of such funds, with capital stock financial institutions to the same extent and subject to the same terms, conditions, and limitations, including collateralization required, if any, as may be otherwise provided for the deposit of such funds in banks. Capital stock financial institutions shall include state and national banks, capital stock state building and loan associations, capital stock federal savings and loan associations, capital stock federal savings banks, and capital stock state savings banks, which have a main chartered office in this state, any branch thereof in this state, or any branch in this state of a capital stock financial institution which maintained a main chartered office in this state prior to becoming a branch of such capital stock financial institution. To the extent any deposit in any bank is:

(a) Required to be subject to check or draft, then such deposit may be subject to order; and

(b) Required to be made, maintained, or otherwise dealt with by reference to the capital of any bank, then it may be so made, maintained, or dealt with by reference to the capital or net worth of such financial institution, and if by reference to the undivided profits, capital notes, debentures, or other capital items of any bank, then to any unimpaired reserves, capital notes, and debentures or comparable capital items of such other financial institution.

(2) To the extent the state or any political subdivision is or may ever be required by any law to deposit funds in any bank, the state or any such political subdivision shall, to the same extent and subject to the same terms, conditions, and limitations, including collateralization required, be required to make deposits in any capital stock financial institution on the same basis.

(3) This section shall be applied in a manner consistent with the intention of the Legislature which is to provide for the deposit of funds of the state and any political subdivision in capital stock financial institutions.

Source: Laws 1988, LB 488, § 1; Laws 1992, LB 757, § 33; Laws 2003, LB 131, § 36; Laws 2004, LB 999, § 49.

(b) PUBLIC FUNDS DEPOSIT SECURITY ACT

77-2387 Terms, defined.

For purposes of the Public Funds Deposit Security Act, unless the context otherwise requires:

(1) Affiliate means any entity that controls, is controlled by, or is under common control with another entity;

(2) Bank means any state-chartered or federally chartered bank which has a main chartered office in this state, any branch thereof in this state, or any branch in this state of a state-chartered or federally chartered bank which maintained a main chartered office in this state prior to becoming a branch of such state-chartered or federally chartered bank;

(3) Capital stock financial institution means a capital stock state building and loan association, a capital stock federal savings and loan association, a capital stock federal savings bank, and a capital stock state savings bank, which has a main chartered office in this state, any branch thereof in this state, or any

branch in this state of a capital stock financial institution which maintained a main chartered office in this state prior to becoming a branch of such capital stock financial institution;

(4) Control means to own directly or indirectly or to control in any manner twenty-five percent of the voting shares of any bank, capital stock financial institution, or holding company or to control in any manner the election of the majority of directors of any bank, capital stock financial institution, or holding company;

(5) Custodial official means an officer or an employee of the State of Nebraska or any political subdivision who, by law, is made custodian of or has control over public money or public funds subject to the act or the security for the deposit of public money or public funds subject to the act;

(6) Deposit guaranty bond means a bond underwritten by an insurance company authorized to do business in this state which provides coverage for deposits of a governing authority which are in excess of the amounts insured by the Federal Deposit Insurance Corporation;

(7) Event of default means the issuance of an order by a supervisory authority or a receiver which restrains a bank, capital stock financial institution, or qualifying mutual financial institution from paying its deposit liabilities;

(8) Governing authority means the official, or the governing board, council, or other body or group of officials, authorized to designate a bank, capital stock financial institution, or qualifying mutual financial institution as a depository of public money or public funds subject to the act;

(9) Governmental unit means the State of Nebraska or any political subdivision thereof;

(10) Qualifying mutual financial institution shall have the same meaning as in section 77-2365.01;

(11) Repurchase agreement means an agreement to purchase securities by the governing authority by which the counterparty bank, capital stock financial institution, or qualifying mutual financial institution will repurchase the securities on or before a specified date and for a specified amount and the counterparty bank, capital stock financial institution, or qualifying mutual financial institution will deliver the underlying securities to the governing authority by book entry, physical delivery, or third-party custodial agreement. The transfer of underlying securities to the counterparty bank's, capital stock financial institution's, or qualifying mutual financial institution's customer book entry account may be used for book entry delivery if the governing authority so chooses; and

(12) Securities means:

(a) Bonds or obligations fully and unconditionally guaranteed both as to principal and interest by the United States Government;

(b) United States Government notes, certificates of indebtedness, or treasury bills of any issue;

(c) United States Government bonds;

(d) United States Government guaranteed bonds or notes;

(e) Bonds or notes of United States Government agencies;

(f) Bonds of any state or political subdivision which are fully defeased as to principal and interest by any combination of bonds or notes authorized in subdivision (c), (d), or (e) of this subdivision;

(g) Bonds or obligations, including mortgage-backed obligations, issued by the Federal Home Loan Mortgage Corporation, the federal farm credit system, a Federal Home Loan Bank, or the Federal National Mortgage Association;

(h) Repurchase agreements the subject securities of which are any of the securities described in subdivisions (a) through (g) of this subdivision;

(i) Securities issued under the authority of the Federal Farm Loan Act;

(j) Loan participations which carry the guarantee of the Commodity Credit Corporation, an instrumentality of the United States Department of Agriculture;

(k) Guaranty agreements of the Small Business Administration of the United States Government;

(l) Bonds or obligations of any county, city, village, metropolitan utilities district, public power and irrigation district, sewer district, fire protection district, rural water district, or school district in this state which have been issued as required by law;

(m) Bonds of the State of Nebraska or of any other state which are purchased by the Board of Educational Lands and Funds of this state for investment in the permanent school fund or which are purchased by the state investment officer of this state for investment in the permanent school fund;

(n) Bonds or obligations of another state, or a political subdivision of another state, which are rated within the two highest classifications of prime by at least one of the standard rating services;

(o) Warrants of the State of Nebraska;

(p) Warrants of any county, city, village, local hospital district, or school district in this state;

(q) Irrevocable, nontransferable, unconditional standby letters of credit issued by the Federal Home Loan Bank of Topeka; and

(r) Certificates of deposit fully insured by the Federal Deposit Insurance Corporation that are issued to a bank, capital stock financial institution, or qualifying mutual financial institution furnishing securities pursuant to the Public Funds Deposit Security Act.

Source: Laws 1996, LB 1274, § 2; Laws 1997, LB 275, § 2; Laws 2000, LB 932, § 39; Laws 2001, LB 362, § 82; Laws 2001, LB 420, § 35; Laws 2003, LB 131, § 37; Laws 2003, LB 175, § 14; Laws 2004, LB 999, § 50.

ARTICLE 26

CIGARETTE TAX

Section

77-2602. Cigarette tax; rate; disposition of proceeds; priority.

77-2602.04. Bonds; limitation on pledge of revenue.

77-2602 Cigarette tax; rate; disposition of proceeds; priority.

(1) Every person engaged in distributing or selling cigarettes at wholesale in this state shall pay to the Tax Commissioner of this state a special privilege tax. This shall be in addition to all other taxes. It shall be paid prior to or at the time

of the sale, gift, or delivery to the retail dealer in the several amounts as follows: On each package of cigarettes containing not more than twenty cigarettes, sixty-four cents per package; and on packages containing more than twenty cigarettes, the same tax as provided on packages containing not more than twenty cigarettes for the first twenty cigarettes in each package and a tax of one-twentieth of the tax on the first twenty cigarettes on each cigarette in excess of twenty cigarettes in each package.

(2) Beginning October 1, 2004, the State Treasurer shall place the equivalent of forty-nine cents of such tax in the General Fund. The State Treasurer shall reduce the amount placed in the General Fund under this subsection by the amount prescribed in subdivision (3)(d) of this section. For purposes of this section, the equivalent of a specified number of cents of the tax shall mean that portion of the proceeds of the tax equal to the specified number divided by the tax rate per package of cigarettes containing not more than twenty cigarettes.

(3) The State Treasurer shall distribute the remaining proceeds of such tax in the following order:

(a) First, beginning July 1, 1980, the State Treasurer shall place the equivalent of one cent of such tax in the Nebraska Outdoor Recreation Development Cash Fund. For fiscal year distributions occurring after FY1998-99, the distribution under this subdivision shall not be less than the amount distributed under this subdivision for FY1997-98. Any money needed to increase the amount distributed under this subdivision to the FY1997-98 amount shall reduce the distribution to the General Fund;

(b) Second, beginning July 1, 1993, the State Treasurer shall place the equivalent of three cents of such tax in the Health and Human Services Cash Fund to carry out sections 81-637 to 81-640. For fiscal year distributions occurring after FY1998-99, the distribution under this subdivision shall not be less than the amount distributed under this subdivision for FY1997-98. Any money needed to increase the amount distributed under this subdivision to the FY1997-98 amount shall reduce the distribution to the General Fund;

(c) Third, beginning October 1, 2002, and continuing until all the purposes of the Deferred Building Renewal Act have been fulfilled, the State Treasurer shall place the equivalent of seven cents of such tax in the Building Renewal Allocation Fund. The distribution under this subdivision shall not be less than the amount distributed under this subdivision for FY1997-98. Any money needed to increase the amount distributed under this subdivision to the FY1997-98 amount shall reduce the distribution to the General Fund;

(d) Fourth, until July 1, 2009, the State Treasurer shall place in the Municipal Infrastructure Redevelopment Fund the sum of five hundred twenty thousand dollars each fiscal year to carry out the Municipal Infrastructure Redevelopment Fund Act. The Legislature shall appropriate the sum of five hundred twenty thousand dollars each year for fiscal year 2003-04 through fiscal year 2008-09;

(e) Fifth, beginning July 1, 2001, and continuing until June 30, 2008, the State Treasurer shall place the equivalent of two cents of such tax in the Information Technology Infrastructure Fund. The distribution under this subdivision shall not be less than two million fifty thousand dollars. Any money needed to increase the amount distributed under this subdivision to two million fifty thousand dollars shall reduce the distribution to the General Fund;

(f) Sixth, beginning July 1, 2001, and continuing until June 30, 2016, the State Treasurer shall place one million dollars each fiscal year in the City of the Primary Class Development Fund. If necessary, the State Treasurer shall reduce the distribution of tax proceeds to the General Fund pursuant to subsection (2) of this section by such amount required to fulfill the one million dollars to be distributed pursuant to this subdivision;

(g) Seventh, beginning July 1, 2001, and continuing until June 30, 2016, the State Treasurer shall place one million five hundred thousand dollars each fiscal year in the City of the Metropolitan Class Development Fund. If necessary, the State Treasurer shall reduce the distribution of tax proceeds to the General Fund pursuant to subsection (2) of this section by such amount required to fulfill the one million five hundred thousand dollars to be distributed pursuant to this subdivision; and

(h) Eighth, beginning July 1, 2008, and continuing until June 30, 2009, the State Treasurer shall place the equivalent of two million fifty thousand dollars of such tax in the Nebraska Public Safety Communication System Cash Fund. Beginning July 1, 2009, and continuing until June 30, 2016, the State Treasurer shall place the equivalent of two million five hundred seventy thousand dollars of such tax in the Nebraska Public Safety Communication System Cash Fund. Beginning July 1, 2016, and every fiscal year thereafter, the State Treasurer shall place the equivalent of five million seventy thousand dollars of such tax in the Nebraska Public Safety Communication System Cash Fund. If necessary, the State Treasurer shall reduce the distribution of tax proceeds to the General Fund pursuant to subsection (2) of this section by such amount required to fulfill the distribution pursuant to this subdivision.

(4) If, after distributing the proceeds of such tax pursuant to subsections (2) and (3) of this section, any proceeds of such tax remain, the State Treasurer shall place such remainder in the Nebraska Capital Construction Fund.

(5) The Legislature hereby finds and determines that the projects funded from the Municipal Infrastructure Redevelopment Fund and the Building Renewal Allocation Fund are of critical importance to the State of Nebraska. It is the intent of the Legislature that the allocations and appropriations made by the Legislature to such funds or, in the case of allocations for the Municipal Infrastructure Redevelopment Fund, to the particular municipality's account not be reduced until all contracts and securities relating to the construction and financing of the projects or portions of the projects funded from such funds or accounts of such funds are completed or paid or, in the case of the Municipal Infrastructure Redevelopment Fund, the earlier of such date or July 1, 2009, and that until such time any reductions in the cigarette tax rate made by the Legislature shall be simultaneously accompanied by equivalent reductions in the amount dedicated to the General Fund from cigarette tax revenue. Any provision made by the Legislature for distribution of the proceeds of the cigarette tax for projects or programs other than those to (a) the General Fund, (b) the Nebraska Outdoor Recreation Development Cash Fund, (c) the Health and Human Services Cash Fund, (d) the Municipal Infrastructure Redevelopment Fund, (e) the Building Renewal Allocation Fund, (f) the Information Technology Infrastructure Fund, (g) the City of the Primary Class Development Fund, (h) the City of the Metropolitan Class Development Fund, and (i) the Nebraska Public Safety Communication System Cash Fund shall not be made a

higher priority than or an equal priority to any of the programs or projects specified in subdivisions (a) through (i) of this subsection.

Source: Laws 1947, c. 267, § 2, p. 861; Laws 1957, c. 341, § 1, p. 1179; Laws 1963, c. 457, § 1, p. 1483; Laws 1965, c. 501, § 2, p. 1595; Laws 1965, c. 500, § 1, p. 1590; Laws 1969, c. 645, § 10, p. 2562; Laws 1971, LB 87, § 1; Laws 1972, LB 1433, § 1; Laws 1973, LB 447, § 5; Laws 1974, LB 945, § 9; Laws 1975, Spec. Sess., LB 6, § 67; Laws 1976, LB 1004, § 24; Laws 1976, LB 1006, § 6; Laws 1978, LB 109, § 3; Laws 1981, LB 506, § 5; Laws 1982, LB 753, § 1; Laws 1983, LB 192, § 1; Laws 1983, LB 410, § 1; Laws 1983, LB 469, § 4; Laws 1984, LB 862, § 1; Laws 1985, LB 728, § 1; Laws 1985, LB 653A, § 1; Laws 1985, Second Spec. Sess., LB 3, § 1; Laws 1986, LB 258, § 16; Laws 1986, LB 842, § 1; Laws 1987, LB 730, § 27; Laws 1987, LB 218, § 1; Laws 1989, LB 683, § 1; Laws 1990, LB 1220, § 1; Laws 1991, LB 703, § 65; Laws 1992, Third Spec. Sess., LB 9, § 1; Laws 1992, Third Spec. Sess., LB 11, § 1; Laws 1993, LB 22, § 1; Laws 1993, LB 595, § 2; Laws 1994, LB 961, § 8; Laws 1996, LB 1044, § 795; Laws 1996, LB 1190, § 15; Laws 1998, LB 1107, § 2; Laws 1999, LB 683, § 1; Laws 2000, LB 1349, § 1; Laws 2001, LB 657, § 5; Laws 2002, LB 1085, § 1; Laws 2003, LB 440, § 2; Laws 2003, LB 759, § 3; Laws 2005, LB 426, § 15; Laws 2007, LB296, § 703; Laws 2007, LB322, § 20.

Cross References

Deferred Building Renewal Act, see section 81-190.
Municipal Infrastructure Redevelopment Fund Act, see section 18-2601.
Task Force for Building Renewal, see section 81-174.

77-2602.04 Bonds; limitation on pledge of revenue.

Notwithstanding any other provision of law, for bonds issued on or after July 1, 2008, funds received by the issuer pursuant to section 77-2602 shall not be pledged for repayment of bonds.

Source: Laws 2008, LB961, § 9.
 Operative date July 1, 2008.

ARTICLE 27

SALES AND INCOME TAX

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- 77-2701.45. Repealed. Laws 2007, LB 367, § 31.
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 - 77-2704.37. Repealed. Laws 2004, LB 841, § 13.
 - 77-2704.44. Use tax; when imposed.
 - 77-2704.45. Ingredient or component parts; exemption.
 - 77-2704.46. Food for human consumption; agricultural components; oxygen for aquaculture; exemption.
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 - 77-2704.56. Purchase of fine art by museum; exemption.
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 - 77-2704.58. Depositions, bills of exceptions, and transcripts sold by court reporter; exemption.
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 - 77-2709.01. Repealed. Laws 2007, LB 367, § 31.
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77-27,119.01. Income tax form; contribution to Wildlife Conservation Fund.

(d) GENERAL PROVISIONS

- 77-27,127. Tax Commissioner; final action; appeal.
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(e) GOVERNMENTAL SUBDIVISION AID

- 77-27,137.01. Aid to incorporated municipalities; distribution; manner.
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77-27,138.01. Repealed. Laws 2004, LB 811, § 3.

(g) LOCAL OPTION REVENUE ACT

- 77-27,143. Municipalities; sales and use tax laws; administration; termination; data bases; required.

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77-27,144. Municipalities; sales and use tax; Tax Commissioner; collection; distribution.

(j) SETOFF FOR CHILD, SPOUSAL, AND MEDICAL SUPPORT DEBTS

77-27,162. Collection system; development; duties.

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(m) NEBRASKA ADVANTAGE RURAL DEVELOPMENT ACT

77-27,187. Act, how cited.

77-27,187.01. Terms, defined.

77-27,187.02. Application; contents; fee; written agreement; contents.

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77-27,189. Qualified business, defined.

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77-27,192. Existing business acquisition, disposal, reorganization, or relocation; computation; certain transactions excluded.

77-27,194. Credit; when transferable.

77-27,194.01. Refund claims; interest not allowable.

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(p) CREDIT FOR BUSINESS CHILD CARE EXPENDITURES

77-27,222. Repealed. Laws 2007, LB 367, § 30.

(r) CREDIT FOR PLANNED GIFTS

77-27,228. Planned gift, defined.

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77-27,230. Individuals; income tax credit; amount; treatment.

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(s) RENEWABLE ENERGY TAX CREDIT

77-27,235. Renewable energy tax credit; Department of Revenue; Environmental Quality Council; powers.

(t) BIODIESEL FACILITY INVESTMENT CREDIT

77-27,236. Biodiesel facility tax credit; conditions; facility; requirements; information not public record.

(a) ACT, RATES, AND DEFINITIONS

77-2701 Act, how cited.

Sections 77-2701 to 77-27,135.01 and 77-27,228 to 77-27,236 shall be known and may be cited as the Nebraska Revenue Act of 1967.

Source: Laws 1967, c. 487, § 1, p. 1533; Laws 1984, LB 1124, § 2; Laws 1985, LB 715, § 1; Laws 1985, LB 273, § 40; Laws 1987, LB 773, § 1; Laws 1987, LB 772, § 1; Laws 1987, LB 775, § 14; Laws 1987, LB 523, § 12; Laws 1989, LB 714, § 1; Laws 1989, LB 762, § 9; Laws 1991, LB 444, § 1; Laws 1991, LB 773, § 6; Laws 1991, LB 829, § 19; Laws 1992, LB 871, § 3; Laws 1992, LB 1063, § 180; Laws 1992, Second Spec. Sess., LB 1, § 153; Laws 1992, Fourth Spec. Sess., LB 1, § 22; Laws 1993, LB 138, § 69;

Laws 1993, LB 240, § 1; Laws 1993, LB 345, § 14; Laws 1993, LB 587, § 20; Laws 1993, LB 815, § 22; Laws 1994, LB 901, § 1; Laws 1994, LB 938, § 1; Laws 1995, LB 430, § 2; Laws 1996, LB 106, § 2; Laws 1997, LB 182A, § 1; Laws 1998, LB 924, § 27; Laws 2001, LB 172, § 10; Laws 2001, LB 433, § 2; Laws 2002, LB 57, § 2; Laws 2002, LB 947, § 3; Laws 2003, LB 72, § 1; Laws 2003, LB 168, § 1; Laws 2003, LB 282, § 6; Laws 2003, LB 759, § 4; Laws 2004, LB 1017, § 2; Laws 2005, LB 28, § 1; Laws 2005, LB 312, § 6; Laws 2006, LB 872, § 1; Laws 2006, LB 968, § 3; Laws 2006, LB 1189, § 1; Laws 2007, LB223, § 3; Laws 2007, LB343, § 1; Laws 2007, LB367, § 9; Laws 2008, LB916, § 5.

Operative date October 1, 2008.

77-2701.04 Definitions, where found.

For purposes of sections 77-2701.04 to 77-2713, unless the context otherwise requires, the definitions found in sections 77-2701.05 to 77-2701.53 shall be used.

Source: Laws 1992, LB 871, § 4; Laws 1992, Fourth Spec. Sess., LB 1, § 23; Laws 1993, LB 345, § 15; Laws 1998, LB 924, § 28; R.S.Supp.,2002, § 77-2702.03; Laws 2003, LB 282, § 8; Laws 2003, LB 759, § 6; Laws 2004, LB 1017, § 3; Laws 2005, LB 312, § 7; Laws 2006, LB 968, § 4; Laws 2006, LB 1189, § 2; Laws 2007, LB223, § 4; Laws 2007, LB367, § 10; Laws 2008, LB916, § 6.

Operative date October 1, 2008.

77-2701.10 Contractor or repairperson, defined.

Contractor or repairperson means any person who performs any repair services upon property annexed to, or who annexes building materials to, real estate, including leased property, and who, as a necessary and incidental part of performing such services, annexes building materials to the real estate being so repaired or annexed or arranges for such annexation. Contractor or repairperson does not include any person who incorporates live plants into real estate except when such incorporation is incidental to the transfer of an improvement upon real estate or the real estate. The contractor or repairperson not electing to be taxed as a retailer is considered to be the consumer of such building materials furnished by him or her and annexed to the real estate being so repaired or annexed for all the purposes of the Nebraska Revenue Act of 1967. The contractor or repairperson:

(1) Shall be permitted to make an election that he or she will be taxed as a retailer in which case he or she shall not be considered the final consumer of building materials annexed to real estate;

(2) Shall be permitted to make an election that he or she will be taxed as the consumer of building materials annexed to real estate, will pay the sales tax or remit the use tax at the time of purchase, and will maintain a tax-paid inventory; or

(3) Shall be permitted to make an election that he or she will be taxed as the consumer of building materials annexed to real estate and may issue a resale certificate when purchasing building materials that will be annexed to real

estate. Such person shall then remit the appropriate use tax on any building materials when withdrawn from inventory for the purpose of being annexed to real estate at the rate in effect at the time and place of the withdrawal from inventory.

The provisions of this section shall not excuse any person from the obligation to collect sales tax on retail sales of property not annexed to real estate or from the obligation to pay the sales tax or remit the use tax on tools, services, and other materials consumed that are not annexed to real estate.

The Department of Revenue shall not prescribe any requirements of Nebraska sales revenue, percentage or otherwise, restricting any person's election. Any change in an election shall require prior approval by the Tax Commissioner.

Any change in the election shall, if filed on or prior to the fifteenth of the month, become effective at the beginning of the following month or, if filed after the fifteenth of the month, become effective on the first day of the next succeeding month. Any person who changes his or her election and becomes a contractor or repairperson shall pay the tax on all building materials in inventory which may be annexed to real estate at the time of making the change in election except when such contractor or repairperson elects to purchase inventory with a resale certificate. Any person who changes his or her election and becomes a retailer shall not be entitled to a refund but shall receive a credit for the tax paid on building materials in inventory at the time the building materials are sold. The credit shall be applied against the tax collected on sales of such building materials.

Any contractor or repairperson who has not completed and filed an election as required in this section within three months after beginning to operate as a contractor or repairperson shall be considered a retailer for all periods until an election has been made.

Source: Laws 1992, LB 871, § 6; Laws 1993, LB 345, § 16; R.S.1943, (1996), § 77-2702.05; Laws 2003, LB 282, § 14; Laws 2003, LB 759, § 7; Laws 2004, LB 1017, § 6; Laws 2007, LB367, § 12.

77-2701.14 Entity-based exemption, defined.

Entity-based exemption means an exemption based on who purchases the product or who sells the product. An exemption that is available to all individuals shall not be considered an entity-based exemption.

Source: Laws 2003, LB 282, § 18; Laws 2006, LB 887, § 2.

77-2701.16 Gross receipts, defined.

(1) Gross receipts means the total amount of the sale or lease or rental price, as the case may be, of the retail sales of retailers.

(2) Gross receipts of every person engaged as a public utility specified in this subsection, as a community antenna television service operator, or as a satellite service operator or any person involved in connecting and installing services defined in subdivision (2)(a), (b), or (d) of this section means:

(a)(i) In the furnishing of telephone communication service, other than mobile telecommunications service as described in section 77-2703.04, the gross income received from furnishing local exchange telephone service and intrastate message toll telephone service; and

(ii) In the furnishing of mobile telecommunications service as described in section 77-2703.04, the gross income received from furnishing mobile telecommunications service that originates and terminates in the same state to a customer with a place of primary use in Nebraska;

(b) In the furnishing of telegraph service, the gross income received from the furnishing of intrastate telegraph services;

(c) In the furnishing of gas, electricity, sewer, and water service, the gross income received from the furnishing of such services upon billings or statements rendered to consumers for such utility services;

(d) In the furnishing of community antenna television service or satellite service, the gross income received from the furnishing of such community antenna television service as regulated under sections 18-2201 to 18-2205 or 23-383 to 23-388 or satellite service; and

(e) The gross income received from the provision, installation, construction, servicing, or removal of property used in conjunction with the furnishing, installing, or connecting of any public utility services specified in subdivision (2)(a) or (b) of this section or community antenna television service or satellite service specified in subdivision (2)(d) of this section, except when acting as a subcontractor for a public utility, this subdivision does not apply to the gross income received by a contractor electing to be treated as a consumer of building materials under subdivision (2) or (3) of section 77-2701.10 for any such services performed on the customer's side of the utility demarcation point.

(3) Gross receipts of every person engaged in selling, leasing, or otherwise providing intellectual or entertainment property means:

(a) In the furnishing of computer software, the gross income received, including the charges for coding, punching, or otherwise producing any computer software and the charges for the tapes, disks, punched cards, or other properties furnished by the seller; and

(b) In the furnishing of videotapes, movie film, satellite programming, satellite programming service, and satellite television signal descrambling or decoding devices, the gross income received from the license, franchise, or other method establishing the charge.

(4) Gross receipts for providing a service means:

(a) The gross income received for building cleaning and maintenance, pest control, and security;

(b) The gross income received for motor vehicle washing, waxing, towing, and painting;

(c) The gross income received for computer software training;

(d) The gross income received for installing and applying tangible personal property if the sale of the property is subject to tax. If any or all of the charge for installation is free to the customer and is paid by a third-party service provider, any tax due on that part of the activation commission, finder's fee, installation charge, or similar payment made by the third-party service provider shall be paid by the third-party service provider and collected and remitted by the installer;

(e) The gross income received for services of recreational vehicle parks;

(f) The gross income received for labor for repair or maintenance services performed with regard to tangible personal property the sale of which would be

subject to sales and use taxes, excluding motor vehicles, except as otherwise provided in section 77-2704.26 or 77-2704.50;

(g) The gross income received for animal specialty services except (i) veterinary services and (ii) specialty services performed on livestock as defined in section 54-183; and

(h) The gross income received for detective services.

(5) Gross receipts includes the sale of admissions which means the right or privilege to have access to or to use a place or location. An admission includes a membership that allows access to or use of a place or location, but which membership does not include the right to hold office, vote, or change the policies of the organization. When an admission to an activity or a membership constituting an admission pursuant to this subsection is combined with the solicitation of a contribution, the portion or the amount charged representing the fair market price of the admission shall be considered a retail sale subject to the tax imposed by section 77-2703. The organization conducting the activity shall determine the amount properly attributable to the purchase of the privilege, benefit, or other consideration in advance, and such amount shall be clearly indicated on any ticket, receipt, or other evidence issued in connection with the payment.

(6) Gross receipts includes the sale of live plants incorporated into real estate except when such incorporation is incidental to the transfer of an improvement upon real estate or the real estate.

(7) Gross receipts includes the sale of any building materials annexed to real estate by a person electing to be taxed as a retailer pursuant to subdivision (1) of section 77-2701.10.

(8) Gross receipts includes the sale of prepaid telephone calling arrangements and the recharge of prepaid telephone calling arrangements. If the sale or recharge of a prepaid telephone calling arrangement does not take place at the vendor's place of business, the sale or recharge shall be conclusively determined to take place at the customer's shipping address or, if there is no item shipped, at the customer's billing address. For purposes of this subsection, a prepaid telephone calling arrangement means the right to exclusively purchase telecommunications services that are paid for in advance that enables the origination of calls using an access number or authorization code, whether manually or electronically dialed.

(9) Gross receipts includes the retail sale of digital audio works, digital audiovisual works, digital codes, and digital books delivered electronically if the products are taxable when delivered on tangible storage media. A sale includes the transfer of a permanent right of use, the transfer of a right of use that terminates on some condition, and the transfer of a right of use conditioned upon the receipt of continued payments.

(10) Gross receipts does not include:

(a) The amount of any rebate granted by a motor vehicle or motorboat manufacturer or dealer at the time of sale of the motor vehicle or motorboat, which rebate functions as a discount from the sales price of the motor vehicle or motorboat; or

(b) The price of property or services returned or rejected by customers when the full sales price is refunded either in cash or credit.

Source: Laws 1992, LB 871, § 8; Laws 1993, LB 345, § 18; Laws 1994, LB 123, § 21; Laws 1994, LB 901, § 2; Laws 1994, LB 977, § 1; Laws 1994, LB 1087, § 1; Laws 1996, LB 106, § 3; Laws 1999, LB 214, § 1; Laws 2002, LB 947, § 4; Laws 2002, LB 1085, § 3; R.S.Supp.,2002, § 77-2702.07; Laws 2003, LB 282, § 20; Laws 2003, LB 759, § 8; Laws 2004, LB 1017, § 7; Laws 2005, LB 216, § 4; Laws 2005, LB 753, § 1; Laws 2007, LB367, § 13; Laws 2008, LB916, § 7.

Operative date October 1, 2008.

77-2701.24 Occasional sale, defined.

Occasional sale means:

(1) A sale, but not a lease or rental, of property which is the subject of any intercompany sale or transfer involving any parent, subsidiary, or brother-sister company relationship under section 77-2704.28 and which was either originally acquired prior to June 1, 1967, or, if acquired thereafter, the seller or transferor directly or indirectly has previously paid a sales or use tax thereon, including:

(a) From one corporation to another corporation pursuant to a reorganization. For purposes of this subdivision, reorganization means a statutory merger or consolidation or the acquisition by a corporation of substantially all of the properties of another corporation when the consideration is solely all or a part of the voting stock of the acquiring corporation or of its parent or subsidiary corporation;

(b) In connection with the winding up, dissolution, or liquidation of a corporation only when there is a distribution of the property of such corporation to the shareholders in kind if the portion of the property so distributed to the shareholder is substantially in proportion to the share of stock or securities held by the shareholder;

(c) To a corporation for the purpose of organization of such corporation or the contribution of additional capital to such corporation when the former owners of the property transferred are immediately after the transfer in control of the corporation and the stock or securities received by each is substantially in proportion to his or her interest in the property prior to the transfer;

(d) To a partnership in the organization of such partnership if the former owners of the property transferred are immediately after the transfer members of such partnership and the interest in the partnership received by each is substantially in proportion to his or her interest in the property prior to the transfer;

(e) From a partnership to the members thereof when made in kind in the dissolution of such partnership if the portion of the property so distributed to the members of the partnership is substantially in proportion to the interest in the partnership held by the members;

(f) To a limited liability company in the organization of such limited liability company if the former owners of the property transferred are immediately after the transfer members of such limited liability company and the interest in the

limited liability company received by each is substantially in proportion to his or her interest in the property prior to the transfer;

(g) From a limited liability company to the members thereof when made in kind in the dissolution of such limited liability company if the portion of the property so distributed to the members of the limited liability company is substantially in proportion to the interest in the limited liability company held by the members;

(h) From one limited liability company to another limited liability company pursuant to a reorganization; or

(i) Any transaction between two persons that qualifies as a tax-free transaction under the Internal Revenue Code;

(2) A sale of household goods, personal effects, and services if each of the following conditions is met and if any one condition is not met then the entire gross receipts shall be subject to the tax imposed by section 77-2703:

(a) Such sales are by an individual at his or her residence or if more than one individual's property is involved such sales are by one of the individuals involved at the residence of one of the individuals;

(b) Such sales do not occur at any residence for more than three days during a calendar year;

(c) Such individual or individuals or any member of any of their households does not conduct or engage in a trade or business in which similar items are sold or services provided;

(d) Such property sold was originally acquired for and used for personal use or the service provided may be performed at any individual residence without specialized equipment or supplies; and

(e) Such property is not otherwise excepted from the definition of occasional sale;

(3) Commencing with any transaction occurring on or after October 1, 1985, any sale of business or farm machinery and equipment if each of the following conditions is met and if any one condition is not met the entire gross receipts shall be subject to the tax imposed by section 77-2703:

(a) Such machinery or equipment was used by the seller or seller's predecessor in a sale described in subdivision (1) of this section as a depreciable capital asset in connection with the farm or business for a period of at least one year;

(b) Such property was originally acquired prior to June 1, 1967, or if acquired thereafter, the seller or seller's predecessor in a sale described in subdivision (1) of this section directly or indirectly has previously paid a sales or use tax thereon; and

(c) Such property is not otherwise excepted from the definition of occasional sale;

(4) Commencing October 1, 1985, a sale by an organization created exclusively for religious purposes or an agent of the organization for such sale if each of the following conditions is met and if any one condition is not met then the entire gross receipts shall be subject to the tax imposed by section 77-2703:

(a) All sales occur during an activity conducted by such organization or, if more than one organization is involved, by one of the organizations owning property being sold;

(b) The organization only sells property it owns or provides the service during one such activity in a calendar year; and

(c) The activity does not last longer than three consecutive days; and

(5) Any sale that is made in connection with the sale to a single buyer of all or substantially all of a trade or business if the seller or seller's predecessor in a sale described in subdivision (1) of this section directly or indirectly has previously paid a sales or use tax thereon. This subdivision shall apply to any transaction occurring on or after October 1, 1985.

Commencing October 1, 1985, occasional sale does not include any sale directly by or any sale which is supervised or aided by an auctioneer or an agent or employee of an auctioneer.

Except for a sale listed in subdivision (1) of this section, an occasional sale does not mean any sale of motor vehicles, semitrailers, or trailers as defined in the Motor Vehicle Registration Act or any sale of a motorboat as defined in section 37-1204.

Source: Laws 1992, LB 871, § 10; Laws 1993, LB 121, § 500; Laws 1993, LB 345, § 19; Laws 1994, LB 123, § 22; Laws 1995, LB 574, § 73; Laws 2002, LB 1085, § 4; R.S.Supp.,2002, § 77-2702.09; Laws 2003, LB 282, § 28; Laws 2005, LB 274, § 273.

Cross References

Motor Vehicle Registration Act, see section 60-301.

77-2701.27 Property, defined.

Property means all tangible and intangible property that is subject to tax under subsection (1) of section 77-2703 and all rights, licenses, and franchises that are subject to tax under such subsection. To facilitate the proper administration of the Nebraska Revenue Act of 1967, unless the context clearly requires otherwise, the term property shall be construed to include all services subject to tax.

Source: Laws 1993, LB 345, § 32; R.S.1943, (1996), § 77-2702.26; Laws 2003, LB 282, § 31; Laws 2005, LB 216, § 5.

77-2701.32 Retailer, defined.

(1) Retailer means any seller.

(2) To facilitate the proper administration of the Nebraska Revenue Act of 1967, the following persons have the duties and responsibilities of sellers for the purposes of sales and use taxes:

(a) Any person in the business of making sales subject to tax under section 77-2703 at auction of property owned by the person or others;

(b) Any person collecting the proceeds of the auction, other than the owner of the property, together with his or her principal, if any, when the person collecting the proceeds of the auction is not the auctioneer or an agent or employee of the auctioneer. The seller does not include the auctioneer in such case;

(c) Every person who has elected to be considered a retailer pursuant to subdivision (1) of section 77-2701.10;

(d) Every person operating, organizing, or promoting a flea market, craft show, fair, or similar event; and

(e) Every person engaged in the business of providing any service defined in subsection (4) of section 77-2701.16.

(3) For the proper administration of the Nebraska Revenue Act of 1967, the following persons do not have the duties and responsibilities of a seller for purposes of sales and use taxes:

(a) Any person who leases or rents films when an admission tax is charged under the Nebraska Revenue Act of 1967;

(b) Any person who leases or rents railroad rolling stock interchanged pursuant to the provisions of the federal Interstate Commerce Act;

(c) Any person engaged in the business of furnishing rooms in a facility licensed under the Health Care Facility Licensure Act in which rooms, lodgings, or accommodations are regularly furnished for a consideration or a facility operated by an educational institution established under Chapter 79 or Chapter 85 in which rooms are regularly used to house students for a consideration for periods in excess of thirty days; or

(d) Any person making sales at a flea market, craft show, fair, or similar event when such person does not have a sales tax permit and has arranged to pay sales taxes collected to the person operating, organizing, or promoting such event.

Source: Laws 1992, LB 871, § 15; Laws 1993, LB 345, § 23; Laws 2000, LB 819, § 149; Laws 2002, LB 1085, § 7; R.S.Supp.,2002, § 77-2702.14; Laws 2003, LB 282, § 36; Laws 2003, LB 759, § 10; Laws 2008, LB916, § 8.
Operative date October 1, 2008.

Cross References

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

77-2701.34 Sale for resale, defined.

Sale for resale means a sale of property or provision of a service to any purchaser who is purchasing such property or service for the purpose of reselling it in the normal course of his or her business, either in the form or condition in which it is purchased or as an attachment to or integral part of other property or service. A sale for resale includes (1) a sale of building materials to a contractor or repairperson electing to be taxed as a retailer under subdivision (1) of section 77-2701.10 or a sale of building materials to a contractor or repairperson being taxed as the consumer of building materials and electing a tax-free inventory under subdivision (3) of section 77-2701.10, (2) a sale of property to a purchaser for the sole purpose of that purchaser renting or leasing such property to another person, with rent or lease payments set at a fair market value, (3) film rentals for use in a place where an admission is charged that is subject to tax under the Nebraska Revenue Act of 1967 but not if incidental to the renting or leasing of real estate, or (4) a sale of digital products, community antenna television services, Internet services, and satellite services to a person who receives by contract the product or service transferred electronically for further broadcast, transmission, retransmission, licensing, relicensing, distribution, redistribution, or exhibition of the product or service

for use in a place where an admission is charged that is subject to sales tax under the Nebraska Revenue Act of 1967.

Source: Laws 1992, LB 871, § 17; Laws 1993, LB 345, § 25; Laws 2002, LB 1085, § 9; R.S.Supp.,2002, § 77-2702.16; Laws 2003, LB 282, § 38; Laws 2004, LB 1017, § 8; Laws 2007, LB367, § 14; Laws 2008, LB916, § 14.

Operative date October 1, 2008.

77-2701.35 Sales price, defined.

(1) Sales price applies to the measure subject to sales tax and means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

- (a) The seller's cost of the property sold;
- (b) The cost of materials used, the cost of labor or service, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;
- (c) Charges by the seller for any services necessary to complete the sale;
- (d) Delivery charges; and
- (e) Installation charges.

(2) Sales price includes consideration received by the seller from third parties if:

- (a) The seller actually receives consideration from a party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale;
- (b) The seller has an obligation to pass the price reduction or discount through to the purchaser;
- (c) The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and

(d) One of the following criteria is met:

(i) The purchaser presents a coupon, certificate, or other documentation to the seller to claim a price reduction or discount when the coupon, certificate, or documentation is authorized, distributed, or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate, or documentation is presented;

(ii) The purchaser identifies himself or herself to the seller as a member of a group or organization entitled to a price reduction or discount. A preferred customer card that is available to any patron does not constitute membership in such a group; or

(iii) The price reduction or discount is identified as a third-party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate, or other documentation presented by the purchaser.

(3) Sales price does not include:

(a) Any discounts, including cash, terms, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;

(b) Interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser;

(c) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser; and

(d) Credit for any trade-in as follows:

(i) The value of property taken by a seller in trade as all or a part of the consideration for a sale of property of any kind or nature; or

(ii) The value of a motor vehicle or motorboat taken by any person in trade as all or a part of the consideration for a sale of another motor vehicle or motorboat.

Source: Laws 2003, LB 282, § 39; Laws 2007, LB223, § 6.

77-2701.42 Use, defined.

Use means the exercise of any right or power over property incident to the ownership or possession of that property, except that use does not include the sale of that property in the regular course of business or the exercise of any right or power over property which will enter into or become an ingredient or component part of property manufactured, processed, or fabricated for ultimate sale at retail. Use specifically includes the annexation of building materials to real estate or the withdrawal of property or building materials from inventory, which inventory is subject to sales tax under the Nebraska Revenue Act of 1967 or would be subject to the sales tax under the act except for an election under section 77-2701.10, for annexation to real estate or to improvements upon real estate without regard to the fact that such building materials are manufactured, processed, or fabricated prior to annexation or that such real estate and improvements may subsequently be sold as such.

Source: Laws 1992, LB 871, § 24; Laws 1993, LB 345, § 30; R.S.1943, (1996), § 77-2702.23; Laws 2003, LB 282, § 46; Laws 2004, LB 1017, § 9.

77-2701.43 Use-based exemption, defined.

Use-based exemption means an exemption based on a specified use of the product by the purchaser.

Source: Laws 2003, LB 282, § 47; Laws 2006, LB 887, § 3.

77-2701.44 Building materials, defined.

Building materials means any property that will be annexed to real estate or to an improvement on real estate. Building materials does not include tools, supplies, or property that will not be annexed.

Source: Laws 2004, LB 1017, § 4.

77-2701.45 Repealed. Laws 2007, LB 367, § 31.

77-2701.46 Manufacturing, defined.

Manufacturing means an action or series of actions performed upon tangible personal property, either by hand or machine, which results in that tangible personal property being reduced or transformed into a different state, quality,

form, property, or thing. Manufacturing does not include retail operations, the generation or transmission of electricity, the production or transmission of information, programming, or data, the preparation of food for immediate consumption, or the purification or transportation of water.

Source: Laws 2005, LB 312, § 8.

77-2701.47 Manufacturing machinery and equipment, defined.

(1) Manufacturing machinery and equipment means any machinery or equipment purchased, leased, or rented by a person engaged in the business of manufacturing for use in manufacturing, including, but not limited to:

(a) Machinery or equipment for use in manufacturing to produce, fabricate, assemble, process, finish, refine, or package tangible personal property;

(b) Machinery or equipment for use in transporting, conveying, handling, or storing by the manufacturer the raw materials or components to be used in manufacturing or the products produced by the manufacturer;

(c) Molds and dies and the materials necessary to create molds and dies for use in manufacturing that determine the physical characteristics of the finished product or its packaging material, whether or not such molds or dies are permanent or temporary in nature, and including any chemicals, solutions, or catalysts utilized in the mold or die process even if such items are consumed during the course of the mold or die process;

(d) Machinery or equipment for use in manufacturing to maintain the integrity of the product or to maintain unique environmental conditions required for either the product or the machinery and equipment used in manufacturing by a manufacturer;

(e) Testing equipment for use in manufacturing to measure the quality of the finished product;

(f) Computers, software, and related peripheral equipment for use in manufacturing to guide, control, operate, or measure the manufacturing process;

(g) Machinery or equipment for use in manufacturing to produce steam, electricity, or chemical catalysts and solutions that are essential to the manufacturing process even if such produced items are consumed during the course of the manufacturing process or do not become necessary or integral parts of the finished product; and

(h) A repair or replacement part or accessory purchased for use in maintaining, repairing, or refurbishing machinery and equipment used in manufacturing.

(2) Manufacturing machinery and equipment does not include: Vehicles required to be registered for operation on the roads and highways of this state; hand tools; office equipment; and computers, software, and related peripheral equipment not used in guiding, controlling, operating, or measuring of the manufacturing process. Machinery or equipment does not need to come into direct physical contact with any of the raw materials, components, or products that are part of the manufacturing process to be considered manufacturing machinery or equipment.

Source: Laws 2005, LB 312, § 9; Laws 2006, LB 1189, § 4.

77-2701.48 Bundled transaction, defined.

(1) Bundled transaction means the retail sale of two or more products, except real property and services to real property, when (a) the products are otherwise distinct and identifiable and (b) the products are sold for one non-itemized price. Bundled transaction does not include the sale of any products in which the sales price varies, or is negotiable, based on the selection by the purchaser of the products included in the transaction.

(2) Distinct and identifiable products do not include:

(a) Packaging, such as containers, boxes, sacks, bags, and bottles or other materials such as wrapping, labels, tags, and instruction guides that accompany the retail sale of the products and are incidental or immaterial to the retail sale thereof. Examples of packaging that are incidental or immaterial include grocery sacks, shoeboxes, dry cleaning garment bags, and express delivery envelopes and boxes;

(b) A product provided free of charge with the required purchase of another product. A product is provided free of charge if the sales price of the product purchased does not vary depending on the inclusion of the product provided free of charge; and

(c) Items included in the definition of sales price pursuant to section 77-2701.35.

(3) One non-itemized price does not include a price that is separately identified by product on binding sales or other supporting sales-related documentation made available to the customer in paper or electronic form, including, but not limited to, an invoice, bill of sale, receipt, contract, service agreement, lease agreement, periodic notice of rates and services, rate card, or price list.

(4) A transaction that otherwise meets the definition of a bundled transaction is not a bundled transaction if it is (a) the retail sale of tangible personal property and a service where the tangible personal property is essential to the use of the service, and is provided exclusively in connection with the service, and the true object of the transaction is the service, (b) the retail sale of services when one service is provided that is essential to the use or receipt of a second service and the first service is provided exclusively in connection with the second service and the true object of the transaction is the second service, or (c) a transaction that includes taxable products and nontaxable products and the purchase price or sales price of the taxable products is de minimus. De minimus means the seller's purchase price or sales price of the taxable products is ten percent or less of the total purchase price or sales price of the bundled products. Sellers shall use either the purchase price or the sales price of the products to determine if the taxable products are de minimus. Sellers may not use a combination of the purchase price and sales price of the products to determine if the taxable products are de minimus. Sellers shall use the full term of a service contract to determine if the taxable products are de minimus.

(5) Bundled transaction does not include the retail sale of exempt tangible personal property and taxable tangible personal property if (a) the transaction includes food and food ingredients, drugs, durable medical equipment, mobility enhancing equipment, over-the-counter drugs, prosthetic devices, or medical supplies and (b) the seller's purchase price or sales price of the taxable tangible personal property is fifty percent or less of the total purchase price or sales price of the bundled tangible personal property. Sellers may not use a combina-

tion of the purchase price and sales price of the tangible personal property when making the fifty-percent determination for a transaction.

Source: Laws 2007, LB223, § 5.

77-2701.49 Delivered electronically, defined.

Delivered electronically means obtained by the purchaser by means other than tangible storage media.

Source: Laws 2008, LB916, § 9.
Operative date October 1, 2008.

77-2701.50 Digital audio works, defined.

Digital audio works means works that result from the fixation of a series of musical, spoken, or other sounds, including ringtones.

Source: Laws 2008, LB916, § 10.
Operative date October 1, 2008.

77-2701.51 Digital audiovisual works, defined.

Digital audiovisual works means a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any.

Source: Laws 2008, LB916, § 11.
Operative date October 1, 2008.

77-2701.52 Digital books, defined.

Digital books means works that are generally recognized in the ordinary and usual sense as books.

Source: Laws 2008, LB916, § 12.
Operative date October 1, 2008.

77-2701.53 Digital code, defined.

Digital code means a code which provides a purchaser with a right to obtain one or more products delivered electronically. A digital code may be obtained by any means, including email or tangible means.

Source: Laws 2008, LB916, § 13.
Operative date October 1, 2008.

(b) SALES AND USE TAX

77-2703 Sales and use tax; rate; collection; understatement; violation; penalty; interest.

(1) There is hereby imposed a tax at the rate provided in section 77-2701.02 upon the gross receipts from all sales of tangible personal property sold at retail in this state; the gross receipts of every person engaged as a public utility, as a community antenna television service operator, or as a satellite service operator, any person involved in the connecting and installing of the services defined in subdivision (2)(a), (b), (d), or (e) of section 77-2701.16, or every person engaged as a retailer of intellectual or entertainment properties referred to in subsection (3) of section 77-2701.16; the gross receipts from the sale of

admissions in this state; the gross receipts from the sale of warranties, guarantees, service agreements, or maintenance agreements when the items covered are subject to tax under this section; beginning January 1, 2008, the gross receipts from the sale of bundled transactions when one or more of the products included in the bundle are taxable; the gross receipts from the provision of services defined in subsection (4) of section 77-2701.16; and the gross receipts from the sale of products delivered electronically as described in subsection (9) of section 77-2701.16. Except as provided in section 77-2701.03, when there is a sale, the tax shall be imposed at the rate in effect at the time the gross receipts are realized under the accounting basis used by the retailer to maintain his or her books and records.

(a) The tax imposed by this section shall be collected by the retailer from the consumer. It shall constitute a part of the purchase price and until collected shall be a debt from the consumer to the retailer and shall be recoverable at law in the same manner as other debts. The tax required to be collected by the retailer from the consumer constitutes a debt owed by the retailer to this state.

(b) It is unlawful for any retailer to advertise, hold out, or state to the public or to any customer, directly or indirectly, that the tax or part thereof will be assumed or absorbed by the retailer, that it will not be added to the selling, renting, or leasing price of the property sold, rented, or leased, or that, if added, it or any part thereof will be refunded. The provisions of this subdivision shall not apply to a public utility.

(c) The tax required to be collected by the retailer from the purchaser, unless otherwise provided by statute or by rule and regulation of the Tax Commissioner, shall be displayed separately from the list price, the price advertised in the premises, the marked price, or other price on the sales check or other proof of sales, rentals, or leases.

(d) For the purpose of more efficiently securing the payment, collection, and accounting for the sales tax and for the convenience of the retailer in collecting the sales tax, it shall be the duty of the Tax Commissioner to provide a schedule or schedules of the amounts to be collected from the consumer or user to effectuate the computation and collection of the tax imposed by the Nebraska Revenue Act of 1967. Such schedule or schedules shall provide that the tax shall be collected from the consumer or user uniformly on sales according to brackets based on sales prices of the item or items. Retailers may compute the tax due on any transaction on an item or an invoice basis. The rounding rule provided in section 77-3,117 applies.

(e) The use of tokens or stamps for the purpose of collecting or enforcing the collection of the taxes imposed in the Nebraska Revenue Act of 1967 or for any other purpose in connection with such taxes is prohibited.

(f) For the purpose of the proper administration of the provisions of the Nebraska Revenue Act of 1967 and to prevent evasion of the retail sales tax, it shall be presumed that all gross receipts are subject to the tax until the contrary is established. The burden of proving that a sale of property is not a sale at retail is upon the person who makes the sale unless he or she takes from the purchaser (i) a resale certificate to the effect that the property is purchased for the purpose of reselling, leasing, or renting it, (ii) an exemption certificate pursuant to subsection (7) of section 77-2705, or (iii) a direct payment permit pursuant to sections 77-2705.01 to 77-2705.03. Receipt of a resale certificate, exemption certificate, or direct payment permit shall be conclusive proof for

the seller that the sale was made for resale or was exempt or that the tax will be paid directly to the state.

(g) In the rental or lease of automobiles, trucks, trailers, semitrailers, and truck-tractors as defined in the Motor Vehicle Registration Act, the tax shall be collected by the lessor on the rental or lease price at the tax rate in effect on the date the automobile, truck, trailer, semitrailer, or truck-tractor is delivered to the lessee, except as otherwise provided within this section.

(h) In the rental or lease of automobiles, trucks, trailers, semitrailers, and truck-tractors as defined in the act, for periods of one year or more, the lessor may elect not to collect and remit the sales tax on the gross receipts and instead pay a sales tax on the cost of such vehicle. If such election is made, it shall be made pursuant to the following conditions:

(i) Notice of the desire to make such election shall be filed with the Tax Commissioner and shall not become effective until the Tax Commissioner is satisfied that the taxpayer has complied with all conditions of this subsection and all rules and regulations of the Tax Commissioner;

(ii) Such election when made shall continue in force and effect for a period of not less than two years and thereafter until such time as the lessor elects to terminate the election;

(iii) When such election is made, it shall apply to all vehicles of the lessor rented or leased for periods of one year or more except vehicles to be leased to common or contract carriers who provide to the lessor a valid common or contract carrier exemption certificate. If the lessor rents or leases other vehicles for periods of less than one year, such lessor shall maintain his or her books and records and his or her accounting procedure as the Tax Commissioner prescribes; and

(iv) The Tax Commissioner by rule and regulation shall prescribe the contents and form of the notice of election, a procedure for the determination of the tax base of vehicles which are under an existing lease at the time such election becomes effective, the method and manner for terminating such election, and such other rules and regulations as may be necessary for the proper administration of this subdivision.

(i) The tax imposed by this section on the sales of motor vehicles, semitrailers, and trailers as defined in sections 60-339, 60-348, and 60-354 shall be the liability of the purchaser and, with the exception of motor vehicles, semitrailers, and trailers registered pursuant to section 60-3,198, the tax shall be collected by the county treasurer or designated county official as provided in the Motor Vehicle Registration Act at the time the purchaser makes application for the registration of the motor vehicle, semitrailer, or trailer for operation upon the highways of this state. The tax imposed by this section on motor vehicles, semitrailers, and trailers registered pursuant to section 60-3,198 shall be collected by the Department of Motor Vehicles at the time the purchaser makes application for the registration of the motor vehicle, semitrailer, or trailer for operation upon the highways of this state. At the time of the sale of any motor vehicle, semitrailer, or trailer, the seller shall (i) state on the sales invoice the dollar amount of the tax imposed under this section and (ii) furnish to the purchaser a certified statement of the transaction, in such form as the Tax Commissioner prescribes, setting forth as a minimum the total sales price, the allowance for any trade-in, and the difference between the two. The sales tax due shall be computed on the difference between the total sales price and the

allowance for any trade-in as disclosed by such certified statement. Any seller who willfully understates the amount upon which the sales tax is due shall be subject to a penalty of one thousand dollars. A copy of such certified statement shall also be furnished to the Tax Commissioner. Any seller who fails or refuses to furnish such certified statement shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars. If the seller fails to state on the sales invoice the dollar amount of the tax due, the purchaser shall have the right and authority to rescind any agreement for purchase and to declare the purchase null and void. If the purchaser retains such motor vehicle, semitrailer, or trailer in this state and does not register it for operation on the highways of this state within thirty days of the purchase thereof, the tax imposed by this section shall immediately thereafter be paid by the purchaser to the county treasurer, the designated county official, or the Department of Motor Vehicles. If the tax is not paid on or before the thirtieth day after its purchase, the county treasurer, designated county official, or Department of Motor Vehicles shall also collect from the purchaser interest from the thirtieth day through the date of payment and sales tax penalties as provided in the Nebraska Revenue Act of 1967. The county treasurer, designated county official, or Department of Motor Vehicles shall report and remit the tax so collected to the Tax Commissioner by the fifteenth day of the following month. The county treasurer or designated county official shall deduct and withhold for the use of the county general fund, from all amounts required to be collected under this subsection, the collection fee permitted to be deducted by any retailer collecting the sales tax. The Department of Motor Vehicles shall deduct, withhold, and deposit in the Motor Carrier Division Cash Fund the collection fee permitted to be deducted by any retailer collecting the sales tax. The collection fee shall be forfeited if the county treasurer, designated county official, or Department of Motor Vehicles violates any rule or regulation pertaining to the collection of the use tax.

(j)(i) The tax imposed by this section on the sale of a motorboat as defined in section 37-1204 shall be the liability of the purchaser. The tax shall be collected by the county treasurer or designated county official at the time the purchaser makes application for the registration of the motorboat. At the time of the sale of a motorboat, the seller shall (A) state on the sales invoice the dollar amount of the tax imposed under this section and (B) furnish to the purchaser a certified statement of the transaction, in such form as the Tax Commissioner prescribes, setting forth as a minimum the total sales price, the allowance for any trade-in, and the difference between the two. The sales tax due shall be computed on the difference between the total sales price and the allowance for any trade-in as disclosed by such certified statement. Any seller who willfully understates the amount upon which the sales tax is due shall be subject to a penalty of one thousand dollars. A copy of such certified statement shall also be furnished to the Tax Commissioner. Any seller who fails or refuses to furnish such certified statement shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars. If the seller fails to state on the sales invoice the dollar amount of the tax due, the purchaser shall have the right and authority to rescind any agreement for purchase and to declare the purchase null and void. If the purchaser retains such motorboat in this state and does not register it within thirty days of the purchase thereof, the tax imposed by this section shall immediately thereafter be paid by the purchaser to the county

treasurer or designated county official. If the tax is not paid on or before the thirtieth day after its purchase, the county treasurer or designated county official shall also collect from the purchaser interest from the thirtieth day through the date of payment and sales tax penalties as provided in the Nebraska Revenue Act of 1967. The county treasurer or designated county official shall report and remit the tax so collected to the Tax Commissioner by the fifteenth day of the following month. The county treasurer or designated county official shall deduct and withhold for the use of the county general fund, from all amounts required to be collected under this subsection, the collection fee permitted to be deducted by any retailer collecting the sales tax. The collection fee shall be forfeited if the county treasurer or designated county official violates any rule or regulation pertaining to the collection of the use tax.

(ii) In the rental or lease of motorboats, the tax shall be collected by the lessor on the rental or lease price.

(k) The Tax Commissioner shall adopt and promulgate necessary rules and regulations for determining the amount subject to the taxes imposed by this section so as to insure that the full amount of any applicable tax is paid in cases in which a sale is made of which a part is subject to the taxes imposed by this section and a part of which is not so subject and a separate accounting is not practical or economical.

(2) A use tax is hereby imposed on the storage, use, or other consumption in this state of property purchased, leased, or rented from any retailer and on any transaction the gross receipts of which are subject to tax under subsection (1) of this section on or after June 1, 1967, for storage, use, or other consumption in this state at the rate set as provided in subsection (1) of this section on the sales price of the property or, in the case of leases or rentals, of the lease or rental prices.

(a) Every person storing, using, or otherwise consuming in this state property purchased from a retailer or leased or rented from another person for such purpose shall be liable for the use tax at the rate in effect when his or her liability for the use tax becomes certain under the accounting basis used to maintain his or her books and records. His or her liability shall not be extinguished until the use tax has been paid to this state, except that a receipt from a retailer engaged in business in this state or from a retailer who is authorized by the Tax Commissioner, under such rules and regulations as he or she may prescribe, to collect the sales tax and who is, for the purposes of the Nebraska Revenue Act of 1967 relating to the sales tax, regarded as a retailer engaged in business in this state, which receipt is given to the purchaser pursuant to subdivision (b) of this subsection, shall be sufficient to relieve the purchaser from further liability for the tax to which the receipt refers.

(b) Every retailer engaged in business in this state and selling, leasing, or renting property for storage, use, or other consumption in this state shall, at the time of making any sale, collect any tax which may be due from the purchaser and shall give to the purchaser, upon request, a receipt therefor in the manner and form prescribed by the Tax Commissioner.

(c) The Tax Commissioner, in order to facilitate the proper administration of the use tax, may designate such person or persons as he or she may deem necessary to be use tax collectors and delegate to such persons such authority as is necessary to collect any use tax which is due and payable to the State of Nebraska. The Tax Commissioner may require of all persons so designated a

surety bond in favor of the State of Nebraska to insure against any misappropriation of state funds so collected. The Tax Commissioner may require any tax official, city, county, or state, to collect the use tax on behalf of the state. All persons designated to or required to collect the use tax shall account for such collections in the manner prescribed by the Tax Commissioner. Nothing in this subdivision shall be so construed as to prevent the Tax Commissioner or his or her employees from collecting any use taxes due and payable to the State of Nebraska.

(d) All persons designated to collect the use tax and all persons required to collect the use tax shall forward the total of such collections to the Tax Commissioner at such time and in such manner as the Tax Commissioner may prescribe. For all use taxes collected prior to October 1, 2002, such collectors of the use tax shall deduct and withhold from the amount of taxes collected two and one-half percent of the first three thousand dollars remitted each month and one-half of one percent of all amounts in excess of three thousand dollars remitted each month as reimbursement for the cost of collecting the tax. For use taxes collected on and after October 1, 2002, such collectors of the use tax shall deduct and withhold from the amount of taxes collected two and one-half percent of the first three thousand dollars remitted each month as reimbursement for the cost of collecting the tax. Any such deduction shall be forfeited to the State of Nebraska if such collector violates any rule, regulation, or directive of the Tax Commissioner.

(e) For the purpose of the proper administration of the Nebraska Revenue Act of 1967 and to prevent evasion of the use tax, it shall be presumed that property sold, leased, or rented by any person for delivery in this state is sold, leased, or rented for storage, use, or other consumption in this state until the contrary is established. The burden of proving the contrary is upon the person who purchases, leases, or rents the property.

(f) For the purpose of the proper administration of the Nebraska Revenue Act of 1967 and to prevent evasion of the use tax, for the sale of property to an advertising agency which purchases the property as an agent for a disclosed or undisclosed principal, the advertising agency is and remains liable for the sales and use tax on the purchase the same as if the principal had made the purchase directly.

Source: Laws 1967, c. 487, § 3, p. 1543; Laws 1967, c. 490, § 2, p. 1652; Laws 1969, c. 684, § 1, p. 2646; Laws 1969, c. 683, § 2, p. 2621; Laws 1974, LB 820, § 2; Laws 1981, LB 179, § 14; Laws 1983, LB 17, § 2; Laws 1983, LB 169, § 1; Laws 1983, LB 571, § 1; Laws 1985, LB 715, § 3; Laws 1985, LB 273, § 42; Laws 1986, LB 1027, § 204; Laws 1987, LB 224, § 28; Laws 1987, LB 523, § 14; Laws 1991, LB 239, § 1; Laws 1991, LB 47, § 7; Laws 1991, LB 829, § 21; Laws 1992, LB 871, § 25; Laws 1992, LB 1063, § 182; Laws 1992, Second Spec. Sess., LB 1, § 155; Laws 1992, Fourth Spec. Sess., LB 1, § 26; Laws 1993, LB 112, § 45; Laws 1993, LB 345, § 33; Laws 1993, LB 767, § 1; Laws 1994, LB 123, § 24; Laws 1994, LB 994, § 1; Laws 1994, LB 1207, § 15; Laws 1995, LB 17, § 1; Laws 1996, LB 1041, § 6; Laws 1996, LB 1218, § 65; Laws 1997, LB 62, § 1; Laws 1997, LB 182A, § 3; Laws 2002, LB 1085, § 11; Laws 2002, Second Spec. Sess., LB 32, § 1; Laws 2003, LB 282, § 48; Laws 2003, LB 381, § 3; Laws 2003, LB 563, § 43; Laws 2003, LB 759, § 12; Laws

2004, LB 1017, § 10; Laws 2005, LB 274, § 274; Laws 2007, LB223, § 7; Laws 2007, LB367, § 15; Laws 2008, LB916, § 15. Operative date October 1, 2008.

Cross References

Motor Vehicle Registration Act, see section 60-301.

77-2703.01 General sourcing rules.

(1) The determination of whether a sale or use of property or the provision of services is in this state, in a municipality that has adopted a tax under the Local Option Revenue Act, or in a county that has adopted a tax under section 13-319 shall be governed by the sourcing rules in sections 77-2703.01 to 77-2703.04.

(2) When the property or service is received by the purchaser at a business location of the retailer, the sale is sourced to that business location.

(3) When the property or service is not received by the purchaser at a business location of the retailer, the sale is sourced to the location where receipt by the purchaser or the purchaser's donee, designated as such by the purchaser, occurs, including the location indicated by instructions for delivery to the purchaser or donee, known to the retailer.

(4) When subsection (2) or (3) of this section does not apply, the sale is sourced to the location indicated by an address or other information for the purchaser that is available from the business records of the retailer that are maintained in the ordinary course of the retailer's business when use of this address does not constitute bad faith.

(5) When subsection (2), (3), or (4) of this section does not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith.

(6) When subsection (2), (3), (4), or (5) of this section does not apply, including the circumstance in which the retailer is without sufficient information to apply the rules in any such subsection, then the location will be determined by the address from which property was shipped, from which the digital good was first available for transmission by the retailer, or from which the service was provided disregarding for these purposes any location that merely provided the digital transfer of the product sold.

(7) The lease or rental of tangible personal property, other than property identified in subsection (8) or (9) of this section, shall be sourced as follows:

(a) For a lease or rental that requires recurring periodic payments, the first periodic payment is sourced the same as a retail sale in accordance with the provisions of subsections (2) through (6) of this section. Periodic payments made subsequent to the first payment are sourced to the primary property location for each period covered by the payment. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business when use of this address does not constitute bad faith. The property location shall not be altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls; and

(b) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsections (2) through (6) of this section.

This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump-sum or accelerated basis or on the acquisition of property for lease.

(8) The lease or rental of motor vehicles, trailers, semitrailers, or aircraft that do not qualify as transportation equipment under subsection (9) of this section shall be sourced as follows:

(a) For a lease or rental that requires recurring periodic payments, each periodic payment is sourced to the primary property location. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business when use of this address does not constitute bad faith. This location shall not be altered by intermittent use at different locations; and

(b) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsections (2) through (6) of this section.

This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump-sum or accelerated basis or on the acquisition of property for lease.

(9) The retail sale, including lease or rental, of transportation equipment shall be sourced the same as a retail sale in accordance with subsections (2) through (6) of this section. Transportation equipment means any of the following:

(a) Locomotives and railcars that are utilized for the carriage of persons or property in interstate commerce;

(b) Trucks and truck-tractors with a gross vehicle weight rating of ten thousand one pounds or greater, trailers, semitrailers, or passenger buses that are (i) registered through the International Registration Plan and (ii) operated under authority of a carrier authorized and certificated by the United States Department of Transportation or another federal authority to engage in the carriage of persons or property in interstate commerce;

(c) Aircraft operated by air carriers authorized and certificated by the United States Department of Transportation or another federal authority or a foreign authority to engage in the carriage of persons or property in interstate or foreign commerce; and

(d) Containers designed for use on and component parts attached or secured on the items set forth in subdivisions (9)(a) through (c) of this section.

(10) For purposes of this section, receive and receipt mean taking possession of tangible personal property, making first use of services, or taking possession or making first use of digital goods, whichever comes first. The terms receive and receipt do not include possession by a shipping company on behalf of the purchaser. For purposes of sourcing detective services subject to tax under subdivision (4)(h) of section 77-2701.16, making first use of a service shall be deemed to be at the individual's residence, in the case of a customer who is an individual, or at the principal place of business, in the case of a business customer.

(11) The sale, not including lease or rental, of a motor vehicle, semitrailer, or trailer as defined in the Motor Vehicle Registration Act shall be sourced to the place of registration of the motor vehicle, semitrailer, or trailer for operation upon the highways of this state.

(12) The sale or lease for one year or more of motorboats shall be sourced to the place of registration of the motorboat. The lease of motorboats for less than one year shall be sourced to the point of delivery.

Source: Laws 2003, LB 282, § 49; Laws 2003, LB 759, § 13; Laws 2004, LB 1017, § 11; Laws 2005, LB 274, § 275; Laws 2007, LB367, § 16; Laws 2008, LB916, § 16.
Operative date October 1, 2008.

Cross References

Local Option Revenue Act, see section 77-27.148.

Motor Vehicle Registration Act, see section 60-301.

77-2703.02 Repealed. Laws 2007, LB 223, § 36.

77-2703.04 Telecommunications sourcing rule.

(1) Except for the telecommunications service defined in subsection (3) of this section, the sale of telecommunications service sold on a call-by-call basis shall be sourced to (a) each level of taxing jurisdiction where the call originates and terminates in that jurisdiction or (b) each level of taxing jurisdiction where the call either originates or terminates and in which the service address is also located.

(2) Except for the telecommunications service defined in subsection (3) of this section, a sale of telecommunications service sold on a basis other than a call-by-call basis is sourced to the customer's place of primary use.

(3)(a) For mobile telecommunications service provided and billed to a customer by a home service provider:

(i) Notwithstanding any other provision of law or any local ordinance or resolution, such mobile telecommunications service is deemed to be provided by the customer's home service provider;

(ii) All taxable charges for such mobile telecommunications service shall be subject to tax by the state or other taxing jurisdiction in this state whose territorial limits encompass the customer's place of primary use regardless of where the mobile telecommunications service originates, terminates, or passes through; and

(iii) No taxes, charges, or fees may be imposed on a customer with a place of primary use outside this state.

(b) In accordance with the federal Mobile Telecommunications Sourcing Act, as such act existed on July 20, 2002, the Tax Commissioner may, but is not required to:

(i) Provide or contract for a tax assignment data base based upon standards identified in 4 U.S.C. 119, as such section existed on July 20, 2002, with the following conditions:

(A) If such data base is provided, a home service provider shall be held harmless for any tax that otherwise would result from any errors or omissions attributable to reliance on such data base; or

(B) If such data base is not provided, a home service provider may rely on an enhanced zip code for identifying the proper taxing jurisdictions and shall be held harmless for any tax that otherwise would result from any errors or omissions attributable to reliance on such enhanced zip code if the home service provider identified the taxing jurisdiction through the exercise of due diligence and complied with any procedures that may be adopted by the Tax Commissioner. Any such procedure shall be in accordance with 4 U.S.C. 120, as such section existed on July 20, 2002; and

(ii) Adopt procedures for correcting errors in the assignment of primary use that are consistent with 4 U.S.C. 121, as such section existed on July 20, 2002.

(c) If charges for mobile telecommunications service that are not subject to tax are aggregated with and not separately stated on the bill from charges that are subject to tax, the total charge to the customer shall be subject to tax unless the home service provider can reasonably separate charges not subject to tax using the records of the home service provider that are kept in the regular course of business.

(d) For purposes of this subsection:

(i) Customer means an individual, business, organization, or other person contracting to receive mobile telecommunications service from a home service provider. Customer does not include a reseller of mobile telecommunications service or a serving carrier under an arrangement to serve the customer outside the home service provider's service area;

(ii) Home service provider means a telecommunications company as defined in section 86-322 that has contracted with a customer to provide mobile telecommunications service;

(iii) Mobile telecommunications service means a wireless communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, and includes (A) both one-way and two-way wireless communication services, (B) a mobile service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations, whether on an individual, cooperative, or multiple basis for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation, and (C) any personal communication service;

(iv) Place of primary use means the street address representative of where the customer's use of mobile telecommunications service primarily occurs. The place of primary use shall be the residential street address or the primary business street address of the customer and shall be within the service area of the home service provider; and

(v) Tax means the sales taxes levied under sections 13-319, 77-2703, and 77-27,142, the surcharges levied under the Enhanced Wireless 911 Services Act, the Nebraska Telecommunications Universal Service Fund Act, and the Telecommunications Relay System Act, and any other tax levied against the customer based on the amount charged to the customer. Tax does not mean an income tax, property tax, franchise tax, or any other tax levied on the home service provider that is not based on the amount charged to the customer.

(4) A sale of post-paid calling service is sourced to the origination point of the telecommunications signal as first identified by either (a) the seller's telecommunications system, or (b) information received by the seller from its service

provider, where the system used to transport such signals is not that of the seller.

(5) A sale of prepaid calling service is sourced in accordance with section 77-2703.01, except that in the case of a sale of mobile telecommunications service that is a prepaid telecommunications service, the rule provided in section 77-2703.01 shall include as an option the location associated with the mobile telephone number.

(6) A sale of a private communication service is sourced as follows:

(a) Service for a separate charge related to a customer channel termination point is sourced to each level of jurisdiction in which such customer channel termination point is located;

(b) Service where all customer termination points are located entirely within one jurisdiction or levels of jurisdiction is sourced in such jurisdiction in which the customer channel termination points are located;

(c) Service for segments of a channel between two customer channel termination points located in different jurisdictions and which segments of channel are separately charged is sourced fifty percent in each level of jurisdiction in which the customer channel termination points are located; and

(d) Service for segments of a channel located in more than one jurisdiction or levels of jurisdiction and which segments are not separately billed is sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in such jurisdiction by the total number of customer channel termination points.

(7) For purposes of this section:

(a) 800 service means a telecommunications service that allows a caller to dial a toll-free number without incurring a charge for the call. The service is typically marketed under the name 800, 855, 866, 877, and 888 toll-free calling, and any subsequent numbers designated by the Federal Communications Commission;

(b) 900 service means an inbound toll telecommunications service purchased by a subscriber that allows the subscriber's customers to call in to the subscriber's prerecorded announcement or live service. 900 service does not include the charge for collection services provided by the seller of the telecommunications services to the subscriber or service or product sold by the subscriber to the subscriber's customer. The service is typically marketed under the name 900 service, and any subsequent numbers designated by the Federal Communications Commission;

(c) Air-to-ground radiotelephone service means a radio telecommunication service, as that term is defined in 47 C.F.R. 22.99, as such regulation existed on January 1, 2007, in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft;

(d) Ancillary services means services that are associated with or incidental to the provision of telecommunications services, including, but not limited to, detailed telecommunications billings, directory assistance, vertical service, and voice mail services;

(e) Call-by-call basis means any method of charging for telecommunications service where the price is measured by individual calls;

(f) Coin-operated telephone service means a telecommunications service paid for by inserting money into a telephone accepting direct deposits of money to operate;

(g) Communications channel means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points;

(h) Conference bridging service means an ancillary service that links two or more participants of an audio or video conference call and may include the provision of a telephone number. Conference bridging service does not include the telecommunications services used to reach the conference bridge;

(i) Customer means the person or entity that contracts with the seller of telecommunications service. If the end user of telecommunications service is not the contracting party, the end user of the telecommunications service is the customer of the telecommunications service, but this sentence only applies for the purpose of sourcing sales of telecommunications service under this section. Customer does not include a reseller of telecommunications service or for mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area;

(j) Customer channel termination point means the location where the customer either inputs or receives the communications;

(k) Detailed telecommunications billing service means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement;

(l) Directory assistance means an ancillary service of providing telephone number information and address information;

(m) End user means the person who utilizes the telecommunications service. In the case of an entity, end user means the individual who utilizes the service on behalf of the entity;

(n) Fixed wireless service means a telecommunications service that provides radio communication between fixed points;

(o) International means a telecommunications service that originates or terminates in the United States and terminates or originates outside the United States, respectively. United States includes the District of Columbia or a United States territory or possession;

(p) Interstate means a telecommunications service that originates in one state of the United States, or a territory or possession of the United States, and terminates in a different state, territory, or possession of the United States;

(q) Intrastate means a telecommunications service that originates in one state of the United States, or a territory or possession of the United States, and terminates in the same state, territory, or possession of the United States;

(r) Mobile wireless service means a telecommunications service that is transmitted, conveyed, or routed regardless of the technology used, whereby the origination and termination points of the transmission, conveyance, or routing are not fixed, including, by way of example only, telecommunications services that are provided by a commercial mobile radio service provider;

(s) Paging service means a telecommunications service that provides transmission of coded radio signals for the purpose of activating specific pagers. Such transmission may include messages and sounds;

(t) Pay telephone services means a telecommunications service provided through pay telephones;

(u) Post-paid calling service means the telecommunications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism, such as a bank card, travel card, credit card, or debit card, or by a charge made to a telephone number which is not associated with the origination or termination of the telecommunications service. A post-paid calling service includes a telecommunications service, except a prepaid wireless calling service, that would be a prepaid calling service except it is not exclusively a telecommunications service;

(v) Prepaid calling service means the right to access exclusively telecommunications service, which is paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount;

(w) Prepaid wireless calling service means a telecommunications service that provides the right to utilize mobile wireless service as well as other nontelecommunications services, including the download of digital products delivered electronically, content, and ancillary services, which must be paid for in advance, that is sold in predetermined units of dollars or which the number declines with use in a known amount;

(x) Private communication service means a telecommunications service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels;

(y) Residential telecommunications service means a telecommunications service or ancillary services provided to an individual for personal use at a residential address, including an individual dwelling unit such as an apartment. In the case of institutions where individuals reside, such as schools or nursing homes, telecommunications service is considered residential if it is provided to and paid for by an individual resident rather than the institution;

(z) Service address means the location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid. If this location is not known, service address means the origination point of the signal of the telecommunications service first identified either by the seller's telecommunications system, or in information received by the seller from its service provider, where the system used to transport such signals is not that of the seller. If both locations are not known, the service address means the location of the customer's place of primary use;

(aa) Telecommunications service means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. Telecommunications service includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice over Internet protocol services or is

classified by the Federal Communications Commission as enhanced or value-added. Telecommunications service does not include:

(i) Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser when such purchaser's primary purpose for the underlying transaction is the processed data or information;

(ii) Installation or maintenance of wiring or equipment on a customer's premises;

(iii) Tangible personal property;

(iv) Advertising, including, but not limited to, directory advertising;

(v) Billing and collection services provided to third parties;

(vi) Internet access service;

(vii) Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance, and routing of such services by the programming service provider. Radio and television audio and video programming services shall include, but not be limited to, cable service as defined in 47 U.S.C. 522, as such section existed on January 1, 2007, and audio and video programming services delivered by providers of commercial mobile radio service as defined in 47 C.F.R. 20.3, as such regulation existed on January 1, 2007;

(viii) Ancillary services; or

(ix) Digital products delivered electronically, including, but not limited to, software, music, video, reading materials, or ringtones;

(bb) Value-added, non-voice data service means a service that otherwise meets the definition of telecommunications services in which computer processing applications are used to act on the form, content, code, or protocol of the information or data primarily for a purpose other than transmission, conveyance, or routing;

(cc) Vertical service means an ancillary service that is offered in connection with one or more telecommunications services, which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference bridging services; and

(dd) Voice mail service means an ancillary service that enables the customer to store, send, or receive recorded messages. Voice mail service does not include any vertical services that the customer may be required to have in order to utilize the voice mail service.

Source: Laws 2003, LB 282, § 52; Laws 2007, LB223, § 8.

Cross References

Enhanced Wireless 911 Services Act, see section 86-442.

Nebraska Telecommunications Universal Service Fund Act, see section 86-316.

Telecommunications Relay Systems Act, see section 86-301.

77-2704.05 Motor vehicle fuels; diesel and compressed fuels; exemption.

Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of motor vehicle fuels as defined, taxed, or exempted under Chapter 66, article 4, diesel fuel as taxed for use on the highways under Chapter 66, article 4, compressed fuels as taxed for use on the highways under the Compressed Fuel

Tax Act, diesel and compressed fuels used to provide motive power for railroad rolling stock, and diesel and compressed fuels delivered into the fuel supply tanks of other vehicles.

Source: Laws 1992, LB 871, § 29; Laws 1993, LB 345, § 35; Laws 1994, LB 1160, § 122; Laws 1995, LB 182, § 66; Laws 2004, LB 983, § 67.

Cross References

Compressed Fuel Tax Act, see section 66-697.

77-2704.09 Insulin; prescription drugs; medical equipment; exemptions.

(1) Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of (a) insulin, (b) drugs, not including over-the-counter drugs, when sold for a patient's use under a prescription, and (c) the following when sold for a patient's use under a prescription and which are of the type eligible for coverage under the medical assistance program established pursuant to the Medical Assistance Act: Durable medical equipment; home medical supplies; prosthetic devices; oxygen; oxygen equipment; and mobility enhancing equipment.

(2) For purposes of this section:

(a) Drug means a compound, substance, preparation, and component of a compound, substance, or preparation, other than food and food ingredients, dietary supplements, or alcoholic beverages:

(i) Recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, and any supplement to any of them;

(ii) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or

(iii) Intended to affect the structure or any function of the body;

(b) Durable medical equipment means equipment which can withstand repeated use, is primarily and customarily used to serve a medical purpose, generally is not useful to a person in the absence of illness or injury, is appropriate for use in the home, and is not worn in or on the body. Durable medical equipment includes repair and replacement parts for such equipment;

(c) Home medical supplies means supplies primarily and customarily used to serve a medical purpose which are appropriate for use in the home and are generally not useful to a person in the absence of illness or injury;

(d) Mobility enhancing equipment means equipment which is primarily and customarily used to provide or increase the ability to move from one place to another, which is not generally used by persons with normal mobility, and which is appropriate for use either in a home or a motor vehicle. Mobility enhancing equipment includes repair and replacement parts for such equipment. Mobility enhancing equipment does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer;

(e) Over-the-counter drug means a drug that contains a label that identifies the product as a drug as required by 21 C.F.R. 201.66, as such regulation existed on January 1, 2003. The over-the-counter drug label includes a drug

facts panel or a statement of the active ingredients with a list of those ingredients contained in the compound, substance, or preparation;

(f) Oxygen equipment means oxygen cylinders, cylinder transport devices including sheaths and carts, cylinder studs and support devices, regulators, flowmeters, tank wrenches, oxygen concentrators, liquid oxygen base dispensers, liquid oxygen portable dispensers, oxygen tubing, nasal cannulas, face masks, oxygen humidifiers, and oxygen fittings and accessories;

(g) Prescription means an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner authorized under the Uniform Credentialing Act; and

(h) Prosthetic devices means a replacement, corrective, or supportive device worn on or in the body to artificially replace a missing portion of the body, prevent or correct physical deformity or malfunction, or support a weak or deformed portion of the body, and includes any supplies used with such device and repair and replacement parts.

Source: Laws 1992, LB 871, § 33; Laws 1993, LB 345, § 39; Laws 1994, LB 901, § 5; Laws 1999, LB 280, § 1; Laws 2003, LB 282, § 53; Laws 2005, LB 256, § 95; Laws 2006, LB 1248, § 85; Laws 2007, LB463, § 1308; Laws 2008, LB916, § 17.
Operative date December 1, 2008.

Cross References

Medical Assistance Act, see section 68-901.

Uniform Credentialing Act, see section 38-101.

77-2704.12 Nonprofit religious, service, educational, or medical organization; exemption; purchasing agents.

(1) Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of purchases by (a) any nonprofit organization created exclusively for religious purposes, (b) any nonprofit organization providing services exclusively to the blind, (c) any nonprofit private educational institution established under sections 79-1601 to 79-1607, (d) any nonprofit private college or university established under sections 85-1101 to 85-1111, (e) any nonprofit (i) hospital, (ii) health clinic when two or more hospitals or the parent corporations of the hospitals own or control the health clinic for the purpose of reducing the cost of health services or when the health clinic receives federal funds through the United States Public Health Service for the purpose of serving populations that are medically underserved, (iii) skilled nursing facility, (iv) intermediate care facility, (v) assisted-living facility, (vi) intermediate care facility for the mentally retarded, (vii) nursing facility, (viii) home health agency, (ix) hospice or hospice service, or (x) respite care service licensed under the Health Care Facility Licensure Act, (f) any nonprofit licensed child-caring agency, (g) any nonprofit licensed child placement agency, or (h) any nonprofit organization certified by the Department of Health and Human Services to provide community-based services for persons with developmental disabilities.

(2) Any organization listed in subsection (1) of this section shall apply for an exemption on forms provided by the Tax Commissioner. The application shall be approved and a numbered certificate of exemption received by the applicant organization in order to be exempt from the sales and use tax.

(3) The appointment of purchasing agents shall be recognized for the purpose of altering the status of the construction contractor as the ultimate consumer of building materials which are physically annexed to the structure and which subsequently belong to the owner of the organization or institution. The appointment of purchasing agents shall be in writing and occur prior to having any building materials annexed to real estate in the construction, improvement, or repair. The contractor who has been appointed as a purchasing agent may apply for a refund of or use as a credit against a future use tax liability the tax paid on inventory items annexed to real estate in the construction, improvement, or repair of a project for a licensed not-for-profit institution.

(4) Any organization listed in subsection (1) of this section which enters into a contract of construction, improvement, or repair upon property annexed to real estate without first issuing a purchasing agent authorization to a contractor or repairperson prior to the building materials being annexed to real estate in the project may apply to the Tax Commissioner for a refund of any sales and use tax paid by the contractor or repairperson on the building materials physically annexed to real estate in the construction, improvement, or repair.

(5) Any person purchasing, storing, using, or otherwise consuming building materials in the performance of any construction, improvement, or repair by or for any institution enumerated in subsection (1) of this section which is licensed upon completion although not licensed at the time of construction or improvement, which building materials are annexed to real estate and which subsequently belong to the owner of the institution, shall pay any applicable sales or use tax thereon. Upon becoming licensed and receiving a numbered certificate of exemption, the institution organized not for profit shall be entitled to a refund of the amount of taxes so paid in the performance of such construction, improvement, or repair and shall submit whatever evidence is required by the Tax Commissioner sufficient to establish the total sales and use tax paid upon the building materials physically annexed to real estate in the construction, improvement, or repair.

Source: Laws 1992, LB 871, § 36; Laws 1993, LB 345, § 42; Laws 1994, LB 977, § 3; Laws 1996, LB 900, § 1063; Laws 2000, LB 819, § 151; Laws 2002, LB 989, § 18; Laws 2004, LB 841, § 1; Laws 2004, LB 1017, § 13; Laws 2005, LB 216, § 6; Laws 2006, LB 1189, § 5; Laws 2008, LB575, § 1.
Operative date October 1, 2008.

Cross References

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

77-2704.15 Purchases by state, schools, or governmental units; exemption; purchasing agents.

(1) Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of purchases by the state, including public educational institutions recognized or established under the provisions of Chapter 85, or by any county, township, city, village, rural or suburban fire protection district, city airport authority, county airport authority, joint airport authority, drainage district organized under sections 31-401 to 31-450, natural resources district, elected county fair board, housing agency as defined in section 71-1575 except for purchases for any commercial operation that does not exclusively benefit the residents of an

affordable housing project, or joint entity or agency formed to fulfill the purposes described in the Integrated Solid Waste Management Act by any combination of two or more counties, townships, cities, or villages pursuant to the Interlocal Cooperation Act, the Integrated Solid Waste Management Act, or the Joint Public Agency Act, except for purchases for use in the business of furnishing gas, water, electricity, or heat, or by any irrigation or reclamation district, the irrigation division of any public power and irrigation district, or public schools established under Chapter 79.

(2) The appointment of purchasing agents shall be recognized for the purpose of altering the status of the construction contractor as the ultimate consumer of building materials which are physically annexed to the structure and which subsequently belong to the state or the governmental unit. The appointment of purchasing agents shall be in writing and occur prior to having any building materials annexed to real estate in the construction, improvement, or repair. The contractor who has been appointed as a purchasing agent may apply for a refund of or use as a credit against a future use tax liability the tax paid on inventory items annexed to real estate in the construction, improvement, or repair of a project for the state or a governmental unit.

(3) Any governmental unit listed in subsection (1) of this section, except the state, which enters into a contract of construction, improvement, or repair upon property annexed to real estate without first issuing a purchasing agent authorization to a contractor or repairperson prior to the building materials being annexed to real estate in the project may apply to the Tax Commissioner for a refund of any sales and use tax paid by the contractor or repairperson on the building materials physically annexed to real estate in the construction, improvement, or repair.

Source: Laws 1992, LB 871, § 39; Laws 1993, LB 345, § 44; Laws 1994, LB 977, § 5; Laws 1994, LB 1207, § 16; Laws 1999, LB 87, § 86; Laws 1999, LB 232, § 1; Laws 2000, LB 557, § 1; Laws 2002, LB 123, § 1; Laws 2004, LB 1017, § 14; Laws 2006, LB 1189, § 6.

Cross References

Integrated Solid Waste Management Act, see section 13-2001.

Interlocal Cooperation Act, see section 13-801.

Joint Public Agency Act, see section 13-2501.

77-2704.18 Repealed. Laws 2006, LB 1189, § 9.

77-2704.21 Purchase of motor vehicle for disabled person; exemption.

Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of the entire purchase price of a motor vehicle purchased when the maximum amount allowed by law is contributed by the United States Department of Veterans Affairs or the Department of Health and Human Services for a disabled person. If the amount contributed is less than the maximum amount, the exemption shall be based on the portion of the purchase price contributed.

Source: Laws 1992, LB 871, § 40; Laws 1996, LB 1044, § 796; Laws 2007, LB296, § 704.

77-2704.22 Manufacturing machinery and equipment and related services; exemption.

(1) Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental and on the storage, use, or other consumption in this state of manufacturing machinery and equipment.

(2) Sales and use taxes shall not be imposed on the gross receipts from the sale of installation, repair, and maintenance services performed on or with respect to manufacturing machinery and equipment.

Source: Laws 2005, LB 312, § 10.

77-2704.25 Sales by school organizations; exemption.

Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of property sold by parent-booster clubs, parent-teacher associations, parent-teacher-student associations, or school-operated stores approved by an elementary or secondary school, public or private, if the proceeds from such sale are used to support school activities or the school itself.

Source: Laws 1992, LB 871, § 45; Laws 1993, LB 345, § 46; Laws 2005, LB 216, § 7.

77-2704.26 Aircraft; exemption.

Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of an aircraft delivered in this state to an individual who is a resident of another state or any other person who has a business location in another state when the aircraft is not to be registered or based in this state and it will not remain in this state more than ten days. Sales and use taxes shall not be imposed on the gross receipts from a service listed in subsection (4) of section 77-2701.16 that is rendered to an aircraft brought into this state by an individual who is a resident of another state or any other person who has a business location in another state when the aircraft is not to be registered or based in this state and it will not remain in this state more than ten days after the service is completed.

Source: Laws 1992, LB 871, § 46; Laws 2002, LB 1085, § 13; Laws 2003, LB 282, § 58; Laws 2003, LB 759, § 16; Laws 2008, LB916, § 18. Operative date October 1, 2008.

77-2704.32 Projects outside the United States; refund of tax.

When a written contract exists for a construction, alteration, or improvement project outside the United States or its territories or possessions, a contractor may apply for a refund of the sales and use tax paid to the State of Nebraska on building materials actually annexed to real estate in the project outside of the United States or its territories or possessions.

Source: Laws 1992, LB 871, § 56; Laws 1993, LB 345, § 51; Laws 2004, LB 1017, § 15.

77-2704.33 Fixed-price contract; change in sales tax rate; refund of tax; failure to pay tax; penalty.

(1) When a written contract exists for a fixed price for a construction, reconstruction, alteration, or improvement project and the sales tax rate is increased during the term of that fixed-price contract, the contractor may apply for a refund of the increased sales tax amount if such refund amount exceeds

ten dollars. The contractor shall be refunded such increased amount if the contractor certifies that the contract was entered into prior to the increase in the tax and that the increased tax for which the refund is requested was paid on the building materials annexed to real estate in the project. The contractor shall agree to submit a copy of the contract or other evidence necessary to prove the validity of the application to the satisfaction of the Tax Commissioner. In the event that the sales tax rate is decreased during the term of that fixed-price contract, the contractor shall pay to the Department of Revenue the decreased sales tax amount if the amount of such payment exceeds ten dollars. Failure by a contractor to pay the decreased sales tax amount as provided in this subsection shall be a Class I misdemeanor if the amount is three hundred dollars or more and a Class IIIA misdemeanor in all other cases.

(2) In the event that construction services are removed from the sales and use tax base during the term of a fixed-price contract, the taxpayer shall pay to the Department of Revenue the decreased sales tax amount if the amount of such payment exceeds ten dollars. Failure by a taxpayer to pay the decreased sales tax amount as provided in this subsection shall be a Class I misdemeanor if the amount is three hundred dollars or more and a Class IIIA misdemeanor in all other cases.

Source: Laws 1992, LB 871, § 57; Laws 1993, LB 345, § 52; Laws 2003, LB 759, § 18; Laws 2004, LB 1017, § 16; Laws 2007, LB367, § 17.

77-2704.36 Agricultural machinery and equipment; exemption.

Sales and use tax shall not be imposed on the gross receipts from the sale, lease, or rental of depreciable agricultural machinery and equipment purchased, leased, or rented on or after January 1, 1993, for use in commercial agriculture.

Source: Laws 1992, Fourth Spec. Sess., LB 1, § 24; Laws 2004, LB 1017, § 17.

77-2704.37 Repealed. Laws 2004, LB 841, § 13.

77-2704.44 Use tax; when imposed.

(1) Except for a transaction that is subject to sales tax under the Nebraska Revenue Act of 1967, use tax shall not be imposed on the keeping, retaining, or exercising of any right or power over property for the purpose of subsequently transporting it outside the state or for the purpose of being processed, fabricated, or manufactured into, attached to, or incorporated into other property to be transported outside the state and thereafter used solely outside the state.

(2)(a) Except as provided in subdivisions (b) through (e) of this subsection, when a person purchases property in another state, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country with the intent of using such property in such other state, commonwealth, territory, possession, or country and such property is actually used in the other state, commonwealth, territory, possession, or country for its intended purpose, the property shall not be subject to tax in this state.

(b) Subdivision (a) of this subsection only applies to a motor vehicle, semi-trailer, or trailer as defined in the Motor Vehicle Registration Act when it is licensed for operation on the highways of the other state, commonwealth,

territory, possession, or country prior to being brought into this state. Licensed for operation on the highways does not include any temporary registration, licensing, or in transit procedure that allows nonresidents to operate the motor vehicle, semitrailer, or trailer on the highways of the other state, commonwealth, territory, possession, or country for a limited time with the intent to remove the motor vehicle, trailer, or semitrailer from the other state, commonwealth, territory, possession, or country.

(c) Subdivision (a) of this subsection does not apply to an aircraft which is brought into this state within one year after purchase and (i) is regularly based within this state or (ii) more than one-half of the aircraft's operating hours are within this state. For purposes of this subdivision, operation of the aircraft for the purpose of maintenance, repair, or fabrication with subsequent removal from this state upon completion of such maintenance, repair, or fabrication shall not be considered operating hours.

(d) Subdivision (a) of this subsection shall only apply to a motorboat as defined in section 37-1204 when it is registered for operation in the other state, commonwealth, territory, possession, or country prior to being brought into this state.

(e) Subdivision (a) of this subsection does not apply to any property that is manufactured, processed, or fabricated in another state and that is not used for its intended purpose in the other state after its manufacture, processing, or fabrication.

Source: Laws 2003, LB 282, § 59; Laws 2005, LB 274, § 276.

Cross References

Motor Vehicle Registration Act, see section 60-301.

77-2704.45 Ingredient or component parts; exemption.

Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of:

(1) Property which will enter into and become an ingredient or component part of property manufactured, processed, or fabricated for ultimate sale at retail; or

(2) A service listed in subsection (4) of section 77-2701.16 which will become an ingredient or component part of a service listed in subsection (4) of section 77-2701.16 for ultimate sale at retail.

Source: Laws 2003, LB 282, § 60; Laws 2003, LB 759, § 19; Laws 2008, LB916, § 19.

Operative date October 1, 2008.

77-2704.46 Food for human consumption; agricultural components; oxygen for aquaculture; exemption.

Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of:

(1) Any form of animal life of a kind the products of which ordinarily constitute food for human consumption. Animal life includes live poultry, other species of game birds subject to permit and regulation by the Game and Parks Commission, and livestock on the hoof when sales are made by the grower, producer, feeder, or any person engaged in the business of bartering, buying, or

selling live poultry, other species of game birds subject to permit and regulation by the Game and Parks Commission, or livestock on the hoof;

(2) Seeds and annual plants, the products of which ordinarily constitute food for human consumption and which seeds and annual plants are sold to commercial producers of such products, and seed legumes, seed grasses, and seed grains when sold to be used exclusively for agricultural purposes;

(3) Agricultural chemicals, adjuvants, surfactants, bonding agents, clays, oils, and any other additives or compatibility agents for use in commercial agriculture and applied to land or crops and sold in any tax period that has not been closed by the applicable statute of limitations. Agricultural chemicals does not mean chemicals, adjuvants, surfactants, bonding agents, clays, oils, and any other additives or compatibility agents applied to harvested grains stored in commercial elevators; or

(4) Oxygen for use in aquaculture as defined in section 2-3804.01.

Source: Laws 2003, LB 282, § 61; Laws 2008, LB916, § 20.
Operative date October 1, 2008.

77-2704.49 Reciprocal exemption.

Sales tax shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of property or services the sale, purchase, or use of which has been taxed to that taxpayer in another state, territory, or possession of the United States when such other state, territory, or possession grants a reciprocal exclusion or an exemption to similar transactions in this state.

Source: Laws 2003, LB 282, § 64; Laws 2004, LB 1017, § 18.

77-2704.55 Certain contractor labor; refund; procedure; Department of Revenue Contractor Enforcement Fund; created; investment.

(1) Construction services performed on an owner-occupied residential unit shall be subject to tax prior to October 1, 2007, but the owner shall be entitled to a refund of any sales and use taxes paid by the owner on construction services pursuant to this subsection. A taxpayer shall be entitled to a refund of any sales tax paid on the gross receipts for the labor of a contractor for any major addition, remodeling, restoration, repair, or renovation described in this section as it existed prior to October 1, 2007. The refund granted in this subsection shall be conditioned upon filing a claim for the refund on a form developed by the Tax Commissioner. The requirements imposed by the Tax Commissioner shall be related to ensuring that the project qualifies for the refund. Any information received pursuant to the requirements of this subsection may be disclosed to any tax official in this state. Any taxpayer who provides false information on the forms required by the Tax Commissioner for purposes of this subsection shall be subject to the penalties provided in subsection (8) of section 77-2705.

(2) The Department of Revenue Contractor Enforcement Fund is created. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2003, LB 285, § 2; Laws 2003, LB 759, § 17; Laws 2004, LB 1017, § 19; Laws 2006, LB 968, § 6; Laws 2007, LB367, § 18.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

77-2704.56 Purchase of fine art by museum; exemption.

Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of purchases of fine art by any museum as defined in section 51-702.

Source: Laws 2006, LB 1189, § 3.

77-2704.57 Personal property used in C-BED project or community-based energy development project; exemption; Tax Commissioner; powers and duties; Department of Revenue; recover tax not paid.

(1) Sales and use tax shall not be imposed on the gross receipts from the sale, lease, or rental of personal property for use in a C-BED project or community-based energy development project. This exemption shall be conditioned upon filing requirements for the exemption as imposed by the Tax Commissioner. The requirements imposed by the Tax Commissioner shall be related to ensuring that the property purchased qualifies for the exemption. The Tax Commissioner may require the filing of the documents showing compliance with section 70-1907, the organization of the project, the distribution of the payments, the power purchase agreements, the project pro forma, articles of incorporation, operating agreements, and any amendments or changes to these documents during the life of the power purchase agreement.

(2) The Tax Commissioner shall notify an electric utility that has a power purchase agreement with a C-BED project if there is a change in project ownership which makes the project no longer eligible as a C-BED project. Purchase of a C-BED project by an electric utility prior to the end of the power purchase agreement disqualifies the C-BED project for the exemption, but the Department of Revenue may not recover the amount of the sales and use tax that was not paid by the project prior to the purchase.

(3) For purposes of this section:

(a) C-BED project or community-based energy development project means a new wind energy project that:

(i) Has an ownership structure as follows:

(A) For a C-BED project that consists of more than two turbines, has one or more qualified owners with no single individual qualified owner owning directly or indirectly more than fifteen percent of the project and with at least thirty-three percent of the gross power purchase agreement payments flowing to the qualified owner or owners or local community; or

(B) For a C-BED project that consists of one or two turbines, has one or more qualified owners with at least thirty-three percent of the gross power purchase agreement payments flowing to a qualified owner or owners or local community; and

(ii) Has a resolution of support adopted:

(A) By the county board of each county in which the C-BED project is to be located; or

(B) By the tribal council for a C-BED project located within the boundaries of an Indian reservation;

(b) New wind energy project means any tangible personal property incorporated into the manufacture, installation, construction, repair, or replacement of a device, such as a wind charger, windmill, or wind turbine, which is used to convert wind energy to electrical energy or for the transmission of electricity to the purchaser; and

(c) Qualified owner means:

(i) A Nebraska resident;

(ii) A limited liability company that is organized under the Limited Liability Company Act and that is entirely made up of members who are Nebraska residents;

(iii) A Nebraska nonprofit corporation organized under the Nebraska Non-profit Corporation Act;

(iv) An electric supplier as defined in section 70-1001.01, except that ownership in a single C-BED project is limited to no more than:

(A) Fifteen percent either directly or indirectly by a single electric supplier; and

(B) A combined total of twenty-five percent ownership either directly or indirectly by multiple electric suppliers; or

(v) A tribal council.

(4) Power purchase agreement payments are the total amount of payments during the life of the agreement. For the purposes of determining eligibility of the project, an estimate of the payments and their recipients shall be used.

(5) Payments to the local community include, but are not limited to, lease payments to property owners on whose property a turbine is located, wind energy easement payments, and real and personal property tax receipts from the C-BED project.

(6) The Department of Revenue may examine the actual payments and the distribution of the payments to determine if the projected distributions were met. If the payment distributions to qualified owners do not meet the requirements of this section, the department may recover the amount of the sales or use tax that was not paid by the project at any time up until the end of three years after the end of the power purchase agreement.

(7) At any time prior to the end of the power purchase agreements, the project may voluntarily surrender the exemption granted by the Tax Commissioner and pay the amount of sales and use tax that would have otherwise have been due.

(8) The amount of the tax due under either subsection (6) or (7) of this section shall be increased by interest at the rate specified in section 45-104.02, as such rate may from time to time be adjusted, from the date the tax would have been due if no exemption was granted until the date paid.

Source: Laws 2007, LB367, § 11; Laws 2008, LB916, § 21.

Operative date October 1, 2008.

77-2704.58 Depositions, bills of exceptions, and transcripts sold by court reporter; exemption.

Sales and use taxes shall not be imposed on the gross receipts from the sale, use, or other consumption in this state of depositions, bills of exceptions, and

transcripts or copies of such depositions, bills of exceptions, and transcripts prepared and sold by a court reporter.

Source: Laws 2008, LB916, § 22.
Operative date October 1, 2008.

77-2704.59 Medical records; exemption.

Sales and use taxes shall not be imposed on the gross receipts from the sale, use, or other consumption in this state of copies of medical records provided to the patient or a person holding such patient's power of attorney for health care.

Source: Laws 2008, LB916, § 23.
Operative date October 1, 2008.

77-2705 Sales and use tax; retailer; registration; permit; form; revocation; restoration; appeal; exempt sale certificate; violations; penalty; wrongful disclosure; online registration system.

(1) Except as provided in subsection (10) of this section, every retailer shall register with the Tax Commissioner and give:

- (a) The name and address of all agents operating in this state;
- (b) The location of all distribution or sales houses or offices or other places of business in this state;
- (c) The name and address of any officer, director, partner, limited liability company member, or employee, other than an employee whose duties are purely ministerial in nature, or any person with a substantial interest in the applicant, who is or who will be responsible for the collection or remittance of the sales tax;

(d) Such other information as the Tax Commissioner may require; and

(e) If the retailer is an individual, his or her social security number.

(2) Every person furnishing public utility service as defined in subsection (2) of section 77-2701.16 shall register with the Tax Commissioner and give:

(a) The address of each office open to the public in which such public utility service business is transacted with consumers; and

(b) Such other information as the Tax Commissioner may require.

(3) It shall be unlawful for any person to engage in or transact business as a seller within this state after June 1, 1967, unless a permit or permits shall have been issued to him or her as prescribed in this section. Every person desiring to engage in or to conduct business as a seller within this state shall file with the Tax Commissioner an application for a permit for each place of business. There shall be no charge to the retailer for the application for or issuance of a permit except as otherwise provided in this section.

(4) Every application for a permit shall:

- (a) Be made upon a form prescribed by the Tax Commissioner;
- (b) Set forth the name under which the applicant transacts or intends to transact business and the location of his or her place or places of business;
- (c) Set forth such other information as the Tax Commissioner may require; and

(d) Be signed by the owner and include his or her social security number if he or she is a natural person; in the case of an association or partnership, by a

member or partner; in the case of a limited liability company, by a member or some person authorized by the limited liability company to sign such kinds of applications; and in the case of a corporation, by an executive officer or some person authorized by the corporation to sign such kinds of applications.

(5) After compliance with subsections (1) through (4) of this section by the applicant, the Tax Commissioner shall grant and issue to each applicant a separate permit for each place of business within the state. A permit shall not be assignable and shall be valid only for the person in whose name it is issued and for the transaction of business at the place designated therein. It shall at all times be conspicuously displayed at the place for which issued and shall be valid and effective until revoked by the Tax Commissioner.

(6)(a) Whenever the holder of a permit issued under subsection (5) of this section or any person required to be identified in subdivision (1)(c) of this section (i) fails to comply with any provision of the Nebraska Revenue Act of 1967 relating to the retail sales tax or with any rule or regulation of the Tax Commissioner relating to such tax prescribed and adopted under such act, (ii) fails to provide for inspection or audit any book, record, document, or item required by law, rule, or regulation, or (iii) makes a misrepresentation of or fails to disclose a material fact to the Department of Revenue, the Tax Commissioner upon hearing, after giving the person twenty days' notice in writing specifying the time and place of hearing and requiring him or her to show cause why his or her permit or permits should not be revoked, may revoke or suspend any one or more of the permits held by the person. The Tax Commissioner shall give to the person written notice of the suspension or revocation of any of his or her permits. The notices may be served personally or by mail in the manner prescribed for service of notice of a deficiency determination.

(b) The Tax Commissioner shall have the power to restore permits which have been revoked but shall not issue a new permit after the revocation of a permit unless he or she is satisfied that the former holder of the permit will comply with the provisions of such act relating to the retail sales tax and the regulations of the Tax Commissioner. A seller whose permit has been previously suspended or revoked under this subsection shall pay the Tax Commissioner a fee of twenty-five dollars for the renewal or issuance of a permit in the event of a first revocation and fifty dollars for renewal after each successive revocation.

(c) The action of the Tax Commissioner may be appealed by the taxpayer in the same manner as a final deficiency determination.

(7) For the purpose of more efficiently securing the payment, collection, and accounting for the sales and use taxes and for the convenience of the retailer in collecting the sales tax, it shall be the duty of the Tax Commissioner to formulate and promulgate appropriate rules and regulations providing a form and method for the registration of exempt purchases and the documentation of exempt sales.

(8) If any person, firm, corporation, association, or agent thereof presents an exempt sale certificate to the seller for property which is purchased by a taxpayer or for a use other than those enumerated in the Nebraska Revenue Act of 1967 as exempted from the computation of sales and use taxes, the Tax Commissioner may, in addition to other penalties provided by law, impose, assess, and collect from the purchaser or the agent thereof a penalty of one hundred dollars or ten times the tax, whichever amount is larger, for each

instance of such presentation and misuse of an exempt sale certificate. Such amount shall be in addition to any tax, interest, or penalty otherwise imposed.

(9) Any report, name, or information which is supplied to the Tax Commissioner regarding a violation specified in this section, including the identity of the informer, shall be subject to the pertinent provisions regarding wrongful disclosure in section 77-2711.

(10) Pursuant to the streamlined sales and use tax agreement, the state shall participate in an online registration system that will allow retailers to register in all the member states. The state hereby agrees to honor and abide by the retailer registration decisions made by the governing board pursuant to the agreement.

Source: Laws 1967, c. 487, § 5, p. 1553; Laws 1967, c. 490, § 4, p. 1663; Laws 1982, LB 928, § 65; Laws 1984, LB 962, § 9; Laws 1992, LB 871, § 60; Laws 1993, LB 121, § 502; Laws 1993, LB 345, § 54; Laws 1997, LB 752, § 212; Laws 2002, Second Spec. Sess., LB 32, § 2; Laws 2003, LB 282, § 70; Laws 2003, LB 759, § 20; Laws 2008, LB916, § 24.

Operative date October 1, 2008.

77-2708 Sales and use tax; returns; date due; failure to file; penalty; deduction; amount; claim for refund; allowance; disallowance; proceedings.

(1)(a) The sales and use taxes imposed by the Nebraska Revenue Act of 1967 shall be due and payable to the Tax Commissioner monthly on or before the twenty-fifth day of the month next succeeding each monthly period unless otherwise provided pursuant to the Nebraska Revenue Act of 1967.

(b)(i) On or before the twenty-fifth day of the month following each monthly period or such other period as the Tax Commissioner may require, a return for such period, along with all taxes due, shall be filed with the Tax Commissioner in such form and content as the Tax Commissioner may prescribe and containing such information as the Tax Commissioner deems necessary for the proper administration of the Nebraska Revenue Act of 1967. The Tax Commissioner, if he or she deems it necessary in order to insure payment to or facilitate the collection by the state of the amount of sales or use taxes due, may require returns and payment of the amount of such taxes for periods other than monthly periods in the case of a particular seller, retailer, or purchaser, as the case may be. The Tax Commissioner shall by rule and regulation require reports and tax payments from sellers, retailers, or purchasers depending on their yearly tax liability. Except as required by the streamlined sales and use tax agreement, annual returns shall be required if such sellers', retailers', or purchasers' yearly tax liability is less than nine hundred dollars, quarterly returns shall be required if their yearly tax liability is nine hundred dollars or more and less than three thousand dollars, and monthly returns shall be required if their yearly tax liability is three thousand dollars or more. The Tax Commissioner shall have the discretion to allow an annual return for seasonal retailers, even when their yearly tax liability exceeds the amounts listed in this subdivision.

The Tax Commissioner may adopt and promulgate rules and regulations to allow annual, semiannual, or quarterly returns for any retailer making monthly remittances or payments of sales and use taxes by electronic funds transfer or for any retailer remitting tax to the state pursuant to the streamlined sales and

use tax agreement. Such rules and regulations may establish a method of determining the amount of the payment that will result in substantially all of the tax liability being paid each quarter. At least once each year, the difference between the amount paid and the amount due shall be reconciled. If the difference is more than ten percent of the amount paid, a penalty of fifty percent of the unpaid amount shall be imposed.

(ii) For purposes of the sales tax, a return shall be filed by every retailer liable for collection from a purchaser and payment to the state of the tax, except that a combined sales tax return may be filed for all licensed locations which are subject to common ownership. For purposes of this subdivision, common ownership means the same person or persons own eighty percent or more of each licensed location. For purposes of the use tax, a return shall be filed by every retailer engaged in business in this state and by every person who has purchased property, the storage, use, or other consumption of which is subject to the use tax, but who has not paid the use tax due to a retailer required to collect the tax.

(iii) The Tax Commissioner may require that returns be signed by the person required to file the return or by his or her duly authorized agent but need not be verified by oath.

(iv) A taxpayer who keeps his or her regular books and records on a cash basis, an accrual basis, or any generally recognized accounting basis which correctly reflects the operation of the business may file the sales and use tax returns required by the Nebraska Revenue Act of 1967 on the same accounting basis that is used for the regular books and records, except that on credit, conditional, and installment sales, the retailer who keeps his or her books on an accrual basis may report such sales on the cash basis and pay the tax upon the collections made during each month. If a taxpayer transfers, sells, assigns, or otherwise disposes of an account receivable, he or she shall be deemed to have received the full balance of the consideration for the original sale and shall be liable for the remittance of the sales tax on the balance of the total sale price not previously reported, except that such transfer, sale, assignment, or other disposition of an account receivable by a retailer to a subsidiary shall not be deemed to require the retailer to pay the sales tax on the credit sale represented by the account transferred prior to the time the customer makes payment on such account. If the subsidiary does not obtain a Nebraska sales tax permit, the taxpayer shall obtain a surety bond in favor of the State of Nebraska to insure payment of the tax and any interest and penalty imposed thereon under this section in an amount not less than two times the amount of tax payable on outstanding accounts receivable held by the subsidiary as of the end of the prior calendar year. Failure to obtain either a sales tax permit or a surety bond in accordance with this section shall result in the payment on the next required filing date of all sales taxes not previously remitted. When the retailer has adopted one basis or the other of reporting credit, conditional, or installment sales and paying the tax thereon, he or she will not be permitted to change from that basis without first having notified the Tax Commissioner.

(c) Except as provided in the streamlined sales and use tax agreement, the taxpayer required to file the return shall deliver or mail any required return together with a remittance of the net amount of the tax due to the office of the Tax Commissioner on or before the required filing date. Failure to file the return, filing after the required filing date, failure to remit the net amount of the tax due, or remitting the net amount of the tax due after the required filing

date shall be cause for a penalty, in addition to interest, of ten percent of the amount of tax not paid by the required filing date or twenty-five dollars, whichever is greater, unless the penalty is being collected under subdivision (1)(i) or (1)(j)(i) of section 77-2703 by a county treasurer, a designated county official, or the Department of Motor Vehicles, in which case the penalty shall be five dollars.

(d) For all sales tax collected prior to October 1, 2002, the taxpayer shall deduct and withhold, from the taxes otherwise due from him or her on his or her tax return, two and one-half percent of the first three thousand dollars remitted each month and one-half of one percent of all amounts in excess of three thousand dollars remitted each month to reimburse himself or herself for the cost of collecting the tax. For all sales tax collected on and after October 1, 2002, the taxpayer shall deduct and withhold, from the taxes otherwise due from him or her on his or her tax return, two and one-half percent of the first three thousand dollars remitted each month to reimburse himself or herself for the cost of collecting the tax. Taxpayers filing a combined return as allowed by subdivision (1)(b)(ii) of this subsection shall compute such collection fees on the basis of the receipts and liability of each licensed location.

(2)(a) If the Tax Commissioner determines that any sales or use tax amount, penalty, or interest has been paid more than once, has been erroneously or illegally collected or computed, or has been paid and the purchaser qualifies for a refund under section 77-2708.01, the Tax Commissioner shall set forth that fact in his or her records and the excess amount collected or paid may be credited on any sales, use, or income tax amounts then due and payable from the person under the Nebraska Revenue Act of 1967. Any balance may be refunded to the person by whom it was paid or his or her successors, administrators, or executors.

(b) No refund shall be allowed unless a claim therefor is filed with the Tax Commissioner by the person who made the overpayment or his or her attorney, executor, or administrator within three years from the required filing date following the close of the period for which the overpayment was made, within six months after any determination becomes final under section 77-2709, or within six months from the date of overpayment with respect to such determinations, whichever of these three periods expires later, unless the credit relates to a period for which a waiver has been given. Failure to file a claim within the time prescribed in this subsection shall constitute a waiver of any demand against the state on account of overpayment.

(c) Every claim shall be in writing on forms prescribed by the Tax Commissioner and shall state the specific amount and grounds upon which the claim is founded. No refund shall be made in any amount less than two dollars.

(d) The Tax Commissioner shall allow or disallow a claim within one hundred eighty days after it has been filed. A request for a hearing shall constitute a waiver of the one-hundred-eighty-day period. The claimant and the Tax Commissioner may also agree to extend the one-hundred-eighty-day period. If a hearing has not been requested and the Tax Commissioner has neither allowed nor disallowed a claim within either the one hundred eighty days or the period agreed to by the claimant and the Tax Commissioner, the claim shall be deemed to have been allowed.

(e) Within thirty days after disallowing any claim in whole or in part, the Tax Commissioner shall serve notice of his or her action on the claimant in the manner prescribed for service of notice of a deficiency determination.

(f) Within thirty days after the mailing of the notice of the Tax Commissioner's action upon a claim filed pursuant to the Nebraska Revenue Act of 1967, the action of the Tax Commissioner shall be final unless the taxpayer seeks review of the Tax Commissioner's determination as provided in section 77-27,127.

(g) Upon the allowance of a credit or refund of any sum erroneously or illegally assessed or collected, of any penalty collected without authority, or of any sum which was excessive or in any manner wrongfully collected, interest shall be allowed and paid on the amount of such credit or refund at the rate specified in section 45-104.02, as such rate may from time to time be adjusted, from the date such sum was paid or from the date the return was required to be filed, whichever date is later, to the date of the allowance of the refund or, in the case of a credit, to the due date of the amount against which the credit is allowed, but in the case of a voluntary and unrequested payment in excess of actual tax liability or a refund under section 77-2708.01, no interest shall be allowed when such excess is refunded or credited.

(h) No suit or proceeding shall be maintained in any court for the recovery of any amount alleged to have been erroneously or illegally determined or collected unless a claim for refund or credit has been duly filed.

(i) The Tax Commissioner may recover any refund or part thereof which is erroneously made and any credit or part thereof which is erroneously allowed by issuing a deficiency determination within one year from the date of refund or credit or within the period otherwise allowed for issuing a deficiency determination, whichever expires later.

(j)(i) Credit shall be allowed to the retailer, contractor, or repairperson for sales or use taxes paid pursuant to the Nebraska Revenue Act of 1967 on any deduction taken that is attributed to bad debts not including interest. Bad debt has the same meaning as in 26 U.S.C. 166, as such section existed on January 1, 2003. However, the amount calculated pursuant to 26 U.S.C. 166 shall be adjusted to exclude: Financing charges or interest; sales or use taxes charged on the purchase price; uncollectible amounts on property that remains in the possession of the seller until the full purchase price is paid; and expenses incurred in attempting to collect any debt and repossessed property.

(ii) Bad debts may be deducted on the return for the period during which the bad debt is written off as uncollectible in the claimant's books and records and is eligible to be deducted for federal income tax purposes. A claimant who is not required to file federal income tax returns may deduct a bad debt on a return filed for the period in which the bad debt is written off as uncollectible in the claimant's books and records and would be eligible for a bad debt deduction for federal income tax purposes if the claimant was required to file a federal income tax return.

(iii) If a deduction is taken for a bad debt and the debt is subsequently collected in whole or in part, the tax on the amount so collected must be paid and reported on the return filed for the period in which the collection is made.

(iv) When the amount of bad debt exceeds the amount of taxable sales for the period during which the bad debt is written off, a refund claim may be filed within the otherwise applicable statute of limitations for refund claims. The

statute of limitations shall be measured from the due date of the return on which the bad debt could first be claimed.

(v) If filing responsibilities have been assumed by a certified service provider, the service provider may claim, on behalf of the retailer, any bad debt allowance provided by this section. The certified service provider shall credit or refund the full amount of any bad debt allowance or refund received to the retailer.

(vi) For purposes of reporting a payment received on a previously claimed bad debt, any payments made on a debt or account are applied first proportionally to the taxable price of the property or service and the sales tax thereon, and secondly to interest, service charges, and any other charges.

(vii) In situations in which the books and records of the party claiming the bad debt allowance support an allocation of the bad debts among the member states in the streamlined sales and use tax agreement, the state shall permit the allocation.

Source: Laws 1967, c. 487, § 8, p. 1558; Laws 1967, c. 490, § 5, p. 1665; Laws 1969, c. 683, § 5, p. 2635; Laws 1976, LB 996, § 1; Laws 1981, LB 179, § 15; Laws 1981, LB 167, § 51; Laws 1982, Spec. Sess., LB 2, § 1; Laws 1983, LB 101, § 1; Laws 1983, LB 571, § 2; Laws 1984, LB 758, § 1; Laws 1985, LB 715, § 7; Laws 1985, LB 273, § 46; Laws 1987, LB 775, § 15; Laws 1987, LB 523, § 16; Laws 1988, LB 1234, § 1; Laws 1991, LB 829, § 23; Laws 1992, LB 1063, § 183; Laws 1992, Second Spec. Sess., LB 1, § 156; Laws 1992, Fourth Spec. Sess., LB 1, § 28; Laws 1993, LB 128, § 1; Laws 1993, LB 345, § 56; Laws 1995, LB 9, § 1; Laws 1995, LB 118, § 1; Laws 1996, LB 1041, § 7; Laws 2002, Second Spec. Sess., LB 32, § 3; Laws 2003, LB 282, § 71; Laws 2005, LB 216, § 8; Laws 2008, LB916, § 25.

Operative date October 1, 2008.

77-2709 Sales and use tax; return; Tax Commissioner; deficiency determination; penalty; deficiency; notice; hearing; order.

(1) If the Tax Commissioner is not satisfied with the return or returns of the tax or the amount of tax required to be paid to the state by any person, he or she may compute and determine the amount required to be paid upon the basis of the facts contained in the return or returns or upon the basis of any information within his or her possession or which may come into his or her possession. One or more deficiency determinations of the amount due for one or more than one period may be made. To the amount of the deficiency determination for each period shall be added a penalty equal to ten percent thereof or twenty-five dollars, whichever is greater. In making a determination, the Tax Commissioner may offset overpayments for a period or periods, together with interest on the overpayments, against underpayments for other period or periods, against penalties, and against the interest on the underpayments.

The interest on underpayments and overpayments shall be computed in the manner set forth hereinafter.

(2) If any person fails to make a return, the Tax Commissioner shall make an estimate of the amount of the gross receipts of the person or, as the case may be, of the amount of the total sales, rent, or lease price of property sold, rented,

or leased or purchased, by the person, the storage, use, or consumption of which in this state is subject to the use tax. The estimate shall be made for the period or periods in respect to which the person failed to make a return and shall be based upon any information which is in the Tax Commissioner's possession or may come into his or her possession. Upon the basis of this estimate, the Tax Commissioner shall compute and determine the amount required to be paid to the state, adding to the sum thus arrived at a penalty equal to ten percent thereof or twenty-five dollars, whichever is greater. One or more determinations may be made for one or more than one period.

(3) The amount of the determination of any deficiency exclusive of penalties shall bear interest at the rate specified in section 45-104.02, as such rate may from time to time be adjusted, from the twenty-fifth of the month following the period for which the amount should have been returned until the date of payment.

(4) If any part of a deficiency for which a deficiency determination is made is the result of fraud or an intent to evade the Nebraska Revenue Act of 1967 or authorized rules and regulations, a penalty of twenty-five percent of the amount of the determination or fifty dollars, whichever is greater, shall be added thereto.

(5)(a) Promptly after making his or her determination, the Tax Commissioner shall give to the person written notice of his or her determination.

(b) The notice may be served personally or by mail, and if by mail the notice shall be addressed to the person at his or her address as it appears in the records of the Tax Commissioner. In case of service by mail of any notice required by the Nebraska Revenue Act of 1967, the service is complete at the time of deposit in the United States post office.

(c) Every notice of a deficiency determination shall be personally served or mailed within three years after the last day of the calendar month following the period for which the amount is proposed to be determined or within three years after the return is filed, whichever period expires the later. In the case of failure to make a return, every notice of determination shall be mailed or personally served within five years after the last day of the calendar month following the period for which the amount is proposed to be determined.

(d) When, before the expiration of the time prescribed in this section for the mailing of a notice of deficiency determination, both the Tax Commissioner and the taxpayer have consented in writing to its mailing after such time, the notice of the deficiency determination may be mailed at any time prior to the expiration of the period agreed upon. The agreed-upon period may be extended by subsequent agreement, in writing, made before the expiration of the period previously agreed upon.

(6) When a business is discontinued, a determination may be made at any time thereafter within the periods specified in this section as to liability arising out of that business, irrespective of whether the determination is issued prior to the due date of the liability as otherwise specified in the Nebraska Revenue Act of 1967.

(7) Any person against whom a determination is made under subsections (1) and (2) of this section or any person directly interested may petition for a redetermination within sixty days after service upon the person of notice thereof. For the purposes of this subsection, a person is directly interested in a deficiency determination when such deficiency could be collected from such

person. If a petition for redetermination is not filed within the sixty-day period, the determination becomes final at the expiration of the period.

(8) If a petition for redetermination is filed within the sixty-day period, the Tax Commissioner shall reconsider the determination and, if the person has so requested in his or her petition, shall grant the person an oral hearing and shall give him or her ten days' notice of the time and place of the hearing. The Tax Commissioner may continue the hearing from time to time as may be necessary.

(9) The Tax Commissioner may decrease or increase the amount of the determination before it becomes final, but the amount may be increased only if a claim for the increase is asserted by the Tax Commissioner at or before the hearing, upon which assertion the petitioner shall be entitled to a thirty-day continuance of the hearing to allow him or her to obtain and produce further evidence applicable to the items upon which the increase is based.

(10) The order or decision of the Tax Commissioner upon a petition for redetermination shall become final thirty days after service upon the petitioner of notice thereof.

(11) All determinations made by the Tax Commissioner under the provisions of subsections (1) and (2) of this section are due and payable at the time they become final. If they are not paid when due and payable, a penalty of ten percent of the amount of the determination, exclusive of interest and penalties, shall be added thereto.

(12) Any notice required by this section shall be served personally or by mail in the manner prescribed in subsection (5) of this section.

Source: Laws 1967, c. 487, § 9, p. 1562; Laws 1969, c. 683, § 6, p. 2639; Laws 1976, LB 996, § 2; Laws 1981, LB 167, § 52; Laws 1985, LB 273, § 47; Laws 1992, Fourth Spec. Sess., LB 1, § 30; Laws 1993, LB 345, § 58; Laws 2008, LB914, § 7.
Operative date January 1, 2009.

77-2709.01 Repealed. Laws 2007, LB 367, § 31.

77-2711 Sales and use tax; Tax Commissioner; enforcement; records; retain; reports; wrongful disclosures; exceptions; information provided to municipality; penalty; waiver; streamlined sales and use tax agreement; confidentiality rights.

(1)(a) The Tax Commissioner shall enforce sections 77-2701.04 to 77-2713 and may prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of such sections.

(b) The Tax Commissioner may prescribe the extent to which any ruling or regulation shall be applied without retroactive effect.

(2) The Tax Commissioner may employ accountants, auditors, investigators, assistants, and clerks necessary for the efficient administration of the Nebraska Revenue Act of 1967 and may delegate authority to his or her representatives to conduct hearings, prescribe regulations, or perform any other duties imposed by such act.

(3)(a) Every seller, every retailer, and every person storing, using, or otherwise consuming in this state property purchased from a retailer shall keep such

records, receipts, invoices, and other pertinent papers in such form as the Tax Commissioner may reasonably require.

(b) Every such seller, retailer, or person shall keep such records for not less than three years from the making of such records unless the Tax Commissioner in writing sooner authorized their destruction.

(4) The Tax Commissioner or any person authorized in writing by him or her may examine the books, papers, records, and equipment of any person selling property and any person liable for the use tax and may investigate the character of the business of the person in order to verify the accuracy of any return made or, if no return is made by the person, to ascertain and determine the amount required to be paid. In the examination of any person selling property or of any person liable for the use tax, an inquiry shall be made as to the accuracy of the reporting of city sales and use taxes for which the person is liable under the Local Option Revenue Act or sections 13-319, 13-324, and 13-2813 and the accuracy of the allocation made between the various counties, cities, villages, and municipal counties of the tax due. The Tax Commissioner may make or cause to be made copies of resale or exemption certificates and may pay a reasonable amount to the person having custody of the records for providing such copies.

(5) The taxpayer shall have the right to keep or store his or her records at a point outside this state and shall make his or her records available to the Tax Commissioner at all times.

(6) In administration of the use tax, the Tax Commissioner may require the filing of reports by any person or class of persons having in his, her, or their possession or custody information relating to sales of property, the storage, use, or other consumption of which is subject to the tax. The report shall be filed when the Tax Commissioner requires and shall set forth the names and addresses of purchasers of the property, the sales price of the property, the date of sale, and such other information as the Tax Commissioner may require.

(7) It shall be a Class I misdemeanor for the Tax Commissioner or any official or employee of the Tax Commissioner, the State Treasurer, or the Department of Administrative Services to make known in any manner whatever the business affairs, operations, or information obtained by an investigation of records and activities of any retailer or any other person visited or examined in the discharge of official duty or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any return, or to permit any return or copy thereof, or any book containing any abstract or particulars thereof to be seen or examined by any person not connected with the Tax Commissioner. Nothing in this section shall be construed to prohibit (a) the delivery to a taxpayer, his or her duly authorized representative, or his or her successors, receivers, trustees, executors, administrators, assignees, or guarantors, if directly interested, of a certified copy of any return or report in connection with his or her tax, (b) the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof, (c) the inspection by the Attorney General, other legal representative of the state, or county attorney of the reports or returns of any taxpayer when either (i) information on the reports or returns is considered by the Attorney General to be relevant to any action or proceeding instituted by the taxpayer or against whom an action or proceeding is being considered or has been commenced by any state agency or the county or (ii) the taxpayer has instituted an action to

review the tax based thereon or an action or proceeding against the taxpayer for collection of tax or failure to comply with the Nebraska Revenue Act of 1967 is being considered or has been commenced, (d) the furnishing of any information to the United States Government or to states allowing similar privileges to the Tax Commissioner, (e) the disclosure of information and records to a collection agency contracting with the Tax Commissioner pursuant to sections 77-377.01 to 77-377.04, (f) the disclosure to another party to a transaction of information and records concerning the transaction between the taxpayer and the other party, or (g) the disclosure of information pursuant to section 77-27,195 or 77-5731.

(8) Notwithstanding the provisions of subsection (7) of this section, the Tax Commissioner may permit the Postal Inspector of the United States Postal Service or his or her delegates to inspect the reports or returns of any person filed pursuant to the Nebraska Revenue Act of 1967 when information on the reports or returns is relevant to any action or proceeding instituted or being considered by the United States Postal Service against such person for the fraudulent use of the mails to carry and deliver false and fraudulent tax returns to the Tax Commissioner with the intent to defraud the State of Nebraska or to evade the payment of Nebraska state taxes.

(9) Notwithstanding the provisions of subsection (7) of this section, the Tax Commissioner may permit other tax officials of this state to inspect the tax returns, reports, and applications filed under sections 77-2701.04 to 77-2713, but such inspection shall be permitted only for purposes of enforcing a tax law and only to the extent and under the conditions prescribed by the rules and regulations of the Tax Commissioner.

(10) Notwithstanding the provisions of subsection (7) of this section, the Tax Commissioner may, upon request, provide the county board of any county which has exercised the authority granted by section 81-1254 with a list of the names and addresses of the hotels located within the county for which lodging sales tax returns have been filed or for which lodging sales taxes have been remitted for the county's County Visitors Promotion Fund under the Nebraska Visitors Development Act.

The information provided by the Tax Commissioner shall indicate only the names and addresses of the hotels located within the requesting county for which lodging sales tax returns have been filed for a specified period and the fact that lodging sales taxes remitted by or on behalf of the hotel have constituted a portion of the total sum remitted by the state to the county for a specified period under the provisions of the Nebraska Visitors Development Act. No additional information shall be revealed.

(11)(a) Notwithstanding the provisions of subsection (7) of this section, the Tax Commissioner shall, upon written request by the Auditor of Public Accounts or the Legislative Performance Audit Committee, make tax returns and tax return information open to inspection by or disclosure to Auditor of Public Accounts or Legislative Performance Audit Section employees for the purpose of and to the extent necessary in making an audit of the Department of Revenue pursuant to section 50-1205 or 84-304. Confidential tax returns and tax return information shall be audited only upon the premises of the Department of Revenue. All audit workpapers pertaining to the audit of the Department of Revenue shall be stored in a secure place in the Department of Revenue.

(b) No employee of the Auditor of Public Accounts or Legislative Performance Audit Section shall disclose to any person, other than another Auditor of Public Accounts or Legislative Performance Audit Section employee whose official duties require such disclosure or as provided in subsections (2) and (3) of section 50-1213, any return or return information described in the Nebraska Revenue Act of 1967 in a form which can be associated with or otherwise identify, directly or indirectly, a particular taxpayer.

(c) Any person who violates the provisions of this subsection shall be guilty of a Class I misdemeanor. For purposes of this subsection, employee includes a former Auditor of Public Accounts or Legislative Performance Audit Section employee.

(12) For purposes of this subsection and subsection (11) of this section:

(a) Disclosure means the making known to any person in any manner a tax return or return information;

(b) Return information means:

(i) A taxpayer's identification number and (A) the nature, source, or amount of his or her income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing or (B) any other data received by, recorded by, prepared by, furnished to, or collected by the Tax Commissioner with respect to a return or the determination of the existence or possible existence of liability or the amount of liability of any person for any tax, penalty, interest, fine, forfeiture, or other imposition or offense; and

(ii) Any part of any written determination or any background file document relating to such written determination; and

(c) Tax return or return means any tax or information return or claim for refund required by, provided for, or permitted under sections 77-2701 to 77-2713 which is filed with the Tax Commissioner by, on behalf of, or with respect to any person and any amendment or supplement thereto, including supporting schedules, attachments, or lists which are supplemental to or part of the filed return.

(13) Notwithstanding the provisions of subsection (7) of this section, the Tax Commissioner shall, upon request, provide any municipality which has adopted the local option sales tax under the Local Option Revenue Act with a list of the names and addresses of the retailers which have collected the local option sales tax for the municipality. The request may be made annually and shall be submitted to the Tax Commissioner on or before June 30 of each year. The information provided by the Tax Commissioner shall indicate only the names and addresses of the retailers. No additional information shall be revealed.

(14) In all proceedings under the Nebraska Revenue Act of 1967, the Tax Commissioner may act for and on behalf of the people of the State of Nebraska. The Tax Commissioner in his or her discretion may waive all or part of any penalties provided by the provisions of such act or interest on delinquent taxes specified in section 45-104.02, as such rate may from time to time be adjusted.

(15)(a) The purpose of this subsection is to set forth the state's policy for the protection of the confidentiality rights of all participants in the system operated pursuant to the streamlined sales and use tax agreement and of the privacy interests of consumers who deal with model 1 sellers.

(b) For purposes of this subsection:

- (i) Anonymous data means information that does not identify a person;
- (ii) Confidential taxpayer information means all information that is protected under a member state's laws, regulations, and privileges; and
- (iii) Personally identifiable information means information that identifies a person.

(c) The state agrees that a fundamental precept for model 1 sellers is to preserve the privacy of consumers by protecting their anonymity. With very limited exceptions, a certified service provider shall perform its tax calculation, remittance, and reporting functions without retaining the personally identifiable information of consumers.

(d) The governing board of the member states in the streamlined sales and use tax agreement may certify a certified service provider only if that certified service provider certifies that:

- (i) Its system has been designed and tested to ensure that the fundamental precept of anonymity is respected;
- (ii) Personally identifiable information is only used and retained to the extent necessary for the administration of model 1 with respect to exempt purchasers;
- (iii) It provides consumers clear and conspicuous notice of its information practices, including what information it collects, how it collects the information, how it uses the information, how long, if at all, it retains the information, and whether it discloses the information to member states. Such notice shall be satisfied by a written privacy policy statement accessible by the public on the web site of the certified service provider;
- (iv) Its collection, use, and retention of personally identifiable information is limited to that required by the member states to ensure the validity of exemptions from taxation that are claimed by reason of a consumer's status or the intended use of the goods or services purchased; and
- (v) It provides adequate technical, physical, and administrative safeguards so as to protect personally identifiable information from unauthorized access and disclosure.

(e) The state shall provide public notification to consumers, including exempt purchasers, of the state's practices relating to the collection, use, and retention of personally identifiable information.

(f) When any personally identifiable information that has been collected and retained is no longer required for the purposes set forth in subdivision (15)(d)(iv) of this section, such information shall no longer be retained by the member states.

(g) When personally identifiable information regarding an individual is retained by or on behalf of the state, it shall provide reasonable access by such individual to his or her own information in the state's possession and a right to correct any inaccurately recorded information.

(h) If anyone other than a member state, or a person authorized by that state's law or the agreement, seeks to discover personally identifiable information, the state from whom the information is sought should make a reasonable and timely effort to notify the individual of such request.

(i) This privacy policy is subject to enforcement by the Attorney General.

(j) All other laws and regulations regarding the collection, use, and maintenance of confidential taxpayer information remain fully applicable and binding. Without limitation, this subsection does not enlarge or limit the state's authority to:

(i) Conduct audits or other reviews as provided under the agreement and state law;

(ii) Provide records pursuant to the federal Freedom of Information Act, disclosure laws with governmental agencies, or other regulations;

(iii) Prevent, consistent with state law, disclosure of confidential taxpayer information;

(iv) Prevent, consistent with federal law, disclosure or misuse of federal return information obtained under a disclosure agreement with the Internal Revenue Service; and

(v) Collect, disclose, disseminate, or otherwise use anonymous data for governmental purposes.

Source: Laws 1967, c. 487, § 11, p. 1566; Laws 1969, c. 683, § 7, p. 2641; Laws 1977, LB 39, § 239; Laws 1981, LB 170, § 6; Laws 1982, LB 705, § 2; Laws 1984, LB 962, § 12; Laws 1985, LB 344, § 4; Laws 1987, LB 523, § 17; Laws 1991, LB 773, § 10; Laws 1992, LB 871, § 61; Laws 1992, Fourth Spec. Sess., LB 1, § 31; Laws 1993, LB 345, § 60; Laws 1994, LB 1175, § 1; Laws 1995, LB 134, § 3; Laws 1996, LB 1177, § 18; Laws 2001, LB 142, § 56; Laws 2003, LB 282, § 73; Laws 2005, LB 216, § 9; Laws 2005, LB 312, § 11; Laws 2006, LB 588, § 8; Laws 2007, LB94, § 1; Laws 2007, LB223, § 9; Laws 2008, LB914, § 8.
Operative date July 18, 2008.

Cross References

Local Option Revenue Act, see section 77-27,148.

Nebraska Visitors Development Act, see section 81-1263.

77-2712.03 Streamlined sales and use tax agreement; ratified; governing board; members.

(1) The streamlined sales and use tax agreement, as adopted by the streamlined sales tax implementing states on November 12, 2002, including amendments through December 14, 2006, is hereby ratified by the Legislature. The Governor shall enter into the agreement with one or more states to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce. In furtherance of the agreement, the Department of Revenue is authorized to act jointly with other states that are members under Articles VII or VIII of the agreement to establish standards for certification of a certified service provider and certified automated system and establish performance standards for multi-state sellers. The department is further authorized to take other actions permissible under law reasonably required to implement the provisions set forth in the agreement. Other actions authorized by this section include, but are not limited to, the adoption and promulgation of rules and regulations and the joint procurement, with other member states, of goods and services in furtherance of the agreement.

(2) The Tax Commissioner or his or her designee and two representatives of the Legislature appointed by the Executive Board of the Legislative Council are authorized to represent Nebraska before the other member states under the agreement. The state also agrees to participate in and comply with the procedures of and decisions made by the governing board of the member states. These provisions of the agreement include the creation of the organization as provided in Article VII of the agreement, the requirements for state entry and withdrawal as provided in Article VIII of the agreement, amendments to the agreement as provided in Article IX of the agreement, and a dispute resolution process as provided in Article X of the agreement.

Source: Laws 2001, LB 172, § 4; Laws 2003, LB 282, § 75; Laws 2007, LB223, § 10.

Cross References

Executive Board of the Legislative Council, see section 50-401.01.

77-2712.05 Streamlined sales and use tax agreement; requirements.

By agreeing to the terms of the streamlined sales and use tax agreement, this state agrees to abide by the following requirements:

(1) Uniform state rate. The state shall comply with restrictions to achieve over time more uniform state rates through the following:

- (a) Limiting the number of state rates;
- (b) Limiting the application of maximums on the amount of state tax that is due on a transaction; and
- (c) Limiting the application of thresholds on the application of state tax;

(2) Uniform standards. The state hereby establishes uniform standards for the following:

(a) Sourcing of transactions to taxing jurisdictions as provided in sections 77-2703.01 to 77-2703.04;

(b) Administration of exempt sales as set out by the agreement and using procedures as determined by the governing board;

(c) Allowances a seller can take for bad debts as provided in section 77-2708; and

(d) Sales and use tax returns and remittances. To comply with the agreement, the Tax Commissioner shall:

(i) Require only one remittance for each return except as provided in this subdivision. If any additional remittance is required, it may only be required from retailers that collect more than thirty thousand dollars in sales and use taxes in the state during the preceding calendar year as provided in this subdivision. The amount of any additional remittance may be determined through a calculation method rather than actual collections. Any additional remittance shall not require the filing of an additional return;

(ii) Require, at his or her discretion, all remittances from sellers under models 1, 2, and 3 to be remitted electronically;

(iii) Allow for electronic payments by both automated clearinghouse credit and debit;

(iv) Provide an alternative method for making same day payments if an electronic funds transfer fails;

(v) Provide that if a due date falls on a legal banking holiday, the taxes are due to that state on the next succeeding business day; and

(vi) Require that any data that accompanies a remittance be formatted using uniform tax type and payment type codes approved by the governing board of the member states to the streamlined sales and use tax agreement;

(3) Uniform definitions. (a) The state shall utilize the uniform definitions of sales and use tax terms as provided in the agreement. The definitions enable Nebraska to preserve its ability to make taxability and exemption choices not inconsistent with the uniform definitions.

(b) The state may enact a product-based exemption without restriction if the agreement does not have a definition for the product or for a term that includes the product. If the agreement has a definition for the product or for a term that includes the product, the state may exempt all items included within the definition but shall not exempt only part of the items included within the definition unless the agreement sets out the exemption for part of the items as an acceptable variation.

(c) The state may enact an entity-based or a use-based exemption without restriction if the agreement does not have a definition for the product whose use or purchase by a specific entity is exempt or for a term that includes the product. If the agreement has a definition for the product whose use or specific purchase is exempt, states may enact an entity-based or a use-based exemption that applies to that product as long as the exemption utilizes the agreement definition of the product. If the agreement does not have a definition for the product whose use or specific purchase is exempt but has a definition for a term that includes the product, states may enact an entity-based or a use-based exemption for the product without restriction.

(d) For purposes of complying with the requirements in this section, the inclusion of a product within the definition of tangible personal property is disregarded;

(4) Central registration. The state shall participate in an electronic central registration system that allows a seller to register to collect and remit sales and use taxes for all member states. Under the system:

(a) A retailer registering under the agreement is registered in this state;

(b) The state agrees not to require the payment of any registration fees or other charges for a retailer to register in the state if the retailer has no legal requirement to register;

(c) A written signature from the retailer is not required;

(d) An agent may register a retailer under uniform procedures adopted by the member states pursuant to the agreement;

(e) A retailer may cancel its registration under the system at any time under uniform procedures adopted by the governing board. Cancellation does not relieve the retailer of its liability for remitting to the proper states any taxes collected;

(f) When registering, the retailer that is registered under the agreement may select one of the following methods of remittances or other method allowed by state law to remit the taxes collected:

(i) Model 1, wherein a seller selects a certified service provider as an agent to perform all the seller's sales or use tax functions, other than the seller's obligation to remit tax on its own purchases;

(ii) Model 2, wherein a seller selects a certified automated system to use which calculates the amount of tax due on a transaction; and

(iii) Model 3, wherein a seller utilizes its own proprietary automated sales tax system that has been certified as a certified automated system; and

(g) Sellers who register within twelve months after this state's first approval of a certified service provider are relieved from liability, including the local option tax, for tax not collected or paid if the seller was not registered between October 1, 2004, and September 30, 2005. Such relief from liability shall be in accordance with the terms of the agreement;

(5) No nexus attribution. The state agrees that registration with the central registration system and the collection of sales and use taxes in the state will not be used as a factor in determining whether the seller has nexus with the state for any tax at any time;

(6) Local sales and use taxes. The agreement requires the reduction of the burdens of complying with local sales and use taxes as provided in sections 13-319, 13-324, 13-326, 77-2701.03, 77-27,142, 77-27,143, and 77-27,144 that require the following:

(a) No variation between the state and local tax bases;

(b) Statewide administration of all sales and use taxes levied by local jurisdictions within the state so that sellers collecting and remitting these taxes will not have to register or file returns with, remit funds to, or be subject to independent audits from local taxing jurisdictions;

(c) Limitations on the frequency of changes in the local sales and use tax rates and setting effective dates for the application of local jurisdictional boundary changes to local sales and use taxes; and

(d) Uniform notice of changes in local sales and use tax rates and of changes in the boundaries of local taxing jurisdictions;

(7) Complete a taxability matrix approved by the governing board. (a) Notice of changes in the taxability of the products or services listed will be provided as required by the governing board.

(b) The entries in the matrix shall be provided and maintained in a data base that is in a downloadable format approved by the governing board.

(c) Sellers, model 2 sellers, and certified service providers are relieved from liability, including the local option tax, for having charged and collected the incorrect amount of sales or use tax resulting from the seller or certified service provider relying on erroneous data provided by the member state in the taxability matrix or for relying on product-based classifications that have been reviewed and approved by the state. The state shall notify the certified service provider or model 2 seller if an item or transaction is incorrectly classified as to its taxability;

(8) Monetary allowances. The state agrees to allow any monetary allowances that are to be provided by the states to sellers or certified service providers in exchange for collecting sales and use taxes as provided in Article VI of the agreement;

(9) State compliance. The agreement requires the state to certify compliance with the terms of the agreement prior to joining and to maintain compliance, under the laws of the member state, with all provisions of the agreement while a member;

(10) Consumer privacy. The state hereby adopts a uniform policy for certified service providers that protects the privacy of consumers and maintains the confidentiality of tax information as provided in section 77-2711; and

(11) Advisory councils. The state agrees to the recognition of an advisory council of private-sector representatives and an advisory council of member and nonmember state representatives to consult with in the administration of the agreement.

Source: Laws 2001, LB 172, § 6; Laws 2003, LB 282, § 77; Laws 2004, LB 1017, § 20; Laws 2005, LB 16, § 1; Laws 2006, LB 887, § 4; Laws 2007, LB223, § 11.

(c) INCOME TAX

77-2715.02 Rate schedules; established; other taxes; tax rate; tax tables.

(1) Whenever the primary rate is changed by the Legislature under section 77-2715.01, the Tax Commissioner shall update the rate schedules required in subsection (2) of this section to reflect the new primary rate and shall publish such updated schedules.

(2) The following rate schedules are hereby established for the Nebraska individual income tax and shall be in the following form:

(a) For taxable years beginning or deemed to begin before January 1, 2007, income amounts for columns A and E shall be:

- (i) \$0, \$2,400, \$17,500, and \$27,000, for single returns;
- (ii) \$0, \$4,000, \$31,000, and \$50,000, for married filing joint returns;
- (iii) \$0, \$3,800, \$25,000, and \$35,000, for head-of-household returns;
- (iv) \$0, \$2,000, \$15,500, and \$25,000, for married filing separate returns; and
- (v) \$0, \$500, \$4,700, and \$15,150, for estates and trusts;

(b) For taxable years beginning or deemed to begin on or after January 1, 2007, income amounts for columns A and E shall be:

- (i) \$0, \$2,400, \$17,500, and \$27,000, for single returns;
- (ii) \$0, \$4,800, \$35,000, and \$54,000, for married filing joint returns;
- (iii) \$0, \$4,500, \$28,000, and \$40,000, for head-of-household returns;
- (iv) \$0, \$2,400, \$17,500, and \$27,000, for married filing separate returns; and
- (v) \$0, \$500, \$4,700, and \$15,150, for estates and trusts;

(c) The amount in column C shall be the total amount of the tax imposed on income less than the amount in column A;

(d) The amount in column D shall be the rate on the income in excess of the amount in column E;

(e) For taxable years beginning or deemed to begin before January 1, 2003, under the Internal Revenue Code of 1986, as amended, the primary rate set by the Legislature shall be multiplied by the following factors to compute the tax rates for column D. The factors for the brackets, from lowest to highest bracket, shall be .6784, .9432, 1.3541, and 1.8054;

(f) For taxable years beginning or deemed to begin on or after January 1, 2003, under the Internal Revenue Code of 1986, as amended, the primary rate set by the Legislature shall be multiplied by the following factors to compute the tax rates for column D. The factors for the brackets, from lowest to highest bracket, shall be .6932, .9646, 1.3846, and 1.848;

(g) The amounts for column C shall be rounded to the nearest dollar, and the amounts in column D shall be rounded to hundredths of one percent; and

(h) One rate schedule shall be established for each federal filing status.

(3) The tax rate schedules shall use the format set forth in this subsection.

A	B	C	D	E
Taxable income over	but not over	pay	plus	of the amount over

(4) The tax rate applied to other federal taxes included in the computation of the Nebraska individual income tax shall be eight times the primary rate.

(5) The Tax Commissioner shall prepare, from the rate schedules, tax tables which can be used by a majority of the taxpayers to determine their Nebraska tax liability. The design of the tax tables shall be determined by the Tax Commissioner. The size of the tax table brackets may change as the level of income changes. The difference in tax between two tax table brackets shall not exceed fifteen dollars. The Tax Commissioner may build the personal exemption credit and standard deduction amounts into the tax tables.

(6) The Tax Commissioner may require by rule and regulation that all taxpayers shall use the tax tables if their income is less than the maximum income included in the tax tables.

Source: Laws 1990, LB 1059, § 34; Laws 1993, LB 240, § 3; Laws 1994, LB 977, § 11; Laws 1997, LB 401, § 1; Laws 1998, LB 1028, § 1; Laws 2002, LB 1085, § 17; Laws 2003, LB 759, § 21; Laws 2006, LB 968, § 7; Laws 2007, LB367, § 19.

77-2715.07 Income tax credits.

(1) There shall be allowed to qualified resident individuals as a nonrefundable credit against the income tax imposed by the Nebraska Revenue Act of 1967:

(a) A credit equal to the federal credit allowed under section 22 of the Internal Revenue Code; and

(b) A credit for taxes paid to another state as provided in section 77-2730.

(2) There shall be allowed to qualified resident individuals against the income tax imposed by the Nebraska Revenue Act of 1967:

(a) For returns filed reporting federal adjusted gross incomes of greater than twenty-nine thousand dollars, a nonrefundable credit equal to twenty-five percent of the federal credit allowed under section 21 of the Internal Revenue Code of 1986, as amended;

(b) For returns filed reporting federal adjusted gross income of twenty-nine thousand dollars or less, a refundable credit equal to a percentage of the federal credit allowable under section 21 of the Internal Revenue Code of 1986, as amended, whether or not the federal credit was limited by the federal tax liability. The percentage of the federal credit shall be one hundred percent for incomes not greater than twenty-two thousand dollars, and the percentage shall

be reduced by ten percent for each one thousand dollars, or fraction thereof, by which the reported federal adjusted gross income exceeds twenty-two thousand dollars;

(c) A refundable credit for individuals who qualify for an income tax credit as an owner of agricultural assets under the Beginning Farmer Tax Credit Act for all taxable years beginning or deemed to begin on or after January 1, 2001, under the Internal Revenue Code of 1986, as amended; and a refundable credit as provided in section 77-5209.01 for individuals who qualify for an income tax credit as a qualified beginning farmer or livestock producer under the Beginning Farmer Tax Credit Act for all taxable years beginning or deemed to begin on or after January 1, 2006, under the Internal Revenue Code of 1986, as amended;

(d) A refundable credit for individuals who qualify for an income tax credit under the Nebraska Advantage Microenterprise Tax Credit Act or the Nebraska Advantage Research and Development Act; and

(e) A refundable credit equal to ten percent of the federal credit allowed under section 32 of the Internal Revenue Code of 1986, as amended.

(3) There shall be allowed to all individuals as a nonrefundable credit against the income tax imposed by the Nebraska Revenue Act of 1967:

(a) A credit for personal exemptions allowed under section 77-2716.01;

(b) A credit for contributions to certified community betterment programs as provided in the Community Development Assistance Act. Each partner, each shareholder of an electing subchapter S corporation, each beneficiary of an estate or trust, or each member of a limited liability company shall report his or her share of the credit in the same manner and proportion as he or she reports the partnership, subchapter S corporation, estate, trust, or limited liability company income; and

(c) A credit for investment in a biodiesel facility as provided in section 77-27,236.

(4) There shall be allowed as a credit against the income tax imposed by the Nebraska Revenue Act of 1967:

(a) A credit to all resident estates and trusts for taxes paid to another state as provided in section 77-2730; and

(b) A credit to all estates and trusts for contributions to certified community betterment programs as provided in the Community Development Assistance Act.

(5)(a) For all taxable years beginning on or after January 1, 2007, and before January 1, 2009, under the Internal Revenue Code of 1986, as amended, there shall be allowed to each partner, shareholder, member, or beneficiary of a partnership, subchapter S corporation, limited liability company, or estate or trust a nonrefundable credit against the income tax imposed by the Nebraska Revenue Act of 1967 equal to fifty percent of the partner's, shareholder's, member's, or beneficiary's portion of the amount of franchise tax paid to the state under sections 77-3801 to 77-3807 by a financial institution.

(b) For all taxable years beginning on or after January 1, 2009, under the Internal Revenue Code of 1986, as amended, there shall be allowed to each partner, shareholder, member, or beneficiary of a partnership, subchapter S corporation, limited liability company, or estate or trust a nonrefundable credit against the income tax imposed by the Nebraska Revenue Act of 1967 equal to

the partner's, shareholder's, member's, or beneficiary's portion of the amount of franchise tax paid to the state under sections 77-3801 to 77-3807 by a financial institution.

(c) Each partner, shareholder, member, or beneficiary shall report his or her share of the credit in the same manner and proportion as he or she reports the partnership, subchapter S corporation, limited liability company, or estate or trust income. If any partner, shareholder, member, or beneficiary cannot fully utilize the credit for that year, the credit may not be carried forward or back.

Source: Laws 1987, LB 773, § 6; Laws 1989, LB 739, § 2; Laws 1993, LB 5, § 3; Laws 1993, LB 121, § 503; Laws 1993, LB 240, § 4; Laws 1993, LB 815, § 23; Laws 1994, LB 977, § 12; Laws 1996, LB 898, § 5; Laws 1998, LB 1028, § 2; Laws 1999, LB 630, § 1; Laws 2001, LB 433, § 4; Laws 2005, LB 312, § 12; Laws 2006, LB 968, § 8; Laws 2006, LB 990, § 1; Laws 2007, LB343, § 3; Laws 2007, LB367, § 20; Laws 2007, LB456, § 1.

Cross References

Beginning Farmer Tax Credit Act, see section 77-5201.

Community Development Assistance Act, see section 13-201.

Nebraska Advantage Microenterprise Tax Credit Act, see section 77-5901.

Nebraska Advantage Research and Development Act, see section 77-5801.

77-2715.08 Capital gains; terms, defined.

For purposes of this section and section 77-2715.09, unless the context otherwise requires:

(1) Capital stock means common or preferred stock, either voting or nonvoting. Capital stock does not include stock rights, stock warrants, stock options, or debt securities;

(2)(a) Corporation means any corporation which, at the time of the first sale or exchange for which the election is made, has been in existence and actively doing business in this state for at least three years.

(b) Corporation also includes:

(i) Any corporation which is a member of a unitary group of corporations, as defined in section 77-2734.04, which includes a corporation defined in subdivision (2)(a) of this section; and

(ii) Any predecessor or successor corporation of a corporation defined in subdivision (2)(a) of this section.

(c) All corporations issuing capital stock for which an election under section 77-2715.09 is made shall, at the time of the first sale or exchange for which the election is made, have (i) at least five shareholders and (ii) at least two shareholders or groups of shareholders who are not related to each other and each of which owns at least ten percent of the capital stock.

For purposes of this subdivision, two persons shall be considered to be related when, under section 318 of the Internal Revenue Code of 1986, one is a person who owns, directly or indirectly, capital stock that if directly owned would be attributed to the other person or is the brother, sister, aunt, uncle, cousin, niece, or nephew of the other person who owns capital stock either directly or indirectly;

(3) Extraordinary dividend means any dividend exceeding twenty percent of the fair market value of the stock on which it is paid as of the date the dividend is declared; and

(4) Predecessor or successor corporation means a corporation that was a party to a reorganization that was entirely or substantially tax free and that occurred during or after the employment of the individual making an election under section 77-2715.09.

Source: Laws 1987, LB 775, § 11; Laws 1991, LB 773, § 11; Laws 2007, LB343, § 4.

77-2715.09 Capital stock; sale or exchange; extraordinary dividend and capital gains treatment.

(1) Every resident individual may elect under this section to subtract from federal adjusted gross income, or for trusts qualifying under subdivision (2)(c) of this section from taxable income, the extraordinary dividends paid on and the capital gain from the sale or exchange of capital stock of a corporation acquired by the individual (a) on account of employment by such corporation or (b) while employed by such corporation.

(2)(a) Each individual shall be entitled to one election under subsection (1) of this section during his or her lifetime for the capital stock of one corporation.

(b) The election shall apply to subsequent extraordinary dividends paid and sales and exchanges in any taxable year if the dividend is received on, or the sale or exchange is of, capital stock in the same corporation and such capital stock was acquired as provided in subsection (1) of this section.

(c) After the individual makes an election, such election shall apply to extraordinary dividends paid on, and the sale or exchange of, capital stock of the corporation transferred by inter vivos gift from the individual to his or her spouse or issue or a trust for the benefit of the individual's spouse or issue if such capital stock was acquired as provided in subsection (1) of this section. This subdivision shall apply, in the case of the spouse, only if the spouse was married to such individual on the date of the extraordinary dividend or sale or exchange or the date of death of the individual.

(d) If the individual dies without making an election, the surviving spouse or, if there is no surviving spouse, the oldest surviving issue may make the election for capital stock that would have qualified under subdivision (c) of this subsection.

(3) An election under subsection (1) of this section shall be made by including a written statement with the taxpayer's Nebraska income tax return or an amended return for the taxable year for which the election is made. The written statement shall identify the corporation that issued the stock and the grounds for the election under this section and shall state that the taxpayer elects to have this section apply.

Source: Laws 1987, LB 775, § 12; Laws 1991, LB 773, § 12; Laws 2007, LB343, § 5.

77-2716 Income tax; adjustments.

(1) The following adjustments to federal adjusted gross income or, for corporations and fiduciaries, federal taxable income shall be made for interest or dividends received:

(a) There shall be subtracted interest or dividends received by the owner of obligations of the United States and its territories and possessions or of any authority, commission, or instrumentality of the United States to the extent includable in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States;

(b) There shall be subtracted that portion of the total dividends and other income received from a regulated investment company which is attributable to obligations described in subdivision (a) of this subsection as reported to the recipient by the regulated investment company;

(c) There shall be added interest or dividends received by the owner of obligations of the District of Columbia, other states of the United States, or their political subdivisions, authorities, commissions, or instrumentalities to the extent excluded in the computation of gross income for federal income tax purposes except that such interest or dividends shall not be added if received by a corporation which is a regulated investment company;

(d) There shall be added that portion of the total dividends and other income received from a regulated investment company which is attributable to obligations described in subdivision (c) of this subsection and excluded for federal income tax purposes as reported to the recipient by the regulated investment company; and

(e)(i) Any amount subtracted under this subsection shall be reduced by any interest on indebtedness incurred to carry the obligations or securities described in this subsection or the investment in the regulated investment company and by any expenses incurred in the production of interest or dividend income described in this subsection to the extent that such expenses, including amortizable bond premiums, are deductible in determining federal taxable income.

(ii) Any amount added under this subsection shall be reduced by any expenses incurred in the production of such income to the extent disallowed in the computation of federal taxable income.

(2) There shall be allowed a net operating loss derived from or connected with Nebraska sources computed under rules and regulations adopted and promulgated by the Tax Commissioner consistent, to the extent possible under the Nebraska Revenue Act of 1967, with the laws of the United States. For a resident individual, estate, or trust, the net operating loss computed on the federal income tax return shall be adjusted by the modifications contained in this section. For a nonresident individual, estate, or trust or for a partial-year resident individual, the net operating loss computed on the federal return shall be adjusted by the modifications contained in this section and any carryovers or carrybacks shall be limited to the portion of the loss derived from or connected with Nebraska sources.

(3) There shall be subtracted from federal adjusted gross income for all taxable years beginning on or after January 1, 1987, the amount of any state income tax refund to the extent such refund was deducted under the Internal Revenue Code, was not allowed in the computation of the tax due under the Nebraska Revenue Act of 1967, and is included in federal adjusted gross income.

(4) Federal adjusted gross income, or, for a fiduciary, federal taxable income shall be modified to exclude the portion of the income or loss received from a small business corporation with an election in effect under subchapter S of the

Internal Revenue Code or from a limited liability company organized pursuant to the Limited Liability Company Act that is not derived from or connected with Nebraska sources as determined in section 77-2734.01.

(5) There shall be subtracted from federal adjusted gross income or, for corporations and fiduciaries, federal taxable income dividends received or deemed to be received from corporations which are not subject to the Internal Revenue Code.

(6) There shall be subtracted from federal taxable income a portion of the income earned by a corporation subject to the Internal Revenue Code of 1986 that is actually taxed by a foreign country or one of its political subdivisions at a rate in excess of the maximum federal tax rate for corporations. The taxpayer may make the computation for each foreign country or for groups of foreign countries. The portion of the taxes that may be deducted shall be computed in the following manner:

(a) The amount of federal taxable income from operations within a foreign taxing jurisdiction shall be reduced by the amount of taxes actually paid to the foreign jurisdiction that are not deductible solely because the foreign tax credit was elected on the federal income tax return;

(b) The amount of after-tax income shall be divided by one minus the maximum tax rate for corporations in the Internal Revenue Code; and

(c) The result of the calculation in subdivision (b) of this subsection shall be subtracted from the amount of federal taxable income used in subdivision (a) of this subsection. The result of such calculation, if greater than zero, shall be subtracted from federal taxable income.

(7) Federal adjusted gross income shall be modified to exclude any amount repaid by the taxpayer for which a reduction in federal tax is allowed under section 1341(a)(5) of the Internal Revenue Code.

(8)(a) Federal adjusted gross income or, for corporations and fiduciaries, federal taxable income shall be reduced, to the extent included, by income from interest, earnings, and state contributions received from the Nebraska educational savings plan trust created in sections 85-1801 to 85-1814.

(b) Federal adjusted gross income or, for corporations and fiduciaries, federal taxable income shall be reduced, to the extent not deducted for federal income tax purposes, by the amount of any gift, grant, or donation made to the Nebraska educational savings plan trust for deposit in the endowment fund of the trust.

(c) Federal adjusted gross income or, for corporations and fiduciaries, federal taxable income shall be reduced by any contributions as a participant in the Nebraska educational savings plan trust, to the extent not deducted for federal income tax purposes, but not to exceed two thousand five hundred dollars per married filing separate return or five thousand dollars for any other return.

(d) Federal adjusted gross income or, for corporations and fiduciaries, federal taxable income shall be increased by the amount resulting from the cancellation of a participation agreement refunded to the taxpayer as a participant in the Nebraska educational savings plan trust to the extent previously deducted as a contribution to the trust.

(9)(a) For income tax returns filed after September 10, 2001, for taxable years beginning or deemed to begin before January 1, 2006, under the Internal Revenue Code of 1986, as amended, federal adjusted gross income or, for

corporations and fiduciaries, federal taxable income shall be increased by eighty-five percent of any amount of any federal bonus depreciation received under the federal Job Creation and Worker Assistance Act of 2002 or the federal Jobs and Growth Tax Act of 2003, under section 168(k) or section 1400L of the Internal Revenue Code of 1986, as amended, for assets placed in service after September 10, 2001, and before December 31, 2005.

(b) For a partnership, limited liability company, cooperative, including any cooperative exempt from income taxes under section 521 of the Internal Revenue Code of 1986, as amended, limited cooperative association, subchapter S corporation, or joint venture, the increase shall be distributed to the partners, members, shareholders, patrons, or beneficiaries in the same manner as income is distributed for use against their income tax liabilities.

(c) For a corporation with a unitary business having activity both inside and outside the state, the increase shall be apportioned to Nebraska in the same manner as income is apportioned to the state by section 77-2734.05.

(d) The amount of bonus depreciation added to federal adjusted gross income or, for corporations and fiduciaries, federal taxable income by this subsection shall be subtracted in a later taxable year. Twenty percent of the total amount of bonus depreciation added back by this subsection for tax years beginning or deemed to begin before January 1, 2003, under the Internal Revenue Code of 1986, as amended, may be subtracted in the first taxable year beginning or deemed to begin on or after January 1, 2005, under the Internal Revenue Code of 1986, as amended, and twenty percent in each of the next four following taxable years. Twenty percent of the total amount of bonus depreciation added back by this subsection for tax years beginning or deemed to begin on or after January 1, 2003, may be subtracted in the first taxable year beginning or deemed to begin on or after January 1, 2006, under the Internal Revenue Code of 1986, as amended, and twenty percent in each of the next four following taxable years.

(10) For taxable years beginning or deemed to begin on or after January 1, 2003, and before January 1, 2006, under the Internal Revenue Code of 1986, as amended, federal adjusted gross income or, for corporations and fiduciaries, federal taxable income shall be increased by the amount of any capital investment that is expensed under section 179 of the Internal Revenue Code of 1986, as amended, that is in excess of twenty-five thousand dollars that is allowed under the federal Jobs and Growth Tax Act of 2003. Twenty percent of the total amount of expensing added back by this subsection for tax years beginning or deemed to begin on or after January 1, 2003, may be subtracted in the first taxable year beginning or deemed to begin on or after January 1, 2006, under the Internal Revenue Code of 1986, as amended, and twenty percent in each of the next four following tax years.

(11)(a) Federal adjusted gross income shall be reduced by contributions, up to two thousand dollars per married filing jointly return or one thousand dollars for any other return, and any investment earnings made as a participant in the Nebraska long-term care savings plan under the Long-Term Care Savings Plan Act, to the extent not deducted for federal income tax purposes.

(b) Federal adjusted gross income shall be increased by the withdrawals made as a participant in the Nebraska long-term care savings plan under the act by a person who is not a qualified individual or for any reason other than transfer of funds to a spouse, long-term care expenses, long-term care insur-

ance premiums, or death of the participant, including withdrawals made by reason of cancellation of the participation agreement or termination of the plan, to the extent previously deducted as a contribution or as investment earnings.

(12) There shall be added to federal adjusted gross income for individuals, estates, and trusts any amount taken as a credit for franchise tax paid by a financial institution under sections 77-3801 to 77-3807 as allowed by subsection (5) of section 77-2715.07.

Source: Laws 1967, c. 487, § 16, p. 1579; Laws 1983, LB 619, § 1; Laws 1984, LB 962, § 15; Laws 1984, LB 1124, § 3; Laws 1985, LB 273, § 50; Laws 1986, LB 774, § 9; Laws 1987, LB 773, § 9; Laws 1987, LB 523, § 20; Laws 1989, LB 458, § 2; Laws 1989, LB 459, § 3; Laws 1991, LB 773, § 13; Laws 1993, LB 121, § 504; Laws 1994, LB 977, § 13; Laws 1997, LB 401, § 2; Laws 1998, LB 1028, § 3; Laws 2000, LB 1003, § 15; Laws 2002, LB 1085, § 18; Laws 2003, LB 596, § 1; Laws 2005, LB 216, § 10; Laws 2006, LB 965, § 6; Laws 2006, LB 968, § 9; Laws 2007, LB338, § 1; Laws 2007, LB368, § 135; Laws 2007, LB456, § 2.

Cross References

Limited Liability Company Act, see section 21-2601.

Long-Term Care Savings Plan Act, see section 77-6101.

77-2716.01 Personal exemptions; standard deduction; computation.

(1) Every individual shall be allowed to subtract from his or her income tax liability an amount for personal exemptions. The amount allowed to be subtracted shall be the credit amount for the year as provided in this section multiplied by the number of exemptions allowed on the federal return. For tax year 1993, the credit amount shall be sixty-five dollars; for tax year 1994, the credit amount shall be sixty-nine dollars; for tax year 1995, the credit amount shall be sixty-nine dollars; for tax year 1996, the credit amount shall be seventy-two dollars; for tax year 1997, the credit amount shall be eighty-six dollars; for tax year 1998, the credit amount shall be eighty-eight dollars; for tax year 1999, and each year thereafter, the credit amount shall be adjusted for inflation by the method provided in section 151 of the Internal Revenue Code of 1986, as amended. The eighty-eight-dollar credit amount shall be adjusted for cumulative inflation since 1998. If any credit amount is not an even dollar amount, the amount shall be rounded to the nearest dollar. For nonresident individuals and partial-year resident individuals, the personal exemption credit shall be subtracted as specified in subsection (3) of section 77-2715.

(2)(a) For tax years beginning or deemed to begin on or after January 1, 2003, and before January 1, 2004, under the Internal Revenue Code of 1986, as amended, every individual who did not itemize deductions on his or her federal return shall be allowed to subtract from federal adjusted gross income a standard deduction based on the filing status used on the federal return except as the amount is adjusted under section 77-2716.03. The standard deduction shall be the smaller of the federal standard deduction actually allowed or (i) for single taxpayers four thousand seven hundred fifty dollars, (ii) for head of household taxpayers seven thousand dollars, (iii) for married filing jointly taxpayers seven thousand nine hundred fifty dollars, and (iv) for married filing separately taxpayers three thousand nine hundred seventy-five dollars. Taxpay-

ers who are allowed additional federal standard deduction amounts because of age or blindness shall be allowed an increase in the Nebraska standard deduction for each additional amount allowed on the federal return. The additional amounts shall be for married taxpayers, nine hundred fifty dollars, and for single or head of household taxpayers, one thousand one hundred fifty dollars.

(b) For tax years beginning or deemed to begin on or after January 1, 2007, under the Internal Revenue Code of 1986, as amended, every individual who did not itemize deductions on his or her federal return shall be allowed to subtract from federal adjusted gross income a standard deduction based on the filing status used on the federal return. The standard deduction shall be the smaller of the federal standard deduction actually allowed or (i) for single taxpayers three thousand dollars and (ii) for head of household taxpayers four thousand four hundred dollars. The standard deduction for married filing jointly taxpayers shall be double the standard deduction for single taxpayers, and for married filing separately taxpayers, the standard deduction shall be the same as single taxpayers. Taxpayers who are allowed additional federal standard deduction amounts because of age or blindness shall be allowed an increase in the Nebraska standard deduction for each additional amount allowed on the federal return. The additional amounts shall be for married taxpayers six hundred dollars and for single or head of household taxpayers seven hundred fifty dollars. The amounts in this subdivision will be indexed using 1987 as the base year.

(c) For tax years beginning or deemed to begin on or after January 1, 2007, the standard deduction amounts, including the additional standard deduction amounts, in this subsection shall be adjusted for inflation by the method provided in section 151 of the Internal Revenue Code of 1986, as amended. If any amount is not a multiple of fifty dollars, the amount shall be rounded to the next lowest multiple of fifty dollars.

(3) Every individual who itemized deductions on his or her federal return shall be allowed to subtract from federal adjusted gross income the greater of either the standard deduction allowed in subsection (2) of this section or his or her federal itemized deductions, except for the amount for state or local income taxes included in federal itemized deductions before any federal disallowance.

Source: Laws 1987, LB 773, § 10; Laws 1988, LB 1234, § 2; Laws 1989, LB 739, § 3; Laws 1991, LB 300, § 3; Laws 1993, LB 240, § 5; Laws 1997, LB 401, § 3; Laws 1998, LB 1028, § 4; Laws 2003, LB 596, § 2; Laws 2004, LB 355, § 1; Laws 2006, LB 968, § 10; Laws 2007, LB367, § 21.

77-2716.03 Income tax; disallowance of itemized deductions; calculation.

(1) Any taxpayer whose federal adjusted gross income is larger than the threshold amount determined under section 68 of the Internal Revenue Code of 1986, as amended, for the disallowance of itemized deductions shall calculate the amount of the excess.

(2) A taxpayer's tax liability shall be increased by an amount determined under this subsection. The amount shall be calculated by multiplying the maximum individual tax rate by ten percent of the excess calculated in subsection (1) of this section and subtracting the amount of the tax from the tax tables on ten percent of the excess from the result. The difference shall be the

increase in the tax liability. If taxable income is less than ten percent of the excess, the calculation in this subsection shall be made using taxable income.

Source: Laws 1993, LB 240, § 6; Laws 1995, LB 300, § 1; Laws 2006, LB 968, § 11.

77-2717 Income tax; estates; trusts; rate; fiduciary return; contents; filing; state income tax; contents; credits.

(1)(a) The tax imposed on all resident estates and trusts shall be a percentage of the federal taxable income of such estates and trusts as modified in section 77-2716, plus a percentage of the federal alternative minimum tax and the federal tax on premature or lump-sum distributions from qualified retirement plans. The additional taxes shall be recomputed by (i) substituting Nebraska taxable income for federal taxable income, (ii) calculating what the federal alternative minimum tax would be on Nebraska taxable income and adjusting such calculations for any items which are reflected differently in the determination of federal taxable income, and (iii) applying Nebraska rates to the result. The federal credit for prior year minimum tax, after the recomputations required by the Nebraska Revenue Act of 1967, and the credits provided in the Nebraska Advantage Microenterprise Tax Credit Act and the Nebraska Advantage Research and Development Act shall be allowed as a reduction in the income tax due. A refundable income tax credit shall be allowed for all resident estates and trusts under the Nebraska Advantage Microenterprise Tax Credit Act and the Nebraska Advantage Research and Development Act.

(b) The tax imposed on all nonresident estates and trusts shall be the portion of the tax imposed on resident estates and trusts which is attributable to the income derived from sources within this state. The tax which is attributable to income derived from sources within this state shall be determined by multiplying the liability to this state for a resident estate or trust with the same total income by a fraction, the numerator of which is the nonresident estate's or trust's Nebraska income as determined by sections 77-2724 and 77-2725 and the denominator of which is its total federal income after first adjusting each by the amounts provided in section 77-2716. The federal credit for prior year minimum tax, after the recomputations required by the Nebraska Revenue Act of 1967, reduced by the percentage of the total income which is attributable to income from sources outside this state, and the credits provided in the Nebraska Advantage Microenterprise Tax Credit Act and the Nebraska Advantage Research and Development Act shall be allowed as a reduction in the income tax due. A refundable income tax credit shall be allowed for all nonresident estates and trusts under the Nebraska Advantage Microenterprise Tax Credit Act and the Nebraska Advantage Research and Development Act.

(2) In all instances wherein a fiduciary income tax return is required under the provisions of the Internal Revenue Code, a Nebraska fiduciary return shall be filed, except that a fiduciary return shall not be required to be filed regarding a simple trust if all of the trust's beneficiaries are residents of the State of Nebraska, all of the trust's income is derived from sources in this state, and the trust has no federal tax liability. The fiduciary shall be responsible for making the return for the estate or trust for which he or she acts, whether the income be taxable to the estate or trust or to the beneficiaries thereof. The fiduciary shall include in the return a statement of each beneficiary's distributive share of net income when such income is taxable to such beneficiaries.

(3) The beneficiaries of such estate or trust who are residents of this state shall include in their income their proportionate share of such estate's or trust's federal income and shall reduce their Nebraska tax liability by their proportionate share of the credits as provided in the Nebraska Advantage Microenterprise Tax Credit Act and the Nebraska Advantage Research and Development Act. There shall be allowed to a beneficiary a refundable income tax credit under the Beginning Farmer Tax Credit Act for all taxable years beginning or deemed to begin on or after January 1, 2001, under the Internal Revenue Code of 1986, as amended.

(4) If any beneficiary of such estate or trust is a nonresident during any part of the estate's or trust's taxable year, he or she shall file a Nebraska income tax return which shall include (a) in Nebraska adjusted gross income that portion of the estate's or trust's Nebraska income, as determined under sections 77-2724 and 77-2725, allocable to his or her interest in the estate or trust and (b) a reduction of the Nebraska tax liability by his or her proportionate share of the credits as provided in the Nebraska Advantage Microenterprise Tax Credit Act and the Nebraska Advantage Research and Development Act and shall execute and forward to the fiduciary, on or before the original due date of the Nebraska fiduciary return, an agreement which states that he or she will file a Nebraska income tax return and pay income tax on all income derived from or connected with sources in this state, and such agreement shall be attached to the Nebraska fiduciary return for such taxable year.

(5) In the absence of the nonresident beneficiary's executed agreement being attached to the Nebraska fiduciary return, the estate or trust shall remit a portion of such beneficiary's income which was derived from or attributable to Nebraska sources with its Nebraska return for the taxable year. The amount of remittance, in such instance, shall be the highest individual income tax rate determined under section 77-2715.02 multiplied by the nonresident beneficiary's share of the estate or trust income which was derived from or attributable to sources within this state. The amount remitted shall be allowed as a credit against the Nebraska income tax liability of the beneficiary.

(6) The Tax Commissioner may allow a nonresident beneficiary to not file a Nebraska income tax return if the nonresident beneficiary's only source of Nebraska income was his or her share of the estate's or trust's income which was derived from or attributable to sources within this state, the nonresident did not file an agreement to file a Nebraska income tax return, and the estate or trust has remitted the amount required by subsection (5) of this section on behalf of such nonresident beneficiary. The amount remitted shall be retained in satisfaction of the Nebraska income tax liability of the nonresident beneficiary.

(7) For purposes of this section, unless the context otherwise requires, simple trust shall mean any trust instrument which (a) requires that all income shall be distributed currently to the beneficiaries, (b) does not allow amounts to be paid, permanently set aside, or used in the tax year for charitable purposes, and (c) does not distribute amounts allocated in the corpus of the trust. Any trust which does not qualify as a simple trust shall be deemed a complex trust.

(8) For purposes of this section, any beneficiary of an estate or trust that is a grantor trust of a nonresident shall be disregarded and this section shall apply as though the nonresident grantor was the beneficiary.

Source: Laws 1967, c. 487, § 17, p. 1579; Laws 1969, c. 690, § 1, p. 2683; Laws 1973, LB 531, § 1; Laws 1985, LB 273, § 51; Laws 1987,

LB 523, § 21; Laws 1991, LB 773, § 14; Laws 1994, LB 977, § 14; Laws 2000, LB 1223, § 1; Laws 2001, LB 433, § 5; Laws 2005, LB 312, § 13; Laws 2006, LB 1003, § 6; Laws 2007, LB367, § 22; Laws 2008, LB915, § 1.
Operative date January 1, 2008.

Cross References

Beginning Farmer Tax Credit Act, see section 77-5201.
Nebraska Advantage Microenterprise Tax Credit Act, see section 77-5901.
Nebraska Advantage Research and Development Act, see section 77-5801.

77-2727 Income tax; partnership; subject to act; credit.

(1) A partnership as such shall not be subject to the income tax imposed by the Nebraska Revenue Act of 1967. Persons or their authorized representatives carrying on business as partners shall be liable for the income tax imposed by the Nebraska Revenue Act of 1967 only in their separate or individual capacities.

(2) The partners of such partnership who are residents of this state or corporations shall include in their incomes their proportionate share of such partnership's income.

(3) If any partner of such partnership is a nonresident individual during any part of the partnership's reporting year, he or she shall file a Nebraska income tax return which shall include in Nebraska adjusted gross income that portion of the partnership's Nebraska income, as determined under the provisions of sections 77-2728 and 77-2729, allocable to his or her interest in the partnership and shall execute and forward to the partnership, on or before the original due date of the Nebraska partnership return, an agreement which states that he or she will file a Nebraska income tax return and pay income tax on all income derived from or attributable to sources in this state, and such agreement shall be attached to the partnership's Nebraska return for such reporting year.

(4)(a) Except as provided in subdivision (c) of this subsection, in the absence of the nonresident individual partner's executed agreement being attached to the Nebraska partnership return, the partnership shall remit a portion of such partner's income which was derived from or attributable to Nebraska sources with its Nebraska return for the reporting year. The amount of remittance, in such instance, shall be the highest individual income tax rate determined under section 77-2715.02 multiplied by the nonresident individual partner's share of the partnership income which was derived from or attributable to sources within this state.

(b) Any amount remitted on behalf of any partner shall be allowed as a credit against the Nebraska income tax liability of the partner.

(c) Subdivision (a) of this subsection does not apply to a publicly traded partnership as defined by section 7704(b) of the Internal Revenue Code of 1986, as amended, that is treated as a partnership for the purposes of the code and that has agreed to file an annual information return with the Department of Revenue reporting the name, address, taxpayer identification number, and other information requested by the department of each unit holder with an income in the state in excess of five hundred dollars.

(5) The Tax Commissioner may allow a nonresident individual partner to not file a Nebraska income tax return if the nonresident individual partner's only source of Nebraska income was his or her share of the partnership's income

which was derived from or attributable to sources within this state, the nonresident did not file an agreement to file a Nebraska income tax return, and the partnership has remitted the amount required by subsection (4) of this section on behalf of such nonresident individual partner. The amount remitted shall be retained in satisfaction of the Nebraska income tax liability of the nonresident individual partner.

(6) For purposes of this section, any partner that is a grantor trust of a nonresident shall be disregarded and this section shall apply as though the nonresident grantor was the partner.

Source: Laws 1967, c. 487, § 27, p. 1583; Laws 1973, LB 531, § 2; Laws 1985, LB 273, § 52; Laws 1991, LB 773, § 15; Laws 2005, LB 216, § 11; Laws 2008, LB915, § 2.
Operative date January 1, 2008.

77-2734.01 Small business corporation shareholders; limited liability company members; determination of income; credit; Tax Commissioner; powers; return; when required.

(1) Residents of Nebraska who are shareholders of a small business corporation having an election in effect under subchapter S of the Internal Revenue Code or who are members of a limited liability company organized pursuant to the Limited Liability Company Act shall include in their Nebraska taxable income, to the extent includable in federal gross income, their proportionate share of such corporation's or limited liability company's federal income adjusted pursuant to this section. Income or loss from such corporation or limited liability company conducting a business, trade, profession, or occupation shall be included in the Nebraska taxable income of a shareholder or member who is a resident of this state to the extent of such shareholder's or member's proportionate share of the net income or loss from the conduct of such business, trade, profession, or occupation within this state, determined under subsection (2) of this section. A resident of Nebraska shall include in Nebraska taxable income fair compensation for services rendered to such corporation or limited liability company. Compensation actually paid shall be presumed to be fair unless it is apparent to the Tax Commissioner that such compensation is materially different from fair value for the services rendered or has been manipulated for tax avoidance purposes.

(2) The income of any small business corporation having an election in effect under subchapter S of the Internal Revenue Code or limited liability company organized pursuant to the Limited Liability Company Act that is derived from or connected with Nebraska sources shall be determined in the following manner:

(a) If the small business corporation is a member of a unitary group, the small business corporation shall be deemed to be doing business within this state if any part of its income is derived from transactions with other members of the unitary group doing business within this state, and such corporation shall apportion its income by using the apportionment factor determined for the entire unitary group, including the small business corporation, under sections 77-2734.05 to 77-2734.15;

(b) If the small business corporation or limited liability company is not a member of a unitary group and is subject to tax in another state, it shall apportion its income under sections 77-2734.05 to 77-2734.15; and

(c) If the small business corporation or limited liability company is not subject to tax in another state, all of its income is derived from or connected with Nebraska sources.

(3) Nonresidents of Nebraska who are shareholders of such corporations or members of such limited liability companies shall file a Nebraska income tax return and shall include in Nebraska adjusted gross income their proportionate share of the corporation's or limited liability company's Nebraska income as determined under subsection (2) of this section.

(4) The nonresident shareholder or member shall execute and forward to the corporation or limited liability company before the filing of the corporation's or limited liability company's return an agreement which states he or she will file a Nebraska income tax return and pay the tax on the income derived from or connected with sources in this state, and such agreement shall be attached to the corporation's or limited liability company's Nebraska return for such taxable year.

(5) In the absence of the nonresident shareholder's or member's executed agreement being attached to the Nebraska return, the corporation or limited liability company shall remit with the return an amount equal to the highest individual income tax rate determined under section 77-2715.02 multiplied by the nonresident shareholder's or member's share of the corporation's or limited liability company's income which was derived from or attributable to this state. The amount remitted shall be allowed as a credit against the Nebraska income tax liability of the shareholder or member.

(6) The Tax Commissioner may allow a nonresident individual shareholder or member to not file a Nebraska income tax return if the nonresident individual shareholder's or member's only source of Nebraska income was his or her share of the small business corporation's or limited liability company's income which was derived from or attributable to sources within this state, the nonresident did not file an agreement to file a Nebraska income tax return, and the small business corporation or limited liability company has remitted the amount required by subsection (5) of this section on behalf of such nonresident individual shareholder or member. The amount remitted shall be retained in satisfaction of the Nebraska income tax liability of the nonresident individual shareholder or member.

(7) A small business corporation or limited liability company return shall be filed only if one or more of the shareholders of the corporation or members of the limited liability company are not residents of the State of Nebraska or if such corporation or limited liability company has income derived from sources outside this state.

(8) For purposes of this section, any shareholder or member of the corporation or limited liability company that is a grantor trust of a nonresident shall be disregarded and this section shall apply as though the nonresident grantor was the shareholder or member.

Source: Laws 1984, LB 1124, § 4; Laws 1985, LB 273, § 54; Laws 1987, LB 773, § 18; Laws 1987, LB 523, § 23; Laws 1991, LB 773, § 16; Laws 1993, LB 121, § 508; Laws 2005, LB 216, § 12; Laws 2008, LB915, § 3.

Operative date January 1, 2008.

Cross References

Limited Liability Company Act, see section 21-2601.

77-2734.02 Corporate taxpayer; income tax rate; how determined.

(1) Except as provided in subsection (2) of this section, a tax is hereby imposed for each taxable year on the taxable income of every corporate taxpayer that is doing business in this state at a rate equal to one hundred fifty and eight-tenths percent of the primary rate imposed on individuals under section 77-2701.01 on the first one hundred thousand dollars of taxable income and at the rate of two hundred eleven percent of such rate on all taxable income in excess of one hundred thousand dollars. The resultant rates shall be rounded to the nearest one hundredth of one percent.

For corporate taxpayers with a fiscal year that does not coincide with the calendar year, the individual rate used for this subsection shall be the rate in effect on the first day, or the day deemed to be the first day, of the taxable year.

(2) An insurance company shall be subject to taxation at the lesser of the rate described in subsection (1) of this section or the rate of tax imposed by the state or country in which the insurance company is domiciled if the insurance company can establish to the satisfaction of the Tax Commissioner that it is domiciled in a state or country other than Nebraska that imposes on Nebraska domiciled insurance companies a retaliatory tax against the tax described in subsection (1) of this section.

(3) For a corporate taxpayer that is subject to tax in another state, its taxable income shall be the portion of the taxpayer's federal taxable income, as adjusted, that is determined to be connected with the taxpayer's operations in this state pursuant to sections 77-2734.05 to 77-2734.15.

(4) Each corporate taxpayer shall file only one income tax return for each taxable year.

Source: Laws 1984, LB 1124, § 5; Laws 1987, LB 773, § 19; Laws 1995, LB 300, § 2; Laws 2008, LB888, § 1.
Operative date January 1, 2008.

77-2734.03 Income tax; tax credits.

(1)(a) For taxable years commencing prior to January 1, 1997, any (i) insurer paying a tax on premiums and assessments pursuant to section 77-908 or 81-523, (ii) electric cooperative organized under the Joint Public Power Authority Act, or (iii) credit union shall be credited, in the computation of the tax due under the Nebraska Revenue Act of 1967, with the amount paid during the taxable year as taxes on such premiums and assessments and taxes in lieu of intangible tax.

(b) For taxable years commencing on or after January 1, 1997, any insurer paying a tax on premiums and assessments pursuant to section 77-908 or 81-523, any electric cooperative organized under the Joint Public Power Authority Act, or any credit union shall be credited, in the computation of the tax due under the Nebraska Revenue Act of 1967, with the amount paid during the taxable year as (i) taxes on such premiums and assessments included as Nebraska premiums and assessments under section 77-2734.05 and (ii) taxes in lieu of intangible tax.

(c) For taxable years commencing or deemed to commence prior to, on, or after January 1, 1998, any insurer paying a tax on premiums and assessments

pursuant to section 77-908 or 81-523 shall be credited, in the computation of the tax due under the Nebraska Revenue Act of 1967, with the amount paid during the taxable year as assessments allowed as an offset against premium and related retaliatory tax liability pursuant to section 44-4233.

(2) There shall be allowed to corporate taxpayers a tax credit for contributions to community betterment programs as provided in the Community Development Assistance Act.

(3) There shall be allowed to corporate taxpayers a refundable income tax credit under the Beginning Farmer Tax Credit Act for all taxable years beginning or deemed to begin on or after January 1, 2001, under the Internal Revenue Code of 1986, as amended.

(4) The changes made to this section by Laws 2004, LB 983, apply to motor fuels purchased during any tax year ending or deemed to end on or after January 1, 2005, under the Internal Revenue Code of 1986, as amended.

(5) There shall be allowed to corporate taxpayers refundable income tax credits under the Nebraska Advantage Microenterprise Tax Credit Act and the Nebraska Advantage Research and Development Act.

(6) There shall be allowed to corporate taxpayers a nonrefundable income tax credit for investment in a biodiesel facility as provided in section 77-27,236.

Source: Laws 1984, LB 1124, § 6; Laws 1985, LB 273, § 55; Laws 1986, LB 1114, § 19; Laws 1992, LB 719A, § 176; Laws 1992, LB 1063, § 184; Laws 1993, LB 5, § 4; Laws 1993, LB 815, § 25; Laws 1996, LB 898, § 6; Laws 1997, LB 55, § 4; Laws 1997, LB 61, § 1; Laws 1998, LB 1035, § 24; Laws 2000, LB 1223, § 2; Laws 2001, LB 433, § 6; Laws 2004, LB 983, § 68; Laws 2005, LB 312, § 14; Laws 2007, LB343, § 6; Laws 2007, LB367, § 23.

Cross References

Beginning Farmer Tax Credit Act, see section 77-5201.

Community Development Assistance Act, see section 13-201.

Joint Public Power Authority Act, see section 70-1401.

Nebraska Advantage Microenterprise Tax Credit Act, see section 77-5901.

Nebraska Advantage Research and Development Act, see section 77-5801.

77-2753 Income tax; withholding from wages and other payments; Department of Revenue; create data base of contractors.

(1)(a) Every employer and payor maintaining an office or transacting business within this state and making payment of any wages or other payments as defined in subsection (6) of this section which are taxable under the Nebraska Revenue Act of 1967 to any individual shall deduct and withhold from such wages for each payroll period and from such payments a tax computed in such manner as to result, so far as practicable, in withholding from the employee's wages and payments to the payee during each calendar year an amount substantially equivalent to the tax reasonably estimated to be due from the employee or payee under such act with respect to the amount of such wages and payments included in his or her taxable income during the calendar year. The method of determining the amount to be withheld shall be prescribed by rules and regulations of the Tax Commissioner. Such rules and regulations may allow withholding to be computed at a percentage of the federal withholding or at a comparable flat percentage for gambling winnings or supplemental payments, including bonuses, commissions, overtime pay, and sales awards which are not paid at the same time as other wages, or payments to independent

contractors. Any withholding tables prescribed by the Tax Commissioner shall be provided to the budget division of the Department of Administrative Services and the Legislative Fiscal Analyst for review at least sixty days before the tables become effective.

(b) Notwithstanding the amount of federal withholding or the rules and regulations of the Department of Revenue determining the amount of withholding, every employer and payor employing twenty-five or more employees shall withhold at least one and one-half percent of the gross wages minus tax qualified deductions of each employee unless the employee provides satisfactory evidence that a lesser amount of withholding is justified in the employee's particular circumstances. Such satisfactory evidence may include birth certificates or social security information for dependents or other evidence that reasonably assures the employer that the employee is not improperly or fraudulently evading or defeating the income tax by reducing or eliminating withholding.

(2)(a) Every payor who is either (i) making a payment or payments in excess of five thousand dollars or (ii) maintaining an office or transacting business within this state and making a payment or payments related to such business in excess of six hundred dollars, and such payment or payments are for personal services performed or to be performed substantially within this state, to a nonresident individual, other than an employee, who is not subject to withholding on such payment under the Internal Revenue Code or a corporation, partnership, or limited liability company described in subdivision (c) of this subsection, shall be deemed an employer, and the individual performing the personal services shall be deemed an employee for the purposes of this section. The payor shall deduct and withhold from such payments the percentage of such payments prescribed in subdivision (b) of this subsection. If the individual performing the personal services provides the payor with a statement of the expenses reasonably related to the personal services, the total payment or payments may be reduced by the total expenses before computing the amount to deduct and withhold, except that such reduction shall not be more than fifty percent of such payment or payments.

(b) For any payment or payments for the same service, award, or purse that totals less than twenty-eight thousand dollars, the percentage deducted from such payment or payments pursuant to this subsection shall be four percent, and for all other payments, the percentage shall be six percent.

(c) For any corporation, partnership, or limited liability company that receives compensation for personal services in this state and of which all or substantially all of the shareholders, partners, or members are the individuals performing the personal services, including, but not limited to, individual athletes, entertainers, performers, or public speakers performing such personal services, such compensation shall be deemed wages of the individuals performing the personal services and subject to the income tax imposed on individuals by the Nebraska Revenue Act of 1967.

(d) The withholding required by this subsection shall not apply to any payment to a nonresident alien, corporation, partnership, or limited liability company if such individual, shareholder, partner, or member provides the payor with a statement that the income earned is not subject to tax because of a treaty obligation of the United States or if such payment is subject to withholding under subsection (3) of this section.

(3)(a) Every contractor who is maintaining an office or transacting business within this state and making a payment or payments related to such business in excess of six hundred dollars, and such payment or payments are for construction services performed within this state, to any contractor or any person that is not an employee shall deduct and withhold five percent of such payments.

(b) The withholding required by this subsection shall not apply to any payment made to (i) a person that provides the payor with a statement that the income earned is not subject to tax because of a treaty obligation of the United States or (ii) a contractor when the payor contractor determines that the payee contractor is in the data base required by this subsection.

(c) The Department of Revenue shall create a data base of contractors who are licensed, granted a permit, or registered under the Nebraska Revenue Act of 1967 or under section 77-3102. The data base shall be accessible on the web site of the department.

(d) Any contractor who determines that a contractor is in the data base is relieved from liability for withholding under either this subsection or section 77-3106 for any future payments on a contract in existence at the time the determination is made or made during the same calendar year as such determination is made.

(e) Withholding required by this subsection shall be considered to be withholding of income tax for purposes of the Nebraska Revenue Act of 1967.

(f) For purposes of this subsection:

(i) Construction services means services that are provided as a contractor; and

(ii) Contractor has the same meaning as in section 77-3101.

(4) The Tax Commissioner may enter into agreements with the tax departments of other states, which require income tax to be withheld from the payment of wages, salaries, and such other payments, so as to govern the amounts to be withheld from the wages and salaries of and other payments to residents of such states. Such agreements may provide for recognition of anticipated tax credits in determining the amounts to be withheld and, under rules and regulations adopted and promulgated by the Tax Commissioner, may relieve employers and payors in this state from withholding income tax on wages, salaries, and such other payments paid to nonresident employees and payees. The agreements authorized by this subsection shall be subject to the condition that the tax department of such other states grant similar treatment to residents of this state.

(5) The Tax Commissioner shall enter into an agreement with the United States Office of Personnel Management for the withholding of income tax imposed on individuals by the Nebraska Revenue Act of 1967 on civil service annuity payments for those recipients who voluntarily request withholding. The agreement shall be pursuant to 5 U.S.C. 8345 and the rules and regulations adopted and promulgated by the Tax Commissioner.

(6) Wages and other payments subject to withholding shall mean payments that are subject to withholding under the Internal Revenue Code of 1986 and are (a) payments made by employers to employees, except such payments subject to 26 U.S.C. 3406, (b) payments of gambling winnings, (c) pension or

annuity payments when the recipient has requested the payor to withhold from such payments, or (d) payments to independent contractors.

Source: Laws 1967, c. 487, § 53, p. 1594; Laws 1977, LB 355, § 1; Laws 1984, LB 962, § 18; Laws 1986, LB 1027, § 208; Laws 1987, LB 284, § 1; Laws 1987, LB 773, § 21; Laws 1987, LB 523, § 24; Laws 1988, LB 1064, § 1; Laws 1990, LB 896, § 1; Laws 1993, LB 121, § 509; Laws 1993, LB 345, § 61; Laws 1994, LB 1175, § 2; Laws 2005, LB 216, § 13; Laws 2007, LB223, § 12; Laws 2008, LB1001, § 9; Laws 2008, LB1004, § 1.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB1001, section 9, with LB1004, section 1, to reflect all amendments.

Note: Changes made by LB1004 became effective April 17, 2008. Changes made by LB1001 became operative January 1, 2009.

77-2756 Income tax; employer or payor; withholding for tax.

(1) Except as provided in subsection (2) of this section, every employer or payor required to deduct and withhold income tax under the Nebraska Revenue Act of 1967 shall, for each calendar quarter, on or before the last day of the month following the close of such calendar quarter, file a withholding return as prescribed by the Tax Commissioner and pay over to the Tax Commissioner or to a depository designated by the Tax Commissioner the taxes so required to be deducted and withheld. When the aggregate amount required to be deducted and withheld by any employer or payor for either the first or second month of a calendar quarter exceeds five hundred dollars, the employer or payor shall, by the fifteenth day of the succeeding month, pay over such aggregate amount to the Tax Commissioner or to a depository designated by the Tax Commissioner. The amount so paid shall be allowed as a credit against the liability shown on the employer's or payor's quarterly withholding return required by this section. The Tax Commissioner may, by rule and regulation, provide for the filing of returns and the payment of the tax deducted and withheld on other than a quarterly basis.

(2) When the aggregate amount required to be deducted and withheld by any employer or payor for the entire calendar year is less than five hundred dollars or the employer or payor is allowed to file federal withholding returns annually, the employer or payor shall, for each calendar year, on or before the last day of the month following the close of such calendar year, file a withholding return as prescribed by the Tax Commissioner and pay over to the Tax Commissioner or to a depository designated by the Tax Commissioner the taxes so required to be deducted and withheld. The employer or payor may elect or the Tax Commissioner may require the filing of returns and the payment of taxes on a quarterly basis.

(3) Whenever any employer or payor fails to collect, truthfully account for, pay over, or make returns of the income tax as required by this section, the Tax Commissioner may serve a notice requiring such employer or payor to collect the taxes which become collectible after service of such notice, to deposit such taxes in a bank approved by the Tax Commissioner in a separate account in trust for and payable to the Tax Commissioner, and to keep the amount of such tax in such account until paid over to the Tax Commissioner. Such notice shall remain in effect until a notice of cancellation is served by the Tax Commissioner.

(4) Any employer or payor may appoint an agent in accordance with section 3504 of the Internal Revenue Code of 1986, as amended, for the purpose of

withholding, reporting, or making payment of amounts withheld on behalf of the employer or payor. The agent shall be considered an employer or payor for purposes of the Nebraska Revenue Act of 1967 and, with the actual employer or payor, shall be jointly and severally liable for any amount required to be withheld and paid over to the Tax Commissioner and any additions to tax, penalties, and interest with respect thereto.

(5) The employer or payor shall also file on or before March 15 of the succeeding year a copy of each statement furnished by such employer or payor to each employee or payee with respect to taxes withheld on wages or payments subject to withholding. Any employer, payor, or agent who furnished more than two hundred fifty statements for a year shall file the required copies electronically in a manner approved by the Tax Commissioner that is compatible with federal electronic filing requirements or methods.

Source: Laws 1967, c. 487, § 56, p. 1596; Laws 1984, LB 962, § 21; Laws 1988, LB 1064, § 2; Laws 1997, LB 62, § 2; Laws 2005, LB 216, § 14; Laws 2007, LB223, § 13.

77-2769 Income tax; estimated tax; payment; date.

(1) Every resident and nonresident individual, corporation, and other entity taxed as a corporation under the Internal Revenue Code shall pay the estimated tax for the taxable year, in such form as the Tax Commissioner may prescribe, except that (a) no payment of estimated tax is required by an individual if the estimated tax can reasonably be expected to be less than five hundred dollars and (b) no payment of estimated tax is required by a corporation or other entity taxed as a corporation under the Internal Revenue Code if the estimated tax can reasonably be expected to be less than four hundred dollars.

(2)(a) Estimated tax for an individual shall mean the amount which the individual estimates to be his or her income tax under sections 77-2714 to 77-27,135 for the taxable year less the amount which he or she estimates to be the sum of any credits allowable.

(b) Estimated tax for a corporation or other entity taxed as a corporation under the Internal Revenue Code shall mean the amount which the corporation or business estimates to be its income tax under sections 77-2714 to 77-27,135 for the taxable year less the amount which is estimated to be the sum of any credits allowable.

(3) If they are eligible to do so for federal tax purposes, a husband and wife may make a joint payment of estimated tax as if they were one taxpayer, in which case the liability with respect to the estimated tax shall be joint and several. If a joint payment is made but husband and wife elect to determine their taxes separately, the estimated tax for such year may be treated as the estimated tax of either husband or wife, or may be divided between them, as they may elect.

(4) The payment of estimated tax for an individual under a disability shall be made and filed in the manner provided in subsection (2) of section 77-2763 for an income tax return.

(5) The payment of estimated tax shall be paid on or before the dates prescribed by the laws of the United States for payment of estimated federal income tax, except that the Tax Commissioner, by rule and regulation, may establish other dates for payment of estimated tax.

(6) The application of this section to taxable years of less than twelve months shall be in accordance with regulations prescribed by the Tax Commissioner.

(7) Payment of the estimated income tax or any installment thereof shall be considered payment on account of the income tax imposed under sections 77-2714 to 77-27,135 for the taxable year.

Source: Laws 1967, c. 487, § 69, p. 1600; Laws 1973, LB 526, § 5; Laws 1983, LB 363, § 4; Laws 1984, LB 962, § 24; Laws 1985, LB 344, § 5; Laws 1985, LB 273, § 60; Laws 2008, LB915, § 4.
Operative date January 1, 2008.

77-2775 Federal income tax return; modified or amended; change in tax liability owed to this state; taxpayer; duties.

(1) If the amount of a taxpayer's federal adjusted gross income, taxable income, or tax liability reported on his or her federal income tax return for any taxable year is changed or corrected by the Internal Revenue Service or other competent authority or as the result of a renegotiation of a contract or subcontract with the United States, the taxpayer shall report such change or correction in federal adjusted gross income, taxable income, or tax liability within sixty days after the final determination of such change, correction, or renegotiation.

(2) Whenever the amount of a taxpayer's income which is taxable in any state for any taxable year or any tax credits allowable in such state are changed or corrected in a way material to the tax liability owed to this state by the agency having authority to examine returns filed with such state or any other competent authority or whenever an amended return is filed by any taxpayer with a change or correction material to the tax liability owed to this state with another state, such change or correction shall be reported to the Tax Commissioner within sixty days after the final change or correction or filing of the amended return. The Tax Commissioner shall by rule and regulation provide the nature of any change or correction which must be reported.

(3) The taxpayer shall report all changes or corrections required to be reported under this section by filing an amended income tax return and shall give such information as the Tax Commissioner may require. The taxpayer shall concede the accuracy of any change or correction or state why it is erroneous.

(4) Any taxpayer filing an amended federal income tax return shall also file within sixty days thereafter an amended income tax return under the Nebraska Revenue Act of 1967 and shall give such information as the Tax Commissioner may require. For any amended federal income tax return requesting a credit or refund, the amended Nebraska income tax return shall be filed within sixty days after the taxpayer has received proof of federal acceptance of the credit or refund or within the time for filing an amended Nebraska income tax return that would otherwise be applicable notwithstanding the amended federal income tax return, whichever is later.

Source: Laws 1967, c. 487, § 75, p. 1603; Laws 1987, LB 773, § 23; Laws 1993, LB 345, § 62; Laws 1997, LB 62, § 3; Laws 2005, LB 216, § 15; Laws 2008, LB914, § 9.
Operative date January 1, 2009.

77-2776 Income tax; Tax Commissioner; return; examination; failure to file; notice; deficiency; notice.

(1) As soon as practical after an income tax return is filed, the Tax Commissioner shall examine it to determine the correct amount of tax. If the Tax Commissioner finds that the amount of tax shown on the return is less than the correct amount, he or she shall notify the taxpayer of the amount of the deficiency proposed to be assessed. If the Tax Commissioner finds that the tax paid is more than the correct amount, he or she shall credit the overpayment against any taxes due by the taxpayer and refund the difference. The Tax Commissioner shall, upon request, make prompt assessment of taxes due as provided by the laws of the United States for federal income tax purposes.

(2) If the taxpayer fails to file an income tax return, the Tax Commissioner shall estimate the taxpayer's tax liability from any available information and notify the taxpayer of the amount proposed to be assessed as in the case of a deficiency.

(3) A notice of deficiency shall set forth the reason for the proposed assessment or for the change in the amount of credit or loss to be carried over to another year. The notice may be mailed by certified or registered mail to the taxpayer at his or her last-known address. In the case of a joint return, the notice of deficiency may be a single joint notice, except that if the Tax Commissioner is notified by either spouse that separate residences have been established, the Tax Commissioner shall mail joint notices to each spouse. If the taxpayer is deceased or under a legal disability, a notice of deficiency may be mailed to his or her last-known address unless the Tax Commissioner has received notice of the existence of a fiduciary relationship with respect to such taxpayer.

(4) A notice of deficiency regarding an item of entity income may be mailed by certified or registered mail to the entity at its last-known address or to the address of the entity's tax matters person for federal income tax purposes. Such notice shall be deemed to have been received by each partner, shareholder, or member of such entity, but only for items of entity income reported by the partner, shareholder, or member.

Source: Laws 1967, c. 487, § 76, p. 1604; Laws 2005, LB 216, § 16.

77-2777 Income tax; deficiency; notice.

Sixty days after the date on which it was mailed, or one hundred fifty days if the taxpayer is outside the United States, a notice of proposed assessment of a deficiency shall constitute a final assessment of the amount of tax specified together with interest, additions to tax, and penalties except only for such amounts as to which the taxpayer has filed a protest with the Tax Commissioner.

Source: Laws 1967, c. 487, § 77, p. 1605; Laws 1993, LB 345, § 63; Laws 1994, LB 977, § 16; Laws 2008, LB914, § 10.

Operative date January 1, 2009.

77-2778 Income tax; deficiency; written protest; time.

Within sixty days after the mailing of a deficiency notice, or one hundred fifty days if the taxpayer is outside the United States, the taxpayer or any person directly interested may file with the Tax Commissioner a written protest against the proposed assessment in which he or she shall set forth the grounds on which the protest is based. If a protest is filed, the Tax Commissioner shall reconsider the assessment of the deficiency and, if the taxpayer has so request-

ed, shall grant the taxpayer or his or her authorized representative an oral hearing. For purposes of this section, a person shall be directly interested in a deficiency determination when such deficiency could be collected from such person.

Source: Laws 1967, c. 487, § 78, p. 1605; Laws 1993, LB 345, § 64; Laws 1994, LB 977, § 17; Laws 2008, LB914, § 11.
Operative date January 1, 2009.

77-2780 Income tax; Tax Commissioner; action on taxpayer's protest; when final.

The action of the Tax Commissioner on the taxpayer's protest shall be final upon the expiration of sixty days after the date when the Tax Commissioner mails notice of his or her action to the taxpayer unless within this period the taxpayer seeks review of the Tax Commissioner's determination as provided in the Nebraska Revenue Act of 1967.

Source: Laws 1967, c. 487, § 80, p. 1605; Laws 1993, LB 345, § 65; Laws 1994, LB 977, § 18; Laws 2008, LB914, § 12.
Operative date January 1, 2009.

77-2786 Deficiency determination; notice; limitation; extension of time periods.

(1) Except as otherwise provided in the Nebraska Revenue Act of 1967, a notice of a proposed deficiency determination shall be mailed to the taxpayer within three years after the return was filed. Except as otherwise provided in the Nebraska Revenue Act of 1967, no deficiency shall be assessed or collected with respect to the year for which the return was filed unless a notice of a proposed deficiency determination is mailed within three years after the return was filed or the period otherwise fixed.

(2) If the taxpayer omits from Nebraska taxable income an amount properly includable therein which is in excess of twenty-five percent of the amount of taxable income stated in the return or a corporate return omits a properly includable member of the unitary group as defined in section 77-2734.04, a notice of a deficiency determination may be mailed to the taxpayer within six years after the return was filed. A notice of deficiency determination based on the omission of a member of a unitary group shall be limited to the increase in the tax caused by including the omitted member. For purposes of this subsection, there shall not be taken into account any amount which is omitted in the return if such amount is disclosed in the return, or in a statement attached to the return, in a manner adequate to apprise the Tax Commissioner of the nature and amount of such item and the manner in which such item would affect the computation of Nebraska taxable income.

(3) If no return is filed or a false and fraudulent return is filed with intent to evade the income tax imposed by the Nebraska Revenue Act of 1967, a notice of deficiency determination may be mailed to the taxpayer at any time.

(4) If a taxpayer fails to comply with the requirement of section 77-2775 by not reporting a change or correction increasing his or her federal adjusted gross income, taxable income, or tax liability or a change or correction which is treated in the same manner as if it were a deficiency determination for federal income tax purposes, or by not reporting a change or correction in income taxable in or tax credit allowable by any state to the extent required by the Tax

Commissioner by regulation, or in not filing an amended return, a notice of deficiency determination based on a complete examination of the tax liability for the tax years involved may be mailed to the taxpayer at any time.

(5) If the taxpayer, pursuant to section 77-2775, reports a federal change or correction or a state change or correction, files an amended return increasing his or her federal adjusted gross income, taxable income, or tax liability, or reports a change or correction which is treated in the same manner as if it were a deficiency for federal income tax purposes, a notice of a deficiency determination based on a redetermination of Nebraska tax liability to reflect the change or correction may be mailed at any time within two years after such report or amended return was filed.

(6) When, before the expiration of the time prescribed in this section for the mailing of a notice of deficiency determination, both the Tax Commissioner and the taxpayer have consented in writing to the mailing after such time, the notice of deficiency determination may be mailed at any time prior to the expiration of the period agreed upon. The period so agreed may be extended by subsequent agreement in writing made before the expiration of the period previously agreed upon.

An agreement between the taxpayer and the Internal Revenue Service providing for the extension of the period for the mailing of a notice of deficiency determination of federal income taxes shall constitute an agreement with the Tax Commissioner to extend the period for assessment of income taxes under the Nebraska Revenue Act of 1967 through the ending date shown on the federal agreement. A copy of all such agreements and extensions thereof shall be filed with the Tax Commissioner within thirty days after their execution. If the copy of the extension agreement with the Internal Revenue Service is not filed pursuant to this subsection, the notice of deficiency determination for such taxable year may be mailed at any time within one year of the discovery of the extension by the Tax Commissioner.

(7) For purposes of this section, an income tax return filed before the last day prescribed by the Nebraska Revenue Act of 1967 for the filing thereof, determined without regard to any extension of time to file the return, shall be deemed to be filed on such last day. If a return or withholding tax for any period ending with or within a calendar year is filed before April 15 of the succeeding calendar year, such return shall be deemed to be filed on April 15 of such succeeding calendar year.

(8) When it becomes necessary for the Tax Commissioner to apply for a court order under subsection (2) of section 77-27,109 for the production of books, papers, records, or memoranda or the testimony of any person, the period for the mailing of a notice of deficiency determination shall be tolled from the date the Tax Commissioner first applies to the appropriate court for the order until the last date on which the information or testimony contained in the application for the court order is obtained by the Tax Commissioner.

This subsection shall not apply if the court finds that the information is not relevant to the determination of the tax liability, the information was provided prior to the filing of the application, or the application was not filed within the time period otherwise provided in this section for the mailing of a notice of deficiency determination.

(9) Any extension for an item of entity income that is signed on behalf of the entity or by the entity's tax matters person for federal income tax purposes shall

extend the time period during which a notice of deficiency could be mailed to the partners, shareholders, or members of the entity with respect to any item of entity income.

Source: Laws 1967, c. 487, § 86, p. 1607; Laws 1985, LB 273, § 63; Laws 1987, LB 773, § 25; Laws 1993, LB 345, § 67; Laws 2004, LB 955, § 1; Laws 2005, LB 216, § 17.

77-2790 Income tax; deficiency; interest; failure to report or file; prohibited acts; penalties.

(1)(a) If any part of a deficiency is the result of negligence or intentional disregard of rules and regulations but without intent to defraud, the Tax Commissioner may add to the tax an amount equal to five percent of the deficiency.

(b) If any part of a requested refund is overstated as a result of negligence, material misstatement, or intentional disregard of rules and regulations but without intent to defraud, the Tax Commissioner may add to the tax an amount equal to five percent of the overstatement of the refund.

(2)(a) If any part of a deficiency is the result of fraud, the Tax Commissioner may add to the tax an amount equal to fifty percent of the deficiency. This amount shall be in lieu of any amount determined under subsection (1) of this section.

(b) If any part of a requested refund is overstated as a result of fraud, the Tax Commissioner may add to the tax an amount equal to fifty percent of the overstatement of the refund. This amount shall be in lieu of any amount determined under subsection (1) of this section.

(3) If any taxpayer fails to pay all or any part of an installment of any tax due, he or she shall be deemed to have made an underpayment of estimated tax. The Tax Commissioner shall determine the amount of underpayment of estimated tax in accordance with the laws of the United States.

(4) If any taxpayer, with intent to evade or defeat any income tax imposed by the Nebraska Revenue Act of 1967 or the payment thereof, claims an excessive number of exemptions or in any other manner overstates the amount of withholding, he or she shall be guilty of a Class II misdemeanor. If any employer or payor, without intent to evade or defeat any income tax imposed by the Nebraska Revenue Act of 1967 or the payment thereof, fails to make a return and pay a tax withheld by him or her at the time required by or under the act, such employer or payor shall be liable for such taxes and shall pay the same together with interest thereon and any addition to tax assessed pursuant to subsection (1) of this section. Such interest and addition to tax shall not be charged to or collected from the employee or payee by the employer or payor. The Tax Commissioner shall have the same rights and powers for the collection of such tax, interest, and addition to tax against such employer or payor as are now prescribed by the act for the collection of income tax against a taxpayer.

(5) If any person required to collect, withhold, truthfully account for, and pay over the income tax imposed by the Nebraska Revenue Act of 1967 willfully fails to collect or withhold such tax or truthfully account for and pay over such tax or willfully attempts in any manner to evade or defeat the tax or the payment thereof, the Tax Commissioner may, in addition to other penalties provided by law, impose, assess, and collect a penalty equal to the total amount

of the tax evaded, not collected, not withheld, or not accounted for and paid over. No addition to tax under subsection (1) or (2) of this section shall be imposed for any offense to which this subsection applies.

(6) If any person with fraudulent intent fails to pay, or to deduct or withhold and pay, any income tax, to make, render, sign, or certify any return of estimated tax, or to supply any information within the time required, the Tax Commissioner may impose, assess, and collect a penalty of not more than one thousand dollars, in addition to any other amounts required under the income tax provisions of the Nebraska Revenue Act of 1967.

(7) If any person for frivolous or groundless reasons or with the intent to delay or impede the administration of the Nebraska Revenue Act of 1967 (a) fails to pay over any tax due and owing under such act, (b) fails to file any return required under such act, or (c) files what purports to be a return but which does not contain sufficient information from which to determine the correctness of the self-assessment of tax or which contains information that indicates that the self-assessment of tax is substantially incorrect, such person shall pay a penalty of five hundred dollars for each occurrence. The penalty provided by this subsection shall be in addition to any other penalties provided by law.

(8) Any person who aids, procures, advises, or assists in the preparation of any return, affidavit, refund claim, or other document with the knowledge that its use will result in the material understatement of the tax liability of another person or the material overstatement of the amount of a refund of another person shall, in addition to other penalties provided by law, pay a penalty of one thousand dollars with respect to each separate return or other document.

(a) For the purposes of this subsection, a person furnishing typing, reproducing, or other mechanical assistance shall not be treated as having aided or assisted in the preparation of such document.

(b) A determination of a material deficiency shall not be sufficient to show that a person has aided or assisted in a material understatement of the tax liability of another person.

(c) The penalty in this subsection shall not be imposed more than once on any person for having aided or assisted in the preparation of documents for the same taxpayer, the same tax, and the same tax period regardless of the number of documents involved.

(d) Such penalty shall apply whether or not the understatement is with the consent of the person authorized to present the return, affidavit, refund claim, or other document.

(9) The additions to the income tax and penalties relating thereto provided by the Nebraska Revenue Act of 1967 shall be paid upon notice and demand and shall be assessed, collected, and paid in the same manner as taxes, and any reference in such act to income tax or the tax imposed by the act shall be deemed also to refer to additions to the tax and penalties provided by this section. For purposes of the deficiency procedures provided in section 77-2776, this subsection shall not apply to:

(a) Any addition to tax under subsection (1) of section 77-2789 except as to that portion attributable to a deficiency;

(b) Any addition to tax for underpayment of estimated tax as provided in subsection (3) of this section; or

(c) Any additional penalty under subsection (6), (7), or (8) of this section.

(10) For purposes of subsections (1) and (2) of this section relating to deficiencies resulting from negligence or fraud, the amount shown as the tax by the taxpayer upon his or her return shall be taken into account in determining the amount of the deficiency only if such return was filed on or before the last day prescribed for the filing of such return determined with regard to any extension of time for such filing.

(11) For purposes of subsections (5) and (6) of this section, the term person shall include an individual, corporation, partnership, or limited liability company, or an officer or employee of any corporation, including a dissolved corporation, or a member or employee of any partnership or limited liability company, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

(12) If any person fails to comply with the reporting or filing requirements of sections 77-2772, 77-2775, and 77-2786 or the rules and regulations adopted and promulgated thereunder, the Tax Commissioner may impose, assess, and collect a penalty against such person for each instance of noncompliance of twenty-five percent of the tax due. Such amount shall be in addition to any other penalty, tax, or interest otherwise imposed by law for such noncompliance.

(13) If any nonresident individual provides false information or statements to an employer or payor regarding the portion of his or her wages or payments that are subject to withholding for this state which if used would result in the amount withheld being less than seventy-five percent of his or her income tax liability on such wages or payments or if any employer or payor uses such information when the employer or payor knows such information is false or maintains records which show such information is false, the Tax Commissioner may, in addition to other penalties provided by law, impose, assess, and collect from such individual, payor, or employer the penalties provided in subsections (5) and (6) of this section.

(14) If any employer or payor employing twenty-five or more employees who is required to withhold and pay over income tax imposed by the Nebraska Revenue Act of 1967 fails to either (a) withhold at least one and one-half percent of the wages of any employee or (b) obtain satisfactory evidence from the employee justifying a lower withholding amount as required by subdivision (1)(b) of section 77-2753, the Tax Commissioner may impose, assess, and collect a penalty of not more than one thousand dollars per violation.

Source: Laws 1967, c. 487, § 90, p. 1611; Laws 1984, LB 962, § 29; Laws 1985, LB 273, § 65; Laws 1988, LB 1064, § 3; Laws 1993, LB 121, § 511; Laws 1993, LB 345, § 69; Laws 2007, LB223, § 14; Laws 2008, LB1004, § 2.
Effective date April 17, 2008.

77-2792 Income tax; Tax Commissioner; abate unpaid assessment; waive penalties or interest.

(1) The Tax Commissioner may abate the unpaid portion of the assessment of any income tax or any liability in respect thereto which (a) is excessive in amount, (b) is assessed after the expiration of the period of limitations properly applicable thereto, (c) is erroneously or illegally assessed, or (d) is the result of

an inconsistent position under section 1311 of the Internal Revenue Code of 1986.

(2) No claim for abatement shall be filed by a taxpayer in respect to an assessment of any income tax imposed under the Nebraska Revenue Act of 1967.

(3) The Tax Commissioner may abate the unpaid portion of the assessment of any tax or any liability in respect thereto if he or she determines under uniform rules prescribed by him or her that the administration and collection costs involved would not warrant collection of the amount due.

(4) In all proceedings under the Nebraska Revenue Act of 1967, the Tax Commissioner may act for and on behalf of the people of the State of Nebraska. The Tax Commissioner in his or her discretion may waive all or part of any penalties provided by such act or interest on delinquent taxes at the rate specified in section 45-104.02, as such rate may from time to time be adjusted.

Source: Laws 1967, c. 487, § 92, p. 1614; Laws 1991, LB 240, § 2; Laws 1991, LB 773, § 18; Laws 1992, Fourth Spec. Sess., LB 1, § 37; Laws 2008, LB914, § 13.

Operative date July 18, 2008.

77-2793 Claim for credit or refund; limitation.

(1) A claim for credit or refund of an overpayment of any income tax imposed by the Nebraska Revenue Act of 1967 shall be filed by the taxpayer within three years from the time the return was filed or two years from the time the tax was paid, whichever of such periods expires later. No credit or refund shall be allowed or made after the expiration of the period of limitation prescribed in this subsection for the filing of a claim for credit or refund unless a claim for credit or refund is filed by the taxpayer within such period.

(2) If the claim is filed by the taxpayer during the three-year period prescribed in subsection (1) of this section, the amount of the credit or refund shall not exceed the portion of the tax paid within the three years immediately preceding the filing of the claim plus the period of any extension of time for filing the return if such return was filed prior to the end of the extension of time. If the claim is not filed within such three-year period, but is filed within the two-year period, the amount of the credit or refund shall not exceed the portion of the tax paid during the two years immediately preceding the filing of the claim. If no claim is filed, the credit or refund shall not exceed the amount which would be allowable under either of the preceding sentences, as the case may be, if a claim was filed on the date the credit or refund is allowed.

(3) If an agreement for an extension of the period for assessment of income taxes is made within the period prescribed in subsection (1) of this section for the filing of a claim for credit or refund, the period for filing claim for credit or for making credit or refund if no claim is filed shall not expire prior to six months after the expiration of the period within which an assessment may be made pursuant to the agreement or any extension thereof.

(4) If a taxpayer is required by subsection (1) of section 77-2775 to report a change or correction in federal adjusted gross income, taxable income, or tax liability reported on his or her federal income tax return, or to report a change or correction which is treated in the same manner as if it were an overpayment for federal income tax purposes, or to file an amended return with the Tax

Commissioner, a claim for credit or refund of any resulting overpayment of tax shall be filed by the taxpayer within two years from the time the notice of such change or correction or such amended return was required to be filed with the Tax Commissioner. If the report or amended return is not filed within the sixty-day period specified in such subsection, interest on any resulting refund or credit shall cease to accrue after such sixtieth day. The amount of such credit or refund shall not exceed the amount of the reduction in tax attributable to such federal change, correction, or items amended on the taxpayer's amended federal income tax return. This subsection shall not affect the time within which or the amount for which a claim for credit or refund may be filed apart from this subsection.

(5)(a) If a taxpayer is required by subsection (2) of section 77-2775 to report a change or correction in the amount of income taxable or tax credit allowable in one or more states and such changes or corrections when reflected in the return filed under the Nebraska Revenue Act of 1967 as most recently amended would result in an overpayment of tax, a claim for credit or refund shall be filed by the taxpayer within the earlier of (i) two years from the time the notice of such change or correction or such amended return was required to be filed with the Tax Commissioner or (ii) ten years from the due date of the return.

(b) If the report or amended return is not filed within the sixty-day period specified in such subsection, interest on any resulting refund or credit shall cease to accrue after such sixtieth day. The amount of such credit or refund shall not exceed the lesser of (i) the reduction in tax attributable to the change or correction in the amount of income taxable or the credit allowable in such other state in the return filed under the Nebraska Revenue Act of 1967 or (ii) the increase in tax actually paid to such other state or states.

(c) This subsection shall not affect the time within which or the amount for which a claim for credit or refund may be filed apart from this subsection. This subsection shall apply to changes or corrections which become final on or after May 1, 1993.

(6) If the claim for credit or refund relates to an overpayment attributable to a net operating loss carryback derived from or connected with Nebraska sources, the claim may be made under rules and regulations prescribed by the Tax Commissioner consistent, to the extent possible under the Nebraska Revenue Act of 1967, with the laws of the United States.

(7) For purposes of this section and section 77-2795, a timely filed petition for redetermination shall be considered a claim for credit or refund filed on the date the notice of deficiency determination was mailed.

Source: Laws 1967, c. 487, § 93, p. 1614; Laws 1985, LB 273, § 66; Laws 1987, LB 773, § 26; Laws 1993, LB 345, § 70; Laws 2008, LB914, § 14.

Operative date January 1, 2009.

77-2794 Income tax; overpayment; interest.

(1) Under regulations prescribed by the Tax Commissioner interest shall be allowed and paid at the rate specified in section 45-104.02, as such rate may from time to time be adjusted, upon any overpayment in respect to the income tax imposed by the Nebraska Revenue Act of 1967.

(2) For purposes of this section:

(a) The date of overpayment shall be the last day prescribed for filing the original return of such tax;

(b) Any return filed before the last day prescribed for the filing thereof, determined without regard to any extension of time to file the return, shall be considered as filed on such last day;

(c) Any tax paid by the taxpayer before the last day prescribed for its payment, any income tax withheld from the taxpayer during any calendar year, and any amount paid by the taxpayer as estimated income tax for a taxable year shall be deemed to have been paid on the last day prescribed for filing the return for the taxable year to which such amount constitutes a credit or payment, determined without regard to any extension of time granted the taxpayer;

(d) If at the time an overpayment is to be refunded, the taxpayer also has a reported underpayment of the same tax in another year: (i) If the overpayment is for a taxable year ending before the year of underpayment, the overpayment shall be applied to reduce such underpayment as of the last day prescribed for filing the original return of such tax for the year of underpayment; (ii) if the overpayment is for a taxable year ending after the year of underpayment, the overpayment shall be applied to reduce such underpayment as of the last day prescribed for filing the original return of such tax for the year of overpayment; or (iii) if the overpayment is one for which interest is not allowed under this section, the overpayment shall be applied as of the date of the filing of the claim for refund; and interest shall be allowed for any remaining overpayment as provided in subdivision (a) of this subsection;

(e) The period of overpayment during which interest shall be allowed shall not include any period during which the overpayment continued due to the unreasonable delay by the taxpayer in filing the claim for refund. For this purpose, the burden of proof shall be on the taxpayer to show that a delay of more than ninety days after all of the facts required to prepare a correct claim for refund are available is not unreasonable; and

(f) The period of overpayment during which interest shall be allowed shall not include any period during which an agreement between the taxpayer and the Internal Revenue Service was not filed as required by subsection (6) of section 77-2786 and the first ninety days after such agreement is filed.

(3) If any overpayment of income tax imposed by the Nebraska Revenue Act of 1967 is refunded within ninety days after the last date prescribed, or permitted by extension of time, for filing the return of such tax or within ninety days after any original return, and any amended return filed to carry back a loss was filed, whichever is later, no interest shall be allowed under this section on overpayment. In the case of amended returns filed for any reason other than to carry back a loss, interest shall be allowed as provided in subsection (1) of this section.

Source: Laws 1967, c. 487, § 94, p. 1616; Laws 1981, LB 167, § 54; Laws 1991, LB 240, § 3; Laws 1992, Fourth Spec. Sess., LB 1, § 38; Laws 1993, LB 345, § 71; Laws 1996, LB 1041, § 8; Laws 2004, LB 955, § 2; Laws 2008, LB915, § 5.
Operative date July 18, 2008.

77-2796 Income tax; Tax Commissioner; claim for refund; denial; notice.

If the Tax Commissioner disallows a claim for refund, he or she shall notify the taxpayer accordingly. The action of the Tax Commissioner denying a claim for refund is final upon the expiration of sixty days after the date when he or she mails notice of his or her action to the taxpayer unless within this period the taxpayer seeks review of the Tax Commissioner's determination as hereinafter provided.

Source: Laws 1967, c. 487, § 96, p. 1617; Laws 2008, LB914, § 15.
Operative date January 1, 2009.

77-27,100 Income tax; claim for refund; limitation.

The action authorized in section 77-2798 shall be filed within three years from the last date prescribed for filing the return or within one year from the date the tax was paid, or within sixty days after the denial of a claim for refund by the Tax Commissioner.

Source: Laws 1967, c. 487, § 100, p. 1617; Laws 2008, LB914, § 16.
Operative date January 1, 2009.

77-27,117 Income tax; prosecution for violation of act; limitation; Attorney General; concurrent jurisdiction.

Any prosecution under income tax provisions of the Nebraska Revenue Act of 1967 shall be instituted within three years after the commission of the offense, except that the period of limitation shall be four years for the offenses described in sections 77-27,113, 77-27,115, and 77-27,116. The failure to do any act required by or under the income tax provisions of such act shall be deemed an act committed in part at the principal office of the Tax Commissioner. Any prosecution may be conducted in any county where the person or corporation to whose liability the proceeding relates resides, or has a place of business or in any county in which such crime is committed. The Attorney General shall have concurrent jurisdiction with the county attorney in the prosecution of offenses.

Source: Laws 1967, c. 487, § 117, p. 1627; Laws 2006, LB 1003, § 7.

77-27,119 Income tax; Tax Commissioner; administer and enforce sections; prescribe forms; content; examination of return or report; uniform school district numbering system; audit by Auditor of Public Accounts or Legislative Auditor; wrongful disclosure; exception; penalty.

(1) The Tax Commissioner shall administer and enforce the income tax imposed by sections 77-2714 to 77-27,135, and he or she is authorized to conduct hearings, to adopt and promulgate such rules and regulations, and to require such facts and information to be reported as he or she may deem necessary to enforce the income tax provisions of such sections, except that such rules, regulations, and reports shall not be inconsistent with the laws of this state or the laws of the United States. The Tax Commissioner may for enforcement and administrative purposes divide the state into a reasonable number of districts in which branch offices may be maintained.

(2)(a) The Tax Commissioner may prescribe the form and contents of any return or other document required to be filed under the income tax provisions. Such return or other document shall be compatible as to form and content with the return or document required by the laws of the United States. The form shall have a place where the taxpayer shall designate the high school district in which he or she lives and the county in which the high school district is

headquartered. The Tax Commissioner shall adopt and promulgate such rules and regulations as may be necessary to insure compliance with this requirement.

(b) The State Department of Education, with the assistance and cooperation of the Department of Revenue, shall develop a uniform system for numbering all school districts in the state. Such system shall be consistent with the data processing needs of the Department of Revenue and shall be used for the school district identification required by subdivision (a) of this subsection.

(c) The proper filing of an income tax return shall consist of the submission of such form as prescribed by the Tax Commissioner or an exact facsimile thereof with sufficient information provided by the taxpayer on the face of the form from which to compute the actual tax liability. Each taxpayer shall include such taxpayer's correct social security number or state identification number and the school district identification number of the school district in which the taxpayer resides on the face of the form. A filing is deemed to occur when the required information is provided.

(3) The Tax Commissioner, for the purpose of ascertaining the correctness of any return or other document required to be filed under the income tax provisions, for the purpose of determining corporate income, individual income, and withholding tax due, or for the purpose of making an estimate of taxable income of any person, shall have the power to examine or to cause to have examined, by any agent or representative designated by him or her for that purpose, any books, papers, records, or memoranda bearing upon such matters and may by summons require the attendance of the person responsible for rendering such return or other document or remitting any tax, or any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take testimony and require proof material for his or her information, with power to administer oaths or affirmations to such person or persons.

(4) The time and place of examination pursuant to this section shall be such time and place as may be fixed by the Tax Commissioner and as are reasonable under the circumstances. In the case of a summons, the date fixed for appearance before the Tax Commissioner shall not be less than twenty days from the time of service of the summons.

(5) No taxpayer shall be subjected to unreasonable or unnecessary examinations or investigations.

(6) Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the Tax Commissioner, any officer or employee of the Tax Commissioner, any person engaged or retained by the Tax Commissioner on an independent contract basis, any person who pursuant to this section is permitted to inspect any report or return or to whom a copy, an abstract, or a portion of any report or return is furnished, any employee of the State Treasurer or the Department of Administrative Services, or any other person to divulge, make known, or use in any manner the amount of income or any particulars set forth or disclosed in any report or return required except for the purpose of enforcing sections 77-2714 to 77-27,135. The officers charged with the custody of such reports and returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the Tax Commissioner in an action or proceeding under the provisions of the tax law to which he or she is a party

or on behalf of any party to any action or proceeding under such sections when the reports or facts shown thereby are directly involved in such action or proceeding, in either of which events the court may require the production of, and may admit in evidence, so much of such reports or of the facts shown thereby as are pertinent to the action or proceeding and no more. Nothing in this section shall be construed (a) to prohibit the delivery to a taxpayer, his or her duly authorized representative, or his or her successors, receivers, trustees, personal representatives, administrators, assignees, or guarantors, if directly interested, of a certified copy of any return or report in connection with his or her tax, (b) to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof, (c) to prohibit the inspection by the Attorney General, other legal representatives of the state, or a county attorney of the report or return of any taxpayer who brings an action to review the tax based thereon, against whom an action or proceeding for collection of tax has been instituted, or against whom an action, proceeding, or prosecution for failure to comply with the Nebraska Revenue Act of 1967 is being considered or has been commenced, (d) to prohibit furnishing to the Nebraska Workers' Compensation Court the names, addresses, and identification numbers of employers, and such information shall be furnished on request of the court, (e) to prohibit the disclosure of information and records to a collection agency contracting with the Tax Commissioner pursuant to sections 77-377.01 to 77-377.04, (f) to prohibit the disclosure of information pursuant to section 77-27,195, 77-4110, or 77-5731, (g) to prohibit the disclosure to the Public Employees Retirement Board of the addresses of individuals who are members of the retirement systems administered by the board, and such information shall be furnished to the board solely for purposes of its administration of the retirement systems upon written request, which request shall include the name and social security number of each individual for whom an address is requested, (h) to prohibit the disclosure to the Department of Labor of tax return information pertaining to individuals, corporations, and businesses determined by the Department of Labor to be delinquent in the payment of combined tax or in the repayment of benefit overpayments, and such disclosure shall be strictly limited to information necessary for the administration of the Employment Security Law, (i) to prohibit the disclosure to the Department of Motor Vehicles of tax return information pertaining to individuals, corporations, and businesses determined by the Department of Motor Vehicles to be delinquent in the payment of amounts due under agreements pursuant to the International Fuel Tax Agreement Act, and such disclosure shall be strictly limited to information necessary for the administration of the act, or (j) to prohibit the disclosure under section 42-358.08, 43-512.06, or 43-3327 to any court-appointed individuals, the county attorney, any authorized attorney, or the Department of Health and Human Services of an absent parent's address, social security number, amount of income, health insurance information, and employer's name and address for the exclusive purpose of establishing and collecting child, spousal, or medical support. Information so obtained shall be used for no other purpose. Any person who violates this subsection shall be guilty of a felony and shall upon conviction thereof be fined not less than one hundred dollars nor more than five hundred dollars, or be imprisoned not more than five years, or be both so fined and imprisoned, in the discretion of the court and shall be assessed the costs of prosecution. If the offender is an officer or employee of the state, he or

she shall be dismissed from office and be ineligible to hold any public office in this state for a period of two years thereafter.

(7) Reports and returns required to be filed under income tax provisions of sections 77-2714 to 77-27,135 shall be preserved until the Tax Commissioner orders them to be destroyed.

(8) Notwithstanding the provisions of subsection (6) of this section, the Tax Commissioner may permit the Secretary of the Treasury of the United States or his or her delegates or the proper officer of any state imposing an income tax, or the authorized representative of either such officer, to inspect the income tax returns of any taxpayer or may furnish to such officer or his or her authorized representative an abstract of the return of income of any taxpayer or supply him or her with information concerning an item of income contained in any return or disclosed by the report of any investigation of the income or return of income of any taxpayer, but such permission shall be granted only if the statutes of the United States or of such other state, as the case may be, grant substantially similar privileges to the Tax Commissioner of this state as the officer charged with the administration of the income tax imposed by sections 77-2714 to 77-27,135.

(9) Notwithstanding the provisions of subsection (6) of this section, the Tax Commissioner may permit the Postal Inspector of the United States Postal Service or his or her delegates to inspect the reports or returns of any person filed pursuant to the Nebraska Revenue Act of 1967 when information on the reports or returns is relevant to any action or proceeding instituted or being considered by the United States Postal Service against such person for the fraudulent use of the mails to carry and deliver false and fraudulent tax returns to the Tax Commissioner with the intent to defraud the State of Nebraska or to evade the payment of Nebraska state taxes.

(10)(a) Notwithstanding the provisions of subsection (6) of this section, the Tax Commissioner shall, upon written request by the Auditor of Public Accounts or the Legislative Performance Audit Committee, make tax returns and tax return information open to inspection by or disclosure to officers and employees of the Auditor of Public Accounts or Legislative Performance Audit Section employees for the purpose of and to the extent necessary in making an audit of the Department of Revenue pursuant to section 50-1205 or 84-304. The Auditor of Public Accounts or Legislative Performance Audit Section shall statistically and randomly select the tax returns and tax return information to be audited based upon a computer tape provided by the Department of Revenue which contains only total population documents without specific identification of taxpayers. The Tax Commissioner shall have the authority to approve the statistical sampling method used by the Auditor of Public Accounts or Legislative Performance Audit Section. Confidential tax returns and tax return information shall be audited only upon the premises of the Department of Revenue. All audit workpapers pertaining to the audit of the Department of Revenue shall be stored in a secure place in the Department of Revenue.

(b) No officer or employee of the Auditor of Public Accounts or Legislative Performance Audit Section employee shall disclose to any person, other than another officer or employee of the Auditor of Public Accounts or Legislative Performance Audit Section employee whose official duties require such disclosure or as provided in subsections (2) and (3) of section 50-1213, any return or return information described in the Nebraska Revenue Act of 1967 in a form

which can be associated with or otherwise identify, directly or indirectly, a particular taxpayer.

(c) Any person who violates the provisions of this subsection shall be guilty of a Class IV felony and, in the discretion of the court, may be assessed the costs of prosecution. The guilty officer or employee shall be dismissed from employment and be ineligible to hold any position of employment with the State of Nebraska for a period of two years thereafter. For purposes of this subsection, officer or employee shall include a former officer or employee of the Auditor of Public Accounts or former Legislative Performance Audit Section employee.

(11) For purposes of subsections (10) through (13) of this section:

(a) Tax returns shall mean any tax or information return or claim for refund required by, provided for, or permitted under sections 77-2714 to 77-27,135 which is filed with the Tax Commissioner by, on behalf of, or with respect to any person and any amendment or supplement thereto, including supporting schedules, attachments, or lists which are supplemental to or part of the filed return;

(b) Return information shall mean:

(i) A taxpayer's identification number and (A) the nature, source, or amount of his or her income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing or (B) any other data received by, recorded by, prepared by, furnished to, or collected by the Tax Commissioner with respect to a return or the determination of the existence or possible existence of liability or the amount of liability of any person for any tax, penalty, interest, fine, forfeiture, or other imposition or offense; and

(ii) Any part of any written determination or any background file document relating to such written determination; and

(c) Disclosures shall mean the making known to any person in any manner a return or return information.

(12) The Auditor of Public Accounts or the Legislative Auditor of the Legislative Performance Audit Section shall (a) notify the Tax Commissioner in writing thirty days prior to the beginning of an audit of his or her intent to conduct an audit, (b) provide an audit plan, and (c) provide a list of the tax returns and tax return information identified for inspection during the audit.

(13) The Auditor of Public Accounts or the Legislative Performance Audit Section shall, as a condition for receiving tax returns and tax return information: (a) Subject employees involved in the audit to the same confidential information safeguards and disclosure procedures as required of Department of Revenue employees; (b) establish and maintain a permanent system of standardized records with respect to any request for tax returns or tax return information, the reason for such request, and the date of such request and any disclosure of the tax return or tax return information; (c) establish and maintain a secure area or place in the Department of Revenue in which the tax returns, tax return information, or audit workpapers shall be stored; (d) restrict access to the tax returns or tax return information only to persons whose duties or responsibilities require access; (e) provide such other safeguards as the Tax Commissioner determines to be necessary or appropriate to protect the confidentiality of the tax returns or tax return information; (f) provide a report to the

Tax Commissioner which describes the procedures established and utilized by the Auditor of Public Accounts or Legislative Performance Audit Section for insuring the confidentiality of tax returns, tax return information, and audit workpapers; and (g) upon completion of use of such returns or tax return information, return to the Tax Commissioner such returns or tax return information, along with any copies.

(14) The Tax Commissioner may permit other tax officials of this state to inspect the tax returns and reports filed under sections 77-2714 to 77-27,135, but such inspection shall be permitted only for purposes of enforcing a tax law and only to the extent and under the conditions prescribed by the rules and regulations of the Tax Commissioner.

(15) The Tax Commissioner shall compile the school district information required by subsection (2) of this section. Insofar as it is possible, such compilation shall include, but not be limited to, the total adjusted gross income of each school district in the state. The Tax Commissioner shall adopt and promulgate such rules and regulations as may be necessary to insure that such compilation does not violate the confidentiality of any individual income tax return nor conflict with any other provisions of state or federal law.

Source: Laws 1967, c. 487, § 119, p. 1628; Laws 1969, c. 694, § 1, p. 2689; Laws 1971, LB 527, § 1; Laws 1971, LB 571, § 1; Laws 1973, LB 526, § 6; Laws 1979, LB 302, § 1; Laws 1981, LB 170, § 7; Laws 1984, LB 962, § 32; Laws 1985, LB 273, § 68; Laws 1985, LB 344, § 8; Laws 1985, LB 345, § 1; Laws 1989, LB 611, § 3; Laws 1990, LB 431, § 1; Laws 1991, LB 549, § 22; Laws 1993, LB 46, § 17; Laws 1993, LB 345, § 72; Laws 1997, LB 129, § 2; Laws 1997, LB 720, § 23; Laws 1997, LB 806, § 3; Laws 2002, LB 989, § 19; Laws 2005, LB 216, § 18; Laws 2005, LB 312, § 15; Laws 2006, LB 588, § 9; Laws 2006, LB 956, § 11; Laws 2008, LB915, § 6.
Operative date July 18, 2008.

Cross References

Employment Security Law, see section 48-601.

International Fuel Tax Agreement Act, see section 66-1401.

77-27,119.01 Income tax form; contribution to Wildlife Conservation Fund.

The Tax Commissioner shall include on the individual income tax return form space in which the individual taxpayer may, if a refund is due, designate one dollar or a greater amount of such refund as a contribution to the Wildlife Conservation Fund created in section 37-811.

Source: Laws 1984, LB 466, § 6; Laws 1987, LB 773, § 27; Laws 1998, LB 922, § 408; Laws 2007, LB299, § 19.

(d) GENERAL PROVISIONS

77-27,127 Tax Commissioner; final action; appeal.

Any final action of the Tax Commissioner may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act. The appeal provided by this section shall be the exclusive remedy available to any taxpayer, and no other legal or equitable proceedings shall issue to prevent or enjoin the assessment or collection of any tax imposed under the Nebraska Revenue Act of

1967. The appeal provided by this section shall be in the district court for Lancaster County except as provided in section 77-2798.

Source: Laws 1967, c. 487, § 127, p. 1634; Laws 1983, LB 101, § 2; Laws 1988, LB 352, § 159; Laws 2005, LB 216, § 19.

Cross References

Administrative Procedure Act, see section 84-920.

77-27,131 Tax Commissioner; security required; when; sale of security; notice.

(1) Unless otherwise specifically provided, the Tax Commissioner, whenever he or she deems it necessary to insure compliance with the provisions of the Nebraska Revenue Act of 1967, may require any person subject to the act to place with him or her such security as he or she may determine. The amount of the necessary security shall be fixed by the Tax Commissioner but, except as provided in this section, shall not be greater than three times the estimated average amount payable for the reporting period by such persons pursuant to the act. In the case of persons habitually delinquent in their obligations under the act, the amount of the security shall not be greater than five times the estimated average amount payable for the reporting period by such persons pursuant to the act. The amount of the security may be increased or decreased by the Tax Commissioner at any time, subject to the limitations set forth in this subsection.

(2) The Tax Commissioner may sell the security at public auction or, in the case of security in the form of bearer bonds issued by the United States or this state which have a prevailing market price, at a private sale at a price not lower than the prevailing market price if it becomes necessary to make such sale in order to recover any tax, interest, or penalties due on any amount required to be collected. Notice of the sale shall be given to the person who deposited the security at least ten days before the sale. The notice may be given personally or by mail addressed to the person at the address furnished to the Tax Commissioner and as it appears in the records of the Tax Commissioner. Upon such sale, any surplus above the amounts due shall be returned to the person who placed the security.

Source: Laws 1967, c. 487, § 131, p. 1636; Laws 1991, LB 773, § 20; Laws 2007, LB223, § 15.

77-27,132 Revenue Distribution Fund; created; use; collections under act; disposition.

(1) There is hereby created a fund to be designated the Revenue Distribution Fund which shall be set apart and maintained by the Tax Commissioner. Revenue not required to be credited to the General Fund or any other specified fund may be credited to the Revenue Distribution Fund. Credits and refunds of such revenue shall be paid from the Revenue Distribution Fund. The balance of the amount credited, after credits and refunds, shall be allocated as provided by the statutes creating such revenue.

(2) The Tax Commissioner shall pay to a depository bank designated by the State Treasurer all amounts collected under the Nebraska Revenue Act of 1967. The Tax Commissioner shall present to the State Treasurer bank receipts showing amounts so deposited in the bank, and of the amounts so deposited the

State Treasurer shall credit to the Highway Trust Fund all of the proceeds of the sales and use taxes derived from the sale or lease for periods of more than thirty-one days of motor vehicles, trailers, and semitrailers, except that the proceeds equal to any sales tax rate provided for in section 77-2701.02 that is in excess of five percent derived from the sale or lease for periods of more than thirty-one days of motor vehicles, trailers, and semitrailers shall be credited to the Highway Allocation Fund. The balance of all amounts collected under the Nebraska Revenue Act of 1967 shall be credited to the General Fund.

Source: Laws 1967, c. 487, § 132, p. 1636; Laws 1969, c. 695, § 1, p. 2692; Laws 1969, c. 313, § 2, p. 1130; Laws 1971, LB 53, § 9; Laws 1972, LB 343, § 23; Laws 1975, LB 233, § 2; Laws 1976, LB 868, § 1; Laws 1984, LB 466, § 5; Laws 1986, LB 599, § 23; Laws 1986, LB 539, § 3; Laws 1987, LB 730, § 30; Laws 1989, LB 258, § 11; Laws 2003, LB 759, § 22; Laws 2006, LB 904, § 4; Laws 2007, LB305, § 1.

(e) GOVERNMENTAL SUBDIVISION AID

77-27,137.01 Aid to incorporated municipalities; distribution; manner.

(1) The appropriation provided for in section 77-27,136 for aid to incorporated municipalities shall be allocated by the Tax Commissioner to the various incorporated municipalities. The Tax Commissioner shall determine the amount to be distributed to the incorporated municipalities and certify such amounts by voucher to the Director of Administrative Services. Each amount shall be distributed in seven as nearly as possible equal monthly payments on the last business day of each month beginning in December. The State Treasurer shall, on the business day preceding the last business day of each month, notify the Director of Administrative Services of the amount of funds available in the General Fund for payment purposes. The Director of Administrative Services shall, on the last business day of each month, draw warrants against funds appropriated. Except as provided in subsection (2) of this section, the Tax Commissioner shall compute the amount due the incorporated municipalities on the ratio of the population of the particular incorporated municipality to the total population of all incorporated municipalities in the state as determined by the most recent federal census figures certified by the Tax Commissioner as provided in section 77-3,119, which amounts shall be placed in the general fund of such municipalities.

(2) For fiscal years 2003-04 through 2008-09, the allocation of state aid provided for in subsection (1) of this section shall be calculated based on the amount appropriated plus an additional five hundred twenty thousand dollars, and the amount of state aid calculated for a city of the primary class shall be reduced by the amount received by the city of the primary class under the Municipal Infrastructure Redevelopment Fund Act for fiscal years 2003-04 through 2008-09. Beginning with fiscal year 2009-10, the amount of aid to municipalities appropriated shall be increased by five hundred twenty thousand dollars.

Source: Laws 1971, LB 707, § 3; Laws 1975, Spec. Sess., LB 3, § 5; Laws 1976, LB 903, § 6; Laws 1977, LB 514, § 4; Laws 1982, LB 816, § 5; Laws 1983, LB 59, § 3; Laws 1986, LB 929, § 3; Laws 1993, LB 726, § 11; Laws 1994, LB 1127, § 7; Laws 2003, LB 440, § 3; Laws 2005, LB 426, § 16.

Cross References

Municipal Infrastructure Redevelopment Fund Act, see section 18-2601.

77-27,137.02 Aid to natural resources districts; distribution; manner.

The appropriation provided for in section 77-27,136 for aid to natural resources districts shall be distributed to the various natural resources districts of the state on the basis of the ratio of the total amount of property taxes levied by the particular natural resources district to the total amount of property taxes levied by all natural resources districts within the state based on amounts stated in the most recent certificate of taxes levied statement and schedules submitted by each county to the Tax Commissioner pursuant to section 77-1613.01. The Tax Commissioner shall determine the amount to be distributed to the various natural resources districts and certify such amounts by voucher to the Director of Administrative Services. Each amount shall be distributed in seven as nearly as possible equal monthly payments between the fifth and twentieth day of each month beginning December 1, 1982, and each December thereafter. The State Treasurer shall, between the fifth and twentieth day of each month, notify the Director of Administrative Services of the amount of funds available in the General Fund for payment purposes. The Director of Administrative Services shall, upon receipt of such notification and vouchers, draw warrants against funds appropriated. The proceeds of the payments received by the various natural resources districts shall be credited to the general fund of the district.

Source: Laws 1982, LB 816, § 6; Laws 1985, LB 268, § 29; Laws 1994, LB 480, § 30; Laws 1996, LB 108, § 77; Laws 2004, LB 962, § 109.

77-27,138.01 Repealed. Laws 2004, LB 811, § 3.

(g) LOCAL OPTION REVENUE ACT

77-27,143 Municipalities; sales and use tax laws; administration; termination; data bases; required.

(1) The administration of all sales and use taxes adopted under the Local Option Revenue Act shall be by the Tax Commissioner who may prescribe forms and adopt and promulgate reasonable rules and regulations in conformity with the act for the making of returns and for the ascertainment, assessment, and collection of taxes imposed under such act. The incorporated municipality shall furnish a certified copy of the adopting or repealing ordinance to the Tax Commissioner in accordance with such rules and regulations as he or she may adopt and promulgate. For ordinances passed after October 1, 1969, the effective date shall be the first day of the next calendar quarter which is at least one hundred twenty days following receipt by the Tax Commissioner of the certified copy of the ordinance. The Tax Commissioner shall provide at least sixty days' notice of the change in tax to retailers. Notice shall be provided to retailers within the municipality. Notice to retailers may be provided through the web site of the Department of Revenue or by other electronic means.

(2) For ordinances containing a termination date and passed after October 1, 1986, the termination date shall be the first day of a calendar quarter. The incorporated municipality shall furnish a certified statement to the Tax Commissioner no more than one hundred eighty days and at least one hundred

twenty days prior to the termination date that the termination date stated in the ordinance is still valid. If the certified statement is not furnished within the prescribed time, the tax shall remain in effect, and the Tax Commissioner shall continue to collect the tax until the first day of the calendar quarter which is at least one hundred twenty days after receipt of the certified statement notwithstanding the termination date stated in the ordinance. The Tax Commissioner shall provide at least sixty days' notice of the termination of the tax to retailers. Notice shall be provided to retailers within the municipality. Notice to retailers may be provided through the web site of the department or by other electronic means.

(3) For sales and use tax purposes only, local jurisdiction boundary changes apply only on the first day of a calendar quarter after a minimum of one hundred twenty days' notice to the Tax Commissioner and sixty days' notice to sellers.

(4) The state shall provide and maintain a data base that describes boundary changes for all local taxing jurisdictions. This data base shall include a description of any change and the effective date of the change for sales and use tax purposes.

(5) The state shall provide and maintain a data base of all sales and use tax rates for all of the local jurisdictions levying taxes within the state. For the identification of counties, cities, and villages, codes corresponding to the rates shall be provided according to Federal Information Processing Standards as developed by the National Institute of Standards and Technology.

(6) The state shall provide and maintain a data base that assigns each five-digit and nine-digit zip code within the state to the proper tax rates and jurisdictions. For purposes of the streamlined sales and use tax agreement, the data base shall apply the lowest combined tax rate imposed in the zip code area if the area includes more than one tax rate in any level of taxing jurisdictions. If a nine-digit zip code designation is not available for a street address or if a seller is unable to determine the nine-digit zip code designation applicable to a purchase after exercising due diligence to determine the designation, the seller or certified service provider may apply the rate for the five-digit zip code area. For purposes of this section, there is a rebuttable presumption that a seller or certified service provider has exercised due diligence if the seller has attempted to determine the nine-digit zip code designation by utilizing software approved by the governing board that makes this designation from the street address and the five-digit zip code applicable to a purchase.

(7) For purposes of the streamlined sales and use tax agreement, the state may provide address-based boundary data base records for assigning taxing jurisdictions and their associated rates which shall be in addition to the requirements of subsection (6) of this section. The data base records shall be in the same approved format as the data base records pursuant to subsection (6) of this section and shall meet the requirements developed pursuant to the federal Mobile Telecommunications Sourcing Act, 4 U.S.C. 119(a), as such act existed on January 1, 2003. The governing board may allow a member state to require sellers that register under the agreement to use an address-based boundary data base provided by that member state. If any member state develops an addressed-based boundary data base pursuant to the agreement, a seller or certified service provider may use those data base records in place of the five-digit and nine-digit zip code data base records provided for in subsec-

tion (6) of this section. If a seller or certified service provider is unable to determine the applicable rate and jurisdiction using an address-based boundary data base after exercising due diligence, the seller or certified service provider may apply the nine-digit zip code designation applicable to a purchase. If a nine-digit zip code designation is not available for a street address or if a seller or certified service provider is unable to determine the nine-digit zip code designation applicable to a purchase after exercising due diligence to determine the designation, the seller or certified service provider may apply the rate for the five-digit zip code area. For the purposes of this section, there is a rebuttable presumption that a seller or certified service provider has exercised due diligence if the seller or certified service provider has attempted to determine the tax rate and jurisdiction by utilizing software approved by the governing board that makes this assignment from the address and zip code information applicable to the purchase.

(8) The state may certify vendor-provided address-based boundary data bases for assigning tax rates and jurisdictions. The data bases shall be in the same approved format as the data base records pursuant to subsection (7) of this section and shall meet the requirements developed pursuant to the federal Mobile Telecommunications Sourcing Act, 4 U.S.C. 119(a) as such act existed on January 1, 2003. If a state certifies a vendor-provided address-based boundary data base, a seller or certified service provider may use that data base in place of the data base provided for in subsection (6) or (7) of this section. Vendors providing address-based boundary data bases may request certification of their data bases from the governing board. Certification by the governing board does not replace the requirement that the data bases be certified by the states individually.

(9) Pursuant to the streamlined sales and use tax agreement, the state shall relieve retailers and certified service providers using data bases pursuant to subsection (6) or (7) of this section from liability to the state and local jurisdictions for having charged and collected the incorrect amount of sales or use tax resulting from the retailer or certified service provider relying on erroneous data provided by a member state on tax rates, boundaries, or taxing jurisdiction assignments. After providing adequate notice determined by the governing board, a member state that provides an address-based boundary data base for assigning taxing jurisdictions pursuant to subsection (7) or (8) of this section may cease providing liability relief for errors resulting from the reliance on the data base provided by the member state under the provisions of subsection (6) of this section. If a seller demonstrates that requiring the use of the address-based boundary data base would create an undue hardship, the state and the governing board may extend the relief of liability to such seller for a designated period of time.

(10) The data bases provided for in this section shall be in a downloadable format approved by the governing board pursuant to the streamlined sales and use tax agreement. The data bases may be directly provided by the state or provided by a vendor as designated by the state. A data base provided by a vendor as designated by a state shall be applicable to and subject to all provisions of this section. The data bases shall be provided at no cost to the user of the data base. The provisions of subsections (6) and (7) of this section do not apply when the purchased product is received by the purchaser at the business location of the seller.

(11) In the rental or lease of automobiles, trucks, trailers, semitrailers, and truck-tractors as defined in the Motor Vehicle Registration Act, the tax shall be collected by the lessor on the rental or lease price at the tax rate in effect on the date the automobile, truck, trailer, semitrailer, or truck-tractor is delivered to the lessee.

(12) A seller that did not have a requirement to register in this state prior to registering pursuant to the agreement or a certified service provider shall not be required to collect sales or use taxes for a state until the first day of the calendar quarter commencing more than sixty days after the state has provided the data bases required by this section.

Source: Laws 1969, c. 629, § 2, p. 2530; Laws 1969, c. 683, § 8, p. 2644; Laws 1986, LB 890, § 4; Laws 2003, LB 282, § 81; Laws 2003, LB 381, § 4; Laws 2005, LB 274, § 277; Laws 2006, LB 887, § 5.

Cross References

Motor Vehicle Registration Act, see section 60-301.

77-27,144 Municipalities; sales and use tax; Tax Commissioner; collection; distribution.

The Tax Commissioner shall collect the tax imposed by any incorporated municipality concurrently with collection of a state tax in the same manner as the state tax is collected. The Tax Commissioner shall remit monthly the proceeds of the tax to the incorporated municipalities levying the tax, after deducting the amount of refunds made and three percent of the remainder to be credited to the Municipal Equalization Fund. The Tax Commissioner shall keep full and accurate records of all money received and distributed under the provisions of the Local Option Revenue Act. When proceeds of a tax levy are received but the identity of the incorporated municipality which levied the tax is unknown and is not identified within six months after receipt, the amount shall be credited to the Municipal Equalization Fund. The municipality may request the names and addresses of the retailers which have collected the tax as provided in section 77-2711.

Source: Laws 1969, c. 629, § 3, p. 2530; Laws 1971, LB 53, § 10; Laws 1976, LB 868, § 2; Laws 1996, LB 1177, § 19; Laws 1998, LB 1104, § 13; Laws 2007, LB94, § 2.

(j) SETOFF FOR CHILD, SPOUSAL, AND MEDICAL SUPPORT DEBTS

77-27,162 Collection system; development; duties.

The Department of Revenue, the Department of Administrative Services, and the Department of Health and Human Services shall develop and implement a collection system to carry out the intent of section 77-27,160.

Source: Laws 1984, LB 845, § 8; Laws 1996, LB 1044, § 799; Laws 2007, LB296, § 705.

77-27,163.01 Costs of health services; setoff; Department of Health and Human Services; duties; amount of setoff; priority of claims.

The Department of Health and Human Services shall use the procedures in this section and sections 77-27,160 to 77-27,173 to set off against a debtor's

income tax refund the costs of health services provided to a child of the debtor if:

(1) The debtor is required by court or administrative order to provide coverage for the costs of such services; and

(2) The debtor has received payment from a third party for the costs of such services but has not used the payment to reimburse either the other parent or guardian or the provider of such services.

The amount of the setoff shall be limited to the amount necessary to reimburse the department for its expenditures for the costs of such services under the medical assistance program established pursuant to the Medical Assistance Act. Any claim for current or past-due child support shall take priority over a claim for setoff for the costs of health services.

Source: Laws 1994, LB 1224, § 86; Laws 1996, LB 1044, § 800; Laws 1997, LB 307, § 201; Laws 2006, LB 1248, § 86.

Cross References

Medical Assistance Act, see section 68-901.

(m) NEBRASKA ADVANTAGE RURAL DEVELOPMENT ACT

77-27,187 Act, how cited.

Sections 77-27,187 to 77-27,195 shall be known and may be cited as the Nebraska Advantage Rural Development Act.

Source: Laws 1986, LB 1124, § 1; Laws 1987, LB 270, § 1; Laws 1997, LB 886, § 1; Laws 1998, LB 1104, § 14; Laws 2002, LB 93, § 19; Laws 2003, LB 608, § 1; Laws 2005, LB 312, § 16.

77-27,187.01 Terms, defined.

For purposes of the Nebraska Advantage Rural Development Act, unless the context otherwise requires:

(1) Any term has the same meaning as used in the Nebraska Revenue Act of 1967;

(2) Equivalent employees means the number of employees computed by dividing the total hours paid in a year to employees by the product of forty times the number of weeks in a year;

(3) Livestock means all animals, including cattle, horses, sheep, goats, hogs, chickens, turkeys, and other species of game birds and animals raised and produced subject to permit and regulation by the Game and Parks Commission or the Department of Agriculture;

(4) Livestock modernization or expansion means the construction, improvement, or acquisition of buildings, facilities, or equipment for livestock housing, confinement, feeding, production, and waste management. Livestock modernization or expansion does not include any improvements made to correct a violation of the Environmental Protection Act, the Integrated Solid Waste Management Act, the Livestock Waste Management Act, a rule or regulation adopted and promulgated pursuant to such acts, or any order of the Department of Environmental Quality undertaken within five years after a complaint issued from the Director of Environmental Quality under section 81-1507;

(5) Livestock production means the active use, management, and operation of real and personal property for the commercial production of livestock, for the commercial breeding, training, showing, or racing of horses, or for the use of horses in a recreational or tourism enterprise. The activity will be considered commercial if the gross income derived from an activity for two or more of the taxable years in the period of seven consecutive taxable years which ends with the taxable year exceeds the deductions attributable to such activity or, if the operation has been in existence for less than seven years, if the activity is engaged in for the purpose of generating a profit;

(6) Qualified employee leasing company means a company which places all employees of a client-lessee on its payroll and leases such employees to the client-lessee on an ongoing basis for a fee and, by written agreement between the employee leasing company and a client-lessee, grants to the client-lessee input into the hiring and firing of the employees leased to the client-lessee;

(7) Related taxpayers includes any corporations that are part of a unitary business under the Nebraska Revenue Act of 1967 but are not part of the same corporate taxpayer, any business entities that are not corporations but which would be a part of the unitary business if they were corporations, and any business entities if at least fifty percent of such entities are owned by the same persons or related taxpayers and family members as defined in the ownership attribution rules of the Internal Revenue Code of 1986, as amended;

(8) Taxpayer means a corporate taxpayer or other person subject to either an income tax imposed by the Nebraska Revenue Act of 1967 or a franchise tax under Chapter 77, article 38, or a partnership, limited liability company, subchapter S corporation, cooperative, including a cooperative exempt under section 521 of the Internal Revenue Code of 1986, as amended, limited cooperative association, or joint venture that is or would otherwise be a member of the same unitary group if incorporated, which is, or whose partners, members, or owners representing an ownership interest of at least ninety percent of the control of such entity are, subject to or exempt from such taxes, and any other partnership, limited liability company, subchapter S corporation, cooperative, including a cooperative exempt under section 521 of the Internal Revenue Code of 1986, as amended, limited cooperative association, or joint venture when the partners, members, or owners representing an ownership interest of at least ninety percent of the control of such entity are subject to or exempt from such taxes; and

(9) Year means the taxable year of the taxpayer.

Source: Laws 1997, LB 886, § 2; Laws 1998, LB 1104, § 15; Laws 1999, LB 539, § 1; Laws 2003, LB 608, § 2; Laws 2005, LB 312, § 17; Laws 2006, LB 990, § 2; Laws 2006, LB 1003, § 8; Laws 2007, LB223, § 16; Laws 2007, LB368, § 136; Laws 2008, LB895, § 2. Effective date April 18, 2008.

Cross References

Environmental Protection Act, see section 81-1501.
Integrated Solid Waste Management Act, see section 13-2001.
Livestock Waste Management Act, see section 54-2416.
Nebraska Revenue Act of 1967, see section 77-2701.

77-27,187.02 Application; contents; fee; written agreement; contents.

(1) To earn the incentives set forth in the Nebraska Advantage Rural Development Act, the taxpayer shall file an application for an agreement with the Tax Commissioner.

(2) The application shall contain:

(a) A written statement describing the full expected employment or type of livestock production and the investment amount for a qualified business, as described in section 77-27,189, in this state;

(b) Sufficient documents, plans, and specifications as required by the Tax Commissioner to support the plan and to define a project; and

(c) An application fee of five hundred dollars. The fee shall be remitted to the State Treasurer for credit to the Nebraska Incentives Fund. The application and all supporting information shall be confidential except for the name of the taxpayer, the location of the project, and the amounts of increased employment or investment.

(3)(a) The Tax Commissioner shall approve the application and authorize the total amount of credits expected to be earned as a result of the project if he or she is satisfied that the plan in the application defines a project that (i) meets the requirements established in section 77-27,188 and such requirements will be reached within the required time period and (ii) for projects other than livestock modernization or expansion projects, is located in an eligible county, city, or village.

(b) The Tax Commissioner shall not approve further applications once the expected credits from the approved projects total two million five hundred thousand dollars in each of fiscal years 2004-05 and 2005-06, three million dollars in each of fiscal years 2006-07 through 2008-09, and four million dollars in fiscal year 2009-10 and each fiscal year thereafter. Four hundred dollars of the application fee shall be refunded to the applicant if the application is not approved because the expected credits from approved projects exceed such amounts.

(c) Applications for benefits shall be considered in the order in which they are received.

(d) Applications shall be filed by November 1 and shall be complete by December 1 of each calendar year. Any application that is filed after November 1 or that is not complete on December 1 shall be considered to be filed during the following calendar year.

(4) After approval, the taxpayer and the Tax Commissioner shall enter into a written agreement. The taxpayer shall agree to complete the project, and the Tax Commissioner, on behalf of the State of Nebraska, shall designate the approved plans of the taxpayer as a project and, in consideration of the taxpayer's agreement, agree to allow the taxpayer to use the incentives contained in the Nebraska Advantage Rural Development Act up to the total amount that were authorized by the Tax Commissioner at the time of approval. The application, and all supporting documentation, to the extent approved, shall be considered a part of the agreement. The agreement shall state:

(a) The levels of employment and investment required by the act for the project;

(b) The time period under the act in which the required level must be met;

(c) The documentation the taxpayer will need to supply when claiming an incentive under the act;

- (d) The date the application was filed; and
- (e) The maximum amount of credits authorized.

Source: Laws 2003, LB 608, § 3; Laws 2005, LB 312, § 18; Laws 2006, LB 990, § 3; Laws 2007, LB223, § 17; Laws 2008, LB895, § 3; Laws 2008, LB914, § 17.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB895, section 3, with LB914, section 17, to reflect all amendments.

Note: Changes made by LB895 became effective April 18, 2008. Changes made by LB914 became operative July 18, 2008.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

77-27,188 Tax credit; allowed; when; amount; repayment.

(1) A refundable credit against the taxes imposed by the Nebraska Revenue Act of 1967 shall be allowed to any taxpayer who has an approved application pursuant to the Nebraska Advantage Rural Development Act, who is engaged in a qualifying business as described in section 77-27,189, and who after January 1, 2006:

(a)(i) Increases employment by two new equivalent employees and makes an increased investment of at least one hundred twenty-five thousand dollars prior to the end of the first taxable year after the year in which the application was submitted in (A) any county in this state with a population of fewer than fifteen thousand inhabitants, according to the most recent federal decennial census, (B) any village in this state, or (C) any area within the corporate limits of a city of the metropolitan class consisting of one or more contiguous census tracts, as determined by the most recent federal decennial census, which contain a percentage of persons below the poverty line of greater than thirty percent, and all census tracts contiguous to such tract or tracts; or

(ii) Increases employment by five new equivalent employees and makes an increased investment of at least two hundred fifty thousand dollars prior to the end of the first taxable year after the year in which the application was submitted in any county in this state with a population of less than twenty-five thousand inhabitants, according to the most recent federal decennial census, or any city of the second class; and

(b) Pays a minimum qualifying wage of eight dollars and twenty-five cents per hour to the new equivalent employees for which tax credits are sought under the Nebraska Advantage Rural Development Act. The Department of Revenue shall adjust the minimum qualifying wages required for applications filed after January 1, 2004, and each January 1 thereafter, as follows: The current rural Nebraska average weekly wage shall be divided by the rural Nebraska average weekly wage for 2003; and the result shall be multiplied by the eight dollars and twenty-five cents minimum qualifying wage for 2003 and rounded to the nearest one cent. The amount of increase or decrease in the minimum qualifying wages for any year shall be the cumulative change in the rural Nebraska average weekly wage since 2003. For purposes of this subsection, rural Nebraska average weekly wage means the most recent average weekly wage paid by all employers in all counties with a population of less than twenty-five thousand inhabitants as reported by October 1 by the Department of Labor.

For purposes of this section, a teleworker working in Nebraska from his or her residence for a taxpayer shall be considered an employee of the taxpayer,

and property of the taxpayer provided to the teleworker working in Nebraska from his or her residence shall be considered an investment. Teleworker includes an individual working on a per-item basis and an independent contractor working for the taxpayer so long as the taxpayer withholds Nebraska income tax from wages or other payments made to such teleworker. For purposes of calculating the number of new equivalent employees when the teleworkers are paid on a per-item basis or are independent contractors, the total wages or payments made to all such new employees during the year shall be divided by the qualifying wage as determined in subdivision (b) of this subsection, with the result divided by two thousand eighty hours.

(2) A refundable credit against the taxes imposed by the Nebraska Revenue Act of 1967 shall be allowed to any taxpayer who (a) has an approved application pursuant to the Nebraska Advantage Rural Development Act, (b) is engaged in livestock production, and (c) after January 1, 2007, invests at least fifty thousand dollars for livestock modernization or expansion.

(3) The amount of the credit allowed under subsection (1) of this section shall be three thousand dollars for each new equivalent employee and two thousand seven hundred fifty dollars for each fifty thousand dollars of increased investment. The amount of the credit allowed under subsection (2) of this section shall be ten percent of the investment, not to exceed a credit of thirty thousand dollars. For each application, a taxpayer engaged in livestock production may qualify for a credit under either subsection (1) or (2) of this section, but cannot qualify for more than one credit per application.

(4) An employee of a qualified employee leasing company shall be considered to be an employee of the client-lessee for purposes of this section if the employee performs services for the client-lessee. A qualified employee leasing company shall provide the Department of Revenue access to the records of employees leased to the client-lessee.

(5) The credit shall not exceed the amounts set out in the application and approved by the Tax Commissioner.

(6)(a) If a taxpayer who receives tax credits creates fewer jobs or less investment than required in the project agreement, the taxpayer shall repay the tax credits as provided in this subsection.

(b) If less than seventy-five percent of the required jobs in the project agreement are created, one hundred percent of the job creation tax credits shall be repaid. If seventy-five percent or more of the required jobs in the project agreement are created, no repayment of the job creation tax credits is necessary.

(c) If less than seventy-five percent of the required investment in the project agreement is created, one hundred percent of the investment tax credits shall be repaid. If seventy-five percent or more of the required investment in the project agreement is created, no repayment of the investment tax credits is necessary.

(7) For taxpayers who submitted applications for benefits under the Nebraska Advantage Rural Development Act before January 1, 2006, subsection (1) of this section, as such subsection existed immediately prior to such date, shall continue to apply to such taxpayers. The changes made by Laws 2005, LB 312,

shall not preclude a taxpayer from receiving the tax incentives earned prior to January 1, 2006.

Source: Laws 1986, LB 1124, § 2; Laws 1987, LB 270, § 2; Laws 1989, LB 335, § 1; Laws 1993, LB 725, § 16; Laws 1995, LB 134, § 6; Laws 1997, LB 886, § 3; Laws 1999, LB 539, § 2; Laws 2001, LB 169, § 2; Laws 2003, LB 608, § 4; Laws 2005, LB 312, § 19; Laws 2006, LB 990, § 4; Laws 2007, LB223, § 18; Laws 2008, LB895, § 4.

Effective date April 18, 2008.

Cross References

Ethanol facility eligible for tax credit, requirements, see section 66-1349.
Nebraska Revenue Act of 1967, see section 77-2701.

77-27,188.01 Tax credit; claim; use; payment by contractor; how treated; applicability of section.

(1) The credit allowed under section 77-27,188 may be used to obtain a refund of state sales and use taxes paid or against the income tax liability of the taxpayer or may be used as a refundable credit claimed on an income tax return of the taxpayer. The return need not reflect any income tax liability owed by the taxpayer.

(2) A claim for the credit may be filed quarterly for refund of the state sales and use taxes paid, either directly or indirectly, after the filing of the income tax return for the taxable year in which the credit was first allowed.

(3) The credit may be used to obtain a refund of state sales and use taxes paid before the end of the taxable year for which the credit was allowed, except that the amount refunded under this subsection shall not exceed the amount of the state sales and use taxes paid, either directly or indirectly, by the taxpayer on the qualifying investment.

(4) For purposes of subsections (2) and (3) of this section, the taxpayer shall be deemed to have paid indirectly any state sales or use taxes paid by a contractor on building materials annexed to an improvement to real estate built for the taxpayer. The contractor shall certify to the taxpayer the amount of the Nebraska state sales and use taxes paid on the building materials, or the taxpayer, with the permission of the Tax Commissioner and a certification from the contractor that Nebraska state sales and use taxes were paid on all building materials, may presume that fifty percent of the cost of the improvement was for building materials annexed to real estate on which the tax was paid.

(5) No claim for refund of sales and use taxes under this section may be filed prior to January 1, 1989.

(6) Credits distributed to a partner, limited liability company member, shareholder, or beneficiary under section 77-27,194 may be used against the income tax liability of the partner, member, shareholder, or beneficiary receiving the credits.

(7) For taxpayers who met the job and investment thresholds of the Employment Expansion and Investment Incentive Act for a tax year beginning before January 1, 2004, subsection (6) of this section and subdivision (1)(b) of section 77-27,188, as such section existed immediately prior to such date, shall continue to apply to such taxpayer. The changes made by Laws 2003, LB 608, shall

not preclude a taxpayer from receiving the tax incentives earned prior to January 1, 2004.

Source: Laws 1987, LB 270, § 3; Laws 1989, LB 335, § 2; Laws 1993, LB 121, § 512; Laws 1993, LB 345, § 73; Laws 1993, LB 725, § 17; Laws 1994, LB 884, § 91; Laws 2003, LB 608, § 5; Laws 2004, LB 1017, § 21.

77-27,188.02 Failure to maintain investment and employment level; effect.

If the taxpayer does not maintain the increases in the level of investment and employment described in subsection (1) of section 77-27,188 to create a credit for at least three years after the year for which the credit was first allowed, the taxpayer shall lose all used and unused credits. The taxpayer shall repay to the state the amount of the used credits within one year after the failure to maintain such investment and employment.

Source: Laws 1987, LB 270, § 4; Laws 1989, LB 335, § 3; Laws 1997, LB 886, § 4; Laws 2001, LB 169, § 3; Laws 2003, LB 608, § 6; Laws 2006, LB 990, § 5.

77-27,189 Qualified business, defined.

(1) A qualified business means any business engaged in:

(a) Storage, warehousing, distribution, transportation, or sale of tangible personal property;

(b) Livestock production;

(c) Conducting research, development, or testing for scientific, agricultural, animal husbandry, food product, or industrial purposes;

(d) Performing data processing, telecommunication, insurance, or financial services. For purposes of this subdivision, financial services includes only financial services provided by any financial institution subject to tax under Chapter 77, article 38, or any person or entity licensed by the Department of Banking and Finance or the Securities and Exchange Commission and telecommunication services includes community antenna television service, Internet access, satellite ground station, data center, call center, or telemarketing;

(e) Assembly, fabrication, manufacture, or processing of tangible personal property;

(f) Administrative management of any activities, including headquarter facilities relating to such activities; or

(g) Any combination of the activities listed in this subsection.

(2) Qualified business does not include:

(a) Any business activity in which eighty percent or more of the total sales are sales to the ultimate consumer of food prepared for immediate consumption or are sales to the ultimate consumer of tangible personal property which is not (i) assembled, fabricated, manufactured, or processed by the taxpayer or (ii) used by the purchaser in any of the activities listed in subsection (1) of this section; and

(b) Any casino.

Source: Laws 1986, LB 1124, § 3; Laws 1987, LB 270, § 5; Laws 1993, LB 725, § 18; Laws 2003, LB 608, § 7; Laws 2006, LB 990, § 6; Laws 2007, LB223, § 19.

77-27,190 Employment expansion; how determined.

(1) A taxpayer shall be deemed to have new equivalent employees when the new equivalent employees hired during a taxable year are in addition to the number of total equivalent employees in the taxable year preceding the date of application.

(2) Qualifying business employees who work within and without this state shall be considered only to the extent they are paid for work performed within this state.

(3) The hours worked by any person considered an independent contractor or the employee of another taxpayer shall not be used in the computation under this section.

Source: Laws 1986, LB 1124, § 4; Laws 1987, LB 270, § 6; Laws 1997, LB 886, § 5; Laws 2003, LB 608, § 8; Laws 2007, LB223, § 20.

77-27,191 Investment increase; how determined.

(1) A taxpayer shall be deemed to have made an increased investment in this state to the extent the value of the property used or available for use exceeds the value of all property used or available for use on the last day of the taxable year previous to the date the application was filed.

(2) To determine the value of property owned by the taxpayer, the tax basis before allowance for depreciation shall be used. To determine the value of property rented by the taxpayer, the average net annual rent shall be multiplied by the number of years of the lease for which the taxpayer was originally bound, not to exceed ten years. The rental of land included in and incidental to the leasing of a building shall not be excluded from the computation.

(3) Only investment in improvements to real property and tangible personal property that are depreciable under the Internal Revenue Code shall be considered.

(4) Vehicles, planes, or railroad rolling stock shall be excluded in determining the investment under this section.

Source: Laws 1986, LB 1124, § 5; Laws 1987, LB 270, § 7; Laws 1989, LB 335, § 4; Laws 2003, LB 608, § 9; Laws 2006, LB 1003, § 9.

77-27,192 Existing business acquisition, disposal, reorganization, or relocation; computation; certain transactions excluded.

(1)(a) If the taxpayer acquires an existing business, the increases determined in sections 77-27,190 and 77-27,191 shall be computed as though the taxpayer had owned the business for the entire taxable year preceding the date of application.

(b) If the taxpayer disposes of an existing business, and the new owner maintains the minimum increases in the levels of investment and employment required in section 77-27,188 to create a credit, the taxpayer shall not be required to make any repayment under section 77-27,188.02 solely because of the disposition of the business.

(2) If the structure of a business is reorganized, the taxpayer shall compute the increases on a consistent basis for all periods.

(3) If the taxpayer moves a business from one location to another and the business was operated in this state during the taxable year preceding the date

of application, the increases determined in sections 77-27,190 and 77-27,191 shall be computed as though the taxpayer had operated the business at the new location for the entire taxable year preceding the date of application.

(4) If the taxpayer enters into any of the following transactions, they shall be presumed to be a transaction entered into for the purpose of generating benefits under the Nebraska Advantage Rural Development Act and shall not be allowed in the computation of any benefit or the meeting of any required levels under the agreement except as specifically provided in this subsection:

(a) The purchase or lease of any property which was previously owned by the taxpayer which filed the application or a related taxpayer unless the first purchase by either the taxpayer which filed the application or a related taxpayer was first placed in service in the state after the beginning of the taxable year the application was filed;

(b) The renegotiation of any lease in existence during the taxable year the application was filed which does not materially change any of the terms of the lease other than the expiration date;

(c) The purchase or lease of any property from a related taxpayer, except that the taxpayer which filed the application will be allowed any benefits under the act to which the related taxpayer would have been entitled on the purchase or lease of the property if the related taxpayer was considered the taxpayer;

(d) Any transaction entered into primarily for the purpose of receiving benefits under the act which is without a business purpose and does not result in increased economic activity in the state; and

(e) Any activity that results in benefits under the Ethanol Development Act.

Source: Laws 1986, LB 1124, § 6; Laws 1997, LB 886, § 6; Laws 2001, LB 169, § 4; Laws 2007, LB223, § 21.

Cross References

Ethanol Development Act, see section 66-1330.

77-27,194 Credit; when transferable.

The credit allowed under the Nebraska Advantage Rural Development Act shall not be transferable except in the following situations:

(1) Any credit allowable to a partnership, a limited liability company, a subchapter S corporation, a cooperative, including a cooperative exempt under section 521 of the Internal Revenue Code of 1986, as amended, a limited cooperative association, or an estate or trust may be distributed to the partners, limited liability company members, shareholders, patrons, limited cooperative association members, or beneficiaries. Any credit distributed shall be distributed in the same manner as income is distributed. A credit distributed shall be considered a credit used and the partnership, limited liability company, subchapter S corporation, cooperative, including a cooperative exempt under section 521 of the Internal Revenue Code of 1986, as amended, limited cooperative association, estate, or trust shall be liable for any repayment under section 77-27,188.02;

(2) The incentives previously allowed and the future allowance of incentives may be transferred when a project covered by an agreement is transferred by sale or lease to another taxpayer or in an acquisition of assets qualifying under section 381 of the Internal Revenue Code of 1986;

(3) The acquiring taxpayer, as of the date of notification of the Tax Commissioner of the completed transfer, shall be entitled to any unused credits and to any future incentives allowable under the act;

(4) The acquiring taxpayer shall be liable for any repayment that becomes due after the date of the transfer for the repayment of any benefits received either before or after the transfer; and

(5) If a taxpayer operating a qualifying business and allowed a credit under section 77-27,188 dies and there is credit remaining after the filing of the final return for the taxpayer, the personal representative shall determine the distribution of the credit or any remaining carryover with the initial fiduciary return filed for the estate. The determination of the distribution of credit may be changed only after obtaining the permission of the Tax Commissioner.

Source: Laws 1986, LB 1124, § 8; Laws 1993, LB 121, § 513; Laws 1994, LB 884, § 92; Laws 1997, LB 886, § 8; Laws 2003, LB 608, § 10; Laws 2005, LB 312, § 20; Laws 2006, LB 1003, § 10; Laws 2007, LB368, § 137.

77-27,194.01 Refund claims; interest not allowable.

For all refund claims filed on or after October 1, 1998, interest shall not be allowable on any refunds paid because of benefits earned under the Nebraska Advantage Rural Development Act.

Source: Laws 1998, LB 1104, § 16; Laws 2005, LB 312, § 21.

77-27,195 Report; contents.

(1) The Tax Commissioner shall prepare a report identifying the amount of investment in this state and the number of equivalent jobs created by each taxpayer claiming a credit pursuant to the Nebraska Advantage Rural Development Act. The report shall include the amount of credits claimed in the aggregate. The report shall be issued on or before March 15 of each year beginning with March 15, 1988, through March 15, 2006, for all credits allowed during the previous calendar year. The report shall be issued on or before July 15 of each year beginning with July 15, 2007, for all credits allowed during the previous calendar year.

(2) Beginning with applications filed on or after January 1, 2006, except for livestock modernization or expansion projects, the report shall provide information on project-specific total incentives used every two years for each approved project and shall disclose (a) the identity of the taxpayer, (b) the location of the project, and (c) the total credits used and refunds approved during the immediately preceding two years expressed as a single, aggregated total. The incentive information required to be reported under this subsection shall not be reported for the first year the taxpayer attains the required employment and investment thresholds. The information on first-year incentives used shall be combined with and reported as part of the second year. Thereafter, the information on incentives used for succeeding years shall be reported for each project every two years containing information on two years of credits used and refunds approved. The incentives used shall include incentives which have been approved by the Department of Revenue, but not necessarily received, during the previous two calendar years.

(3) For livestock modernization or expansion projects, the report shall disclose (a) the identity of the taxpayer, (b) the total credits used and refunds approved during the preceding calendar year, and (c) the location of the project.

(4) No information shall be provided in the report that is protected by state or federal confidentiality laws.

Source: Laws 1986, LB 1124, § 9; Laws 1993, LB 725, § 19; Laws 1997, LB 886, § 9; Laws 2003, LB 608, § 11; Laws 2005, LB 312, § 22; Laws 2006, LB 990, § 7.

77-27,196.01 Changes to sections; when operative; credits; applicability of act.

(1) The changes made in sections 77-27,188, 77-27,188.02, 77-27,190, 77-27,192, 77-27,193, and 77-27,194 by Laws 1997, LB 886, shall become operative for all credits earned in tax years beginning, or deemed to begin, on and after January 1, 1998. For all credits earned in tax years beginning, or deemed to begin, prior to January 1, 1998, the provisions of the Employment Expansion and Investment Incentive Act as they existed immediately prior to such date shall apply.

(2) The changes made in sections 77-27,187.01 and 77-27,188 by Laws 1999, LB 539, shall become operative for all credits earned in tax years beginning, or deemed to begin, on and after January 1, 1999. For all credits earned in tax years beginning, or deemed to begin, prior to January 1, 1999, the provisions of the Employment Expansion and Investment Incentive Act as they existed immediately prior to such date shall apply.

(3) The changes made in sections 77-27,188, 77-27,188.02, and 77-27,192 by Laws 2001, LB 169, shall become operative for all credits earned in tax years beginning, or deemed to begin, on and after January 1, 2001. For all credits earned in tax years beginning, or deemed to begin, prior to January 1, 2001, the provisions of the Employment Expansion and Investment Incentive Act as they existed immediately prior to such date shall apply.

(4) The changes made in sections 77-27,187.01 and 77-27,187.02 by Laws 2008, LB 895, become operative for applications filed on and after April 18, 2008. The changes made in section 77-27,188 by Laws 2008, LB 895, become operative for applications filed on and after July 1, 2009.

Source: Laws 1997, LB 886, § 10; Laws 1999, LB 539, § 3; Laws 2001, LB 169, § 5; Laws 2008, LB 895, § 5.
Effective date April 18, 2008.

Cross References

Employment Expansion and Investment Incentive Act, see section 77-27,187.

(p) CREDIT FOR BUSINESS CHILD CARE EXPENDITURES

77-27,222 Repealed. Laws 2007, LB 367, § 30.

(r) CREDIT FOR PLANNED GIFTS

77-27,228 Planned gift, defined.

(1) For purposes of sections 77-27,228 to 77-27,234, subject to subsection (2) of this section, planned gift means an irrevocable contribution to a qualified

endowment when the contribution uses any of the following techniques authorized under the Internal Revenue Code of 1986, as amended:

- (a) Charitable remainder unitrusts, as defined by section 664(d)(2) of the code;
- (b) Charitable remainder annuity trusts, as defined by section 664(d)(1) of the code;
- (c) Pooled income fund trusts, as defined by section 642(c)(5) of the code;
- (d) Charitable lead unitrusts qualifying under section 170(f)(2)(B) of the code;
- (e) Charitable lead annuity trusts qualifying under section 170(f)(2)(B) of the code;
- (f) Charitable gift annuities undertaken pursuant to section 1011(b) of the code;
- (g) Deferred charitable gift annuities undertaken pursuant to section 1011(b) of the code;
- (h) Charitable life estate agreements qualifying under section 170(f)(3)(B) of the code; or
- (i) Paid-up life insurance policies qualifying as a deduction under section 170 of the code.

(2)(a) A contribution using a technique described in subdivision (1)(a) or (1)(b) of this section is not a planned gift unless the trust agreement provides that the trust cannot terminate and the beneficiaries' interest in the trust cannot be assigned or contributed to the qualified endowment sooner than the earlier of:

- (i) The date of death of the beneficiaries; or
- (ii) Five years after the date of the contribution.

(b) A contribution using the technique described in subdivision (1)(g) of this section is not a planned gift unless the payment of the annuity is required to begin within the life expectancy of the annuitant or of the joint life expectancies of the annuitants, if more than one annuitant, as determined using the actuarial tables adopted by the Department of Revenue in effect on the date of the contribution. The department may adopt and promulgate rules and regulations adopting life expectancy tables that are derived from the actuarial tables contained in the publications of the Internal Revenue Service.

(c) A contribution using a technique described in subdivision (1)(f) or (1)(g) of this section is not a planned gift unless the annuity agreement provides that the interest of the annuitant or annuitants in the gift annuity cannot be assigned to the qualified endowment sooner than the earlier of:

- (i) The date of death of the annuitant or annuitants; or
- (ii) Five years after the date of the contribution.

(d) A contribution using a technique described in subdivision (1)(f) or (1)(g) of this section is not a planned gift unless the annuity is a qualified charitable gift annuity as defined in section 59-1802.

Source: Laws 2005, LB 28, § 2.

Termination date January 1, 2010.

77-27,229 Qualified endowment, defined.

For purposes of sections 77-27,228 to 77-27,234, qualified endowment means a permanent, irrevocable fund that is used for Nebraska charitable purposes and held by a Nebraska incorporated or established organization that:

(1)(a) Is a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986, as amended; or

(b) Is a bank or trust company that is holding the fund on behalf of a tax-exempt organization; and

(2) Holds the fund as a permanent endowment fund.

Source: Laws 2005, LB 28, § 3.

Termination date January 1, 2010.

77-27,230 Individuals; income tax credit; amount; treatment.

(1) A resident individual shall be allowed a credit against the income tax due under the Nebraska Revenue Act of 1967 in an amount equal to fifteen percent of the present value of the aggregate amount of the charitable gift portion of a planned gift made by the individual during the tax year to any qualified endowment. The maximum credit per individual per tax year is five thousand dollars. The credit allowed under this section shall not exceed the taxpayer's income tax liability.

(2) The credit cannot be carried back or forward, and the credit shall be applied to the tax year in which the planned gift is made.

Source: Laws 2005, LB 28, § 4; Laws 2006, LB 1010, § 1.

Termination date January 1, 2010.

77-27,231 Certain business entities; tax credit; amount; treatment.

A contribution to a qualified endowment by a small business corporation, partnership, or limited liability company carrying on any trade or business for which deductions would be allowed under section 162 of the Internal Revenue Code or carrying on any rental activity qualifies for the credit provided in section 77-27,230. The credit shall be attributed to shareholders, partners, or members in the same proportion used to report the corporation's, partnership's, or limited liability company's income or loss for income tax purposes. The maximum credit per shareholder, partner, or member per tax year is five thousand dollars. The credit allowed under this section may not exceed the taxpayer's income tax liability. The credit cannot be carried back or forward, and the credit shall be applied to the tax year in which the contribution is made.

Source: Laws 2005, LB 28, § 5; Laws 2006, LB 1010, § 2.

Termination date January 1, 2010.

77-27,232 Corporate income tax credit; amount; treatment.

A corporation shall be allowed a credit against the income tax due under the Nebraska Revenue Act of 1967 in an amount equal to ten percent of any contribution made by the corporation to a qualified endowment. The maximum credit that may be claimed by a corporation for contributions made per tax year under this section is five thousand dollars. The credit allowed under this section shall not exceed the taxpayer's income tax liability. The credit cannot be

carried back or forward, and the credit shall be applied to the tax year in which the contribution is made.

Source: Laws 2005, LB 28, § 6; Laws 2006, LB 1010, § 3.
Termination date January 1, 2010.

77-27,233 Estate or trust; income tax credit; amount; treatment.

A contribution to a qualified endowment by a resident estate or trust qualifies for the credit provided in section 77-27,230 if the contribution is a planned gift or in section 77-27,232 if the contribution is an outright gift to a qualified endowment. Any credit not used by the estate or trust may be attributed to each beneficiary of the estate or trust in the same proportion used to report the beneficiary's income from the estate or trust for Nebraska income tax purposes. The maximum credit per beneficiary is five thousand dollars, and the credit can only be claimed in the tax year in which the contribution is made. The credit cannot be carried back or forward.

Source: Laws 2005, LB 28, § 7; Laws 2006, LB 1010, § 4.
Termination date January 1, 2010.

77-27,234 Termination of sections.

Sections 77-27,228 to 77-27,233 terminate for taxable years beginning or deemed to begin on or after January 1, 2010, under the Internal Revenue Code of 1986, as amended.

Source: Laws 2005, LB 28, § 8.

(s) RENEWABLE ENERGY TAX CREDIT

77-27,235 Renewable energy tax credit; Department of Revenue; Environmental Quality Council; powers.

(1) Any producer of electricity generated by a new zero-emission facility shall earn a renewable energy tax credit. For electricity generated on or after July 14, 2006, and before October 1, 2007, the credit shall be .075 cent for each kilowatt-hour of electricity generated by a new zero-emission facility. For electricity generated on or after October 1, 2007, and before January 1, 2010, the credit shall be .1 cent for each kilowatt-hour of electricity generated by a new zero-emission facility. For electricity generated on or after January 1, 2010, and before January 1, 2013, the credit shall be .075 cent per kilowatt-hour for electricity generated by a new zero-emission facility. For electricity generated on or after January 1, 2013, and before January 1, 2018, the credit shall be .05 cent per kilowatt-hour for electricity generated by a new zero-emission facility. The credit may be earned for production of electricity for ten years after the date that the facility is placed in operation on or after July 14, 2006.

(2) For purposes of this section:

(a) Electricity generated by a new zero-emission facility means electricity that is exclusively produced by a new zero-emission facility;

(b) Eligible renewable resources means wind, moving water, solar, geothermal, fuel cell, methane gas, or photovoltaic technology; and

(c) New zero-emission facility means an electrical generating facility located in this state that is first placed into service on or after July 14, 2006, which

utilizes eligible renewable resources as its fuel source and for which the operation of the facility results in no pollution or emissions that are or may be harmful to the environment as certified by the Department of Environmental Quality.

(3) The credit allowed under this section may be used to reduce the producer's Nebraska income tax liability or to obtain a refund of state sales and use taxes paid by the producer of electricity generated by a zero-emission facility. A claim to use the credit for refund of the state sales and use taxes paid, either directly or indirectly, by the producer may be filed quarterly for electricity generated during the previous quarter by the twentieth day of the month following the end of the calendar quarter. The credit may be used to obtain a refund of state sales and use taxes paid during the quarter immediately preceding the quarter in which the claim for refund is made, except that the amount refunded under this subsection shall not exceed the amount of the state sales and use taxes paid during the quarter.

(4) The Department of Revenue may adopt and promulgate rules and regulations to permit verification of the validity and timeliness of any renewable energy tax credit claimed.

(5) The Environmental Quality Council may adopt and promulgate rules and regulations to certify that the operation of a new zero-emission facility results in no pollution or emissions that are or may be harmful to the environment.

(6) The total amount of renewable energy tax credits that may be used by all taxpayers shall be limited to seven hundred fifty thousand dollars without further authorization from the Legislature.

(7) The credit allowed under this section may not be claimed by a producer who received a sales tax exemption under section 77-2704.57 for the new zero-emission facility.

Source: Laws 2006, LB 872, § 2; Laws 2007, LB367, § 24.

(t) BIODIESEL FACILITY INVESTMENT CREDIT

77-27,236 Biodiesel facility tax credit; conditions; facility; requirements; information not public record.

(1) A taxpayer who makes an investment after January 1, 2008, and prior to January 1, 2015, in a biodiesel facility shall receive a nonrefundable income tax credit as provided in this section.

(2) The credit provided in subsection (1) of this section shall be equal to thirty percent of the amount invested by the taxpayer in a biodiesel facility. The credit shall be taken over at least four taxable years subject to the following conditions:

(a) No more than ten percent of the credit provided for in subsection (1) of this section shall be taken in each of the first two taxable years the biodiesel facility produces B100 and no more than fifty percent of the credit provided for in subsection (1) of this section shall be taken in the third taxable year the biodiesel facility produces B100. The credit allowed under subsection (1) of this section shall not exceed fifty percent of the taxpayer's liability in any tax year;

(b) Any amount of credit not allowed because of the limitations in this section may be carried forward for up to fifteen taxable years after the taxable year in

which the investment was made. The aggregate maximum income tax credit a taxpayer may obtain is two hundred fifty thousand dollars;

(c) The investment shall be at risk in the biodiesel facility. The investment shall be in the form of a purchase of an ownership interest or the right to receive payment of dividends from the biodiesel facility and shall remain in the business for at least three years. The Tax Commissioner may recapture any credits used if the investment does not remain invested for the three-year period. An investment placed in escrow does not qualify under this subdivision;

(d) The entire amount of the investment shall be expended by the biodiesel facility for plant, equipment, research and development, marketing and sales activity, or working capital;

(e) A partnership, a subchapter S corporation, a limited liability company that for tax purposes is treated like a partnership, a cooperative, including a cooperative exempt under section 521 of the Internal Revenue Code of 1986, as amended, or any other pass-through entity that invests in a biodiesel facility shall be considered to be the taxpayer for purposes of the credit limitations. Except for the limitation under subdivision (2)(a) of this section, the amount of the credit allowed to a pass-through entity shall be determined at the partnership, corporate, cooperative, or other organizational level. The amount of the credit determined at the partnership, corporate, cooperative, or other organizational level shall be allowed to the partners, members, or other owners in proportion to their respective ownership interests in the pass-through entity;

(f) The credit shall be taken only if (i) the biodiesel facility produces B100, (ii) the biodiesel facility in which the investment was made produces at a rate of at least seventy percent of its rated capacity continuously for at least one week during the first taxable year the credit is taken and produces at a rate of at least seventy percent of its rated capacity over a six-month period during each of the next two taxable years the credit is taken, (iii) all processing takes place at the biodiesel facility in which the investment was made and which is located in Nebraska, and (iv) at least fifty-one percent of the ownership interest of the biodiesel facility is held by Nebraska resident individuals or Nebraska entities; and

(g) The biodiesel facility shall provide the Department of Revenue written evidence substantiating that the biodiesel facility has received the requisite authority from the Department of Environmental Quality and from the United States Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives. The biodiesel facility shall annually provide an analysis to the Department of Revenue of samples of the product collected according to procedures specified by the department. The analysis shall be prepared by an independent laboratory meeting standards of the International Organization for Standardization. Prior to collecting the samples, the biodiesel facility shall notify the department which may observe the sampling procedures utilized by the biodiesel facility to obtain the samples to be submitted for independent analysis.

(3) Any biodiesel facility for which credits are granted shall, whenever possible, employ workers who are residents of the State of Nebraska.

(4) Trade secrets, academic and scientific research work, and other proprietary or commercial information which may be filed with the Tax Commissioner shall not be considered to be public records as defined in section 84-712.01 if the release of such trade secrets, work, or information would give advantage to

business competitors and serve no public purpose. Any person seeking release of the trade secrets, work, or information as a public record shall demonstrate to the satisfaction of the department that the release would not violate this section.

(5) For purposes of this section:

(a) Biodiesel facility means a plant or facility related to the processing, marketing, or distribution of biodiesel; and

(b) B100 means pure biodiesel containing mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, designated as B100, and meeting the American Society for Testing and Materials standard, ASTM D6751.

Source: Laws 2007, LB343, § 2.

ARTICLE 31

REGISTRATION BY NONRESIDENT CONTRACTORS

Section

77-3101. Terms, defined.

77-3102. Nonresident contractor, registration; contract, registration; exemptions.

77-3104. Nonresident contractor; registration; bond; conditions; file.

77-3105. Nonresident contractor; contract; before performance; bond, conditions; file.

77-3106. Contractor; nonresident subcontractor; withholding of funds; failure to withhold or obtain clearance prior to releasing funds; effect.

77-3101 Terms, defined.

As used in sections 77-3101 to 77-3112, unless the context otherwise requires:

(1) Contractor shall include individuals, firms, partnerships, limited liability companies, corporations, or other associations of persons engaged in the business of the construction, alteration, repairing, dismantling, or demolition of buildings, roads, bridges, viaducts, sewers, water and gas mains, streets, disposal plants, water filters, tanks and towers, airports, dams, levees and canals, water wells, pipelines, transmission and power lines, and every other type of structure, project, development, or improvement coming within the definition of real property and personal property, including such construction, repairing, or alteration of such property to be held either for sale or rental. Contractor shall also include any subcontractor engaged in the business of such activities and any person who is providing or arranging for labor for such activities, either as an employee or as an independent contractor, for any contractor or person; and

(2) Nonresident contractor shall mean a contractor who neither is domiciled in nor maintains a permanent place of business in this state or who, being so domiciled or maintaining such permanent place of residence, spends in the aggregate less than six months of the year in this state.

Source: Laws 1969, c. 637, § 1, p. 2546; Laws 1993, LB 121, § 515; Laws 2004, LB 1017, § 22.

77-3102 Nonresident contractor, registration; contract, registration; exemptions.

(1) In order that the State of Nebraska and the political subdivisions thereof may receive all taxes due in every instance, including contributions due under the Employment Security Law and any withholding required under the Nebras-

ka Revenue Act of 1967, contractors who are nonresidents of this state desiring to engage in, prosecute, follow, or carry on the business of contracting within this state shall register with the Tax Commissioner.

(2) Each contract to which a nonresident contractor is a party shall be registered with the Tax Commissioner, except that if the total contract price or compensation to be received is less than ten thousand dollars, the Tax Commissioner may waive the requirements of this subsection.

Source: Laws 1969, c. 637, § 2, p. 2547; Laws 2007, LB223, § 22; Laws 2008, LB1001, § 10.

Operative date January 1, 2009.

Cross References

Employment Security Law, see section 48-601.

Nebraska Revenue Act of 1967, see section 77-2701.

77-3104 Nonresident contractor; registration; bond; conditions; file.

Every contractor required to register under the provisions of sections 77-3101 to 77-3112 shall, before entering into the performance of any contract or contracts in this state, execute and file with the Tax Commissioner either (1) a good and valid bond issued by a surety company authorized to do business in this state, or with sufficient sureties to be approved by the Tax Commissioner, conditioned that all taxes, including contributions under the Employment Security Law and any withholding required under the Nebraska Revenue Act of 1967, which may accrue to the State of Nebraska and all taxes which may accrue to the political subdivisions thereof on account of the execution and performance of such contract or contracts, will be paid when due, and the execution and filing of such bond shall be a condition precedent to commencing work on any contract in the State of Nebraska, or (2) such other form of assurance of such performance as shall be acceptable to the Tax Commissioner.

Source: Laws 1969, c. 637, § 4, p. 2548; Laws 2008, LB1001, § 11.

Operative date January 1, 2009.

Cross References

Employment Security Law, see section 48-601.

Nebraska Revenue Act of 1967, see section 77-2701.

77-3105 Nonresident contractor; contract; before performance; bond, conditions; file.

(1) Every contractor required to register any contract or contracts under the provisions of sections 77-3101 to 77-3112 shall, for each such contract and before entering into the performance of such contract or contracts, execute and file with the Tax Commissioner either (a) a good and valid bond issued by a surety company authorized to do business in this state, or with sufficient sureties to be approved by the Tax Commissioner, conditioned that all taxes, including contributions due under the Employment Security Law and any withholding required under the Nebraska Revenue Act of 1967, which may accrue to the State of Nebraska and the political subdivisions thereof on account of the execution and performance of such contract or contracts, will be paid when due, and the execution and filing of such bond shall be a condition precedent to commencing work on any contract in the State of Nebraska, or (b) such other form of assurance of such performance as shall be acceptable to the Tax Commissioner.

(2) Bonds filed pursuant to this section shall be subject to the following conditions:

(a) The Tax Commissioner may, at his or her discretion, allow the execution and filing of one bond to be sufficient for commencing performance of all such contracts. Such bond shall be conditioned as provided in this section with respect to all contracts to be performed during the current calendar year and shall be in the sum of not less than five thousand dollars;

(b) If at any time the Tax Commissioner shall determine that the amount of any bond is not sufficient to cover the tax liabilities accruing to the State of Nebraska or the political subdivisions thereof for the current calendar year, the Tax Commissioner shall require such bond to be increased in such sum as the Tax Commissioner may determine to be proper;

(c) When any nonresident contractor shall have fully performed the contracts registered by him or her and shall have made payments of all taxes, including contributions due under the Employment Security Law and any withholding required under the Nebraska Revenue Act of 1967, which accrued to the State of Nebraska and the political subdivisions thereof on account of the execution and performance of such contracts, the bond or bonds may be released by the Tax Commissioner; and

(d) Any bond or bonds required in this section are in addition to, separate, and distinct from all bonds required under the provisions of section 77-3104.

Source: Laws 1969, c. 637, § 5, p. 2548; Laws 2008, LB1001, § 12.
Operative date January 1, 2009.

Cross References

Employment Security Law, see section 48-601.
Nebraska Revenue Act of 1967, see section 77-2701.

77-3106 Contractor; nonresident subcontractor; withholding of funds; failure to withhold or obtain clearance prior to releasing funds; effect.

(1) Any contractor who contracts with any subcontractor who is or shall become subject to the provisions of sections 77-3101 to 77-3112 shall withhold sufficient money on such contract or contracts to guarantee that all taxes, including contributions due under the Employment Security Law and any withholding required under the Nebraska Revenue Act of 1967, which may accrue to the State of Nebraska and all taxes which may accrue to the political subdivisions thereof on account of the execution and performance of such contract or contracts, will be paid when due. Failure to comply with the provisions of this section or to obtain a clearance from the Department of Revenue prior to releasing such withholding to the subcontractor shall render such contractor directly liable for the amount of bond that the subcontractor was required to provide under section 77-3104, and the Tax Commissioner shall have all the remedies of collection against such contractor under the provisions of sections 77-3101 to 77-3112 as though the services in question were performed directly by such contractor.

(2) The withholding required by this section shall not apply to any payment made to (a) a person that provides the payor with a statement that the income earned is not subject to income tax because of a treaty obligation of the United States, (b) a contractor when the payor contractor determines that the payee contractor is in the data base required by subsection (3) of section 77-2753, or

.....
Notary Public

Source: Laws 1973, LB 73, § 4; Laws 1997, LB 489, § 3; Laws 2004, LB 813, § 34.

77-3206 Authority; duties.

It shall be the duty of such authority to administer the tax-delinquent lands as follows:

(1) Such authority shall immediately assume possession and control of all real estate acquired by it under the Land Reutilization Act and proceed to inventory and appraise such land and thereafter keep and maintain a perpetual inventory of such real estate, except that individual parcels may be consolidated and grouped or regrouped for economy, utility, or convenience;

(2) Such authority shall classify such land as to its use into the following three classifications:

(a) Suitable for private use;

(b) Suitable for use by a public agency; and

(c) Not usable in its present condition or situation and held as a public land reserve. Any parcel of property may be reclassified by a three-fifths vote of the commissioners;

(3) Such authority shall administer all property described in subdivision (2)(a) of this section in accordance with subdivision (4) of this section. Every effort shall be made to sell such property at a price as close to its appraised value as possible. Property described in subdivisions (2)(b) and (2)(c) of this section may be transferred at no cost by the authority upon request of and to a public agency upon submission of a plan of use for the property by such public agency to the land reutilization commissioners. If the property is transferred at no cost to any public agency and such public agency shall then sell or otherwise dispose of such property within ten years for any consideration, the proceeds of such sale or disposal shall be returned to the commissioners who shall in turn distribute the proceeds in accordance with the act. If the commissioners do not give an affirmative vote to the request for transfer, the authority may dispose of the property in accordance with subdivision (4) of this section. Properties described in subdivision (2)(c) of this section shall be studied and recommendations made to taxing authorities as to possible uses for such real estate. In furtherance of this objective, such authority shall have access to any and all city and county records at any time and may call upon any and all city and county officers, departments, boards, planning commissions, or other commissions for studies, statistics, or recommendations. Such authority shall prepare a list of all land described in subdivision (2)(a) of this section, which list shall be corrected and amended from time to time in the discretion of the commissioners. Such commissioners may make a charge not to exceed one dollar for each copy of such list, which charge shall be used to help defray the costs of preparing such list. Any person may purchase a copy of such list. Any real estate agent or broker licensed to do business in the city may, when authorized by the commissioners, sell any such property upon the terms and conditions imposed by the commissioners, and the commissioners may pay a reasonable real estate commission. Nothing in the act shall prohibit the commissioners from selling or exchanging any such real estate directly to or with any purchaser;

(4) Such commissioners shall manage, maintain, protect, rent, lease, repair, insure, alter, sell, trade, exchange, or otherwise dispose of any such real estate on such terms and conditions as may be determined in the sole discretion of the commissioners in accordance with section 77-3205. Such commissioners may assemble tracts or parcels of real estate for public parks or other public purposes and to such end may exchange parcels and otherwise effectuate such purposes by agreement with any taxing authority; and

(5) Such authority shall adopt rules and regulations consistent with the act and shall keep records of all of its transactions, which records shall be open to inspection of any taxing authority in the county at any time. There shall be an annual audit of the affairs, accounts, expenses, and financial transactions of such authority by certified public accountants as of December 31 of each year, which accountants shall be employed by the commissioners on or before November 1 of each year, and certified copies of such audit shall be furnished to the appointing authorities and shall be available for public inspection at the offices of such appointing authorities.

Source: Laws 1973, LB 73, § 6; Laws 1980, LB 862, § 3; Laws 2008, LB710, § 2.
Effective date July 18, 2008.

77-3206.01 Authority; sale of real property; notification to adjacent real property owner required.

No authority created pursuant to section 77-3201 shall offer for sale any parcel of real property without notifying, in writing, each owner of adjacent real property, on record, that the authority intends to offer such parcel for sale. The notice shall include the legal description of such parcel and shall be mailed at least forty-five days before the parcel is offered for sale.

Source: Laws 2008, LB710, § 1.
Effective date July 18, 2008.

77-3207 Authority; employees; disbursements; fiscal year; audit; warrants.

(1) The commissioners may appoint a director and such other employees as are deemed necessary to carry out the responsibilities and duties imposed by the Land Reutilization Act and may incur such other reasonable and proper costs and expenses related thereto. If such costs and expenses exceed the amount of funds available to the authority under the act, the authority shall obtain approval for such additional or supplemental needs. Such appropriations shall be considered advances to the authority subject to repayment from funds accumulated by the authority under the act.

The county treasurer's office shall handle all such appropriated expense funds and disburse the same under the provisions for handling other expenditures.

The authority shall deposit all funds received under the act with the county treasurer of the county and make disbursements therefrom upon receipt of vouchers duly authorized by the authority under the act and in accordance with standard procedures adopted by and approved by the county treasurer.

(2) The fiscal year of the authority shall commence on January 1 of each year. The authority shall audit all claims for the expenditure of money and the

chairman or vice-chairman thereof shall draw warrants therefor from time to time.

Source: Laws 1973, LB 73, § 7; Laws 2008, LB710, § 3.
Effective date July 18, 2008.

77-3210 Authority; members; employees; prohibited acts; violations; penalty.

(1) Neither the members nor any salaried employee of the authority shall receive any compensation, emolument, or other profit directly or indirectly from the rental, management, purchase, sale, or other disposition of any lands held by such authority other than the salaries, expenses, and emoluments provided for in the Land Reutilization Act.

(2) Any person convicted of violating any provision of this section shall be guilty of a felony and shall, upon conviction thereof, be punished by imprisonment in a Department of Correctional Services adult correctional facility not less than two years nor more than five years.

Source: Laws 1973, LB 73, § 10; Laws 1993, LB 31, § 23; Laws 2008, LB710, § 4.
Effective date July 18, 2008.

77-3212 Title subject to rights-of-way, easements, covenants, and rights of redemption.

(1) The title to any real estate which shall vest in the authority under the Land Reutilization Act shall be held by the authority in trust for the tax bill owners and taxing authorities having an interest in any tax liens which were foreclosed, as their interests may appear in the judgment of foreclosure.

(2) The title to any real estate which shall vest in any purchaser or the authority upon confirmation of such sale by the court shall be an absolute estate in fee simple, subject to rights-of-way, easements, and covenants thereon and subject to all rights of redemption provided by law or the Constitution.

Source: Laws 1973, LB 73, § 12; Laws 2008, LB710, § 5.
Effective date July 18, 2008.

77-3213 Act, how cited.

Sections 77-3201 to 77-3213 shall be known and may be cited as the Land Reutilization Act.

Source: Laws 1973, LB 73, § 13; Laws 2008, LB710, § 6.
Effective date July 18, 2008.

ARTICLE 34

POLITICAL SUBDIVISIONS, BUDGET LIMITATIONS

(d) LIMITATION ON PROPERTY TAXES

Section

77-3442. Property tax levies; maximum levy; exceptions.

77-3444. Authority to exceed maximum levy; procedure.

(d) LIMITATION ON PROPERTY TAXES

77-3442 Property tax levies; maximum levy; exceptions.

(1) Property tax levies for the support of local governments for fiscal years beginning on or after July 1, 1998, shall be limited to the amounts set forth in this section except as provided in section 77-3444.

(2)(a) Except as provided in subdivision (2)(e) of this section, school districts and multiple-district school systems, except learning communities and school districts that are members of learning communities, may levy a maximum levy of one dollar and five cents per one hundred dollars of taxable valuation of property subject to the levy.

(b) For each fiscal year, learning communities may levy a maximum levy for the general fund budgets of member school districts of ninety-five cents per one hundred dollars of taxable valuation of property subject to the levy. The proceeds from the levy pursuant to this subdivision shall be distributed pursuant to section 79-1073.

(c) Except as provided in subdivision (2)(e) of this section, for each fiscal year, school districts that are members of learning communities may levy for purposes of such districts' general fund budget and special building funds a maximum combined levy of the difference of one dollar and five cents on each one hundred dollars of taxable property subject to the levy minus the learning community levies pursuant to subdivisions (2)(b) and (2)(g) of this section for such learning community.

(d) Excluded from the limitations in subdivisions (2)(a) and (2)(c) of this section are amounts levied to pay for sums agreed to be paid by a school district to certificated employees in exchange for a voluntary termination of employment and amounts levied to pay for special building funds and sinking funds established for projects commenced prior to April 1, 1996, for construction, expansion, or alteration of school district buildings. For purposes of this subsection, commenced means any action taken by the school board on the record which commits the board to expend district funds in planning, constructing, or carrying out the project.

(e) Federal aid school districts may exceed the maximum levy prescribed by subdivision (2)(a) or (2)(c) of this section only to the extent necessary to qualify to receive federal aid pursuant to Title VIII of Public Law 103-382, as such title existed on September 1, 2001. For purposes of this subdivision, federal aid school district means any school district which receives ten percent or more of the revenue for its general fund budget from federal government sources pursuant to Title VIII of Public Law 103-382, as such title existed on September 1, 2001.

(f) For school fiscal year 2002-03 through school fiscal year 2007-08, school districts and multiple-district school systems may, upon a three-fourths majority vote of the school board of the school district, the board of the unified system, or the school board of the high school district of the multiple-district school system that is not a unified system, exceed the maximum levy prescribed by subdivision (2)(a) of this section in an amount equal to the net difference between the amount of state aid that would have been provided under the Tax Equity and Educational Opportunities Support Act without the temporary aid adjustment factor as defined in section 79-1003 for the ensuing school fiscal year for the school district or multiple-district school system and the amount provided with the temporary aid adjustment factor. The State Department of Education shall certify to the school districts and multiple-district school systems the amount by which the maximum levy may be exceeded for the next school fiscal year pursuant to this subdivision (f) of this subsection on or before February 15 for school fiscal years 2004-05 through 2007-08.

(g) For each fiscal year, learning communities may levy a maximum levy of two cents on each one hundred dollars of taxable property subject to the levy for special building funds for member school districts. The proceeds from the levy pursuant to this subdivision shall be distributed pursuant to section 79-1073.01.

(h) For each fiscal year, learning communities may levy a maximum levy of five cents on each one hundred dollars of taxable property subject to the levy for elementary learning center facilities and for up to fifty percent of the estimated cost for capital projects approved by the learning community coordinating council pursuant to section 79-2111.

(3) Community colleges may levy a maximum levy calculated pursuant to the Community College Foundation and Equalization Aid Act on each one hundred dollars of taxable property subject to the levy.

(4)(a) Natural resources districts may levy a maximum levy of four and one-half cents per one hundred dollars of taxable valuation of property subject to the levy.

(b) Natural resources districts shall also have the power and authority to levy a tax equal to the dollar amount by which their restricted funds budgeted to administer and implement ground water management activities and integrated management activities under the Nebraska Ground Water Management and Protection Act exceed their restricted funds budgeted to administer and implement ground water management activities and integrated management activities for FY2003-04, not to exceed one cent on each one hundred dollars of taxable valuation annually on all of the taxable property within the district.

(c) In addition, natural resources districts located in a river basin, subbasin, or reach that has been determined to be fully appropriated pursuant to section 46-714 or designated as overappropriated pursuant to section 46-713 by the Department of Natural Resources shall also have the power and authority to levy a tax equal to the dollar amount by which their restricted funds budgeted to administer and implement ground water management activities and integrated management activities under the Nebraska Ground Water Management and Protection Act exceed their restricted funds budgeted to administer and implement ground water management activities and integrated management activities for FY2005-06, not to exceed three cents on each one hundred dollars of taxable valuation on all of the taxable property within the district for fiscal year 2006-07 and each fiscal year thereafter through fiscal year 2011-12.

(5) Any educational service unit authorized to levy a property tax pursuant to section 79-1225 may levy a maximum levy of one and one-half cents per one hundred dollars of taxable valuation of property subject to the levy.

(6)(a) Incorporated cities and villages which are not within the boundaries of a municipal county may levy a maximum levy of forty-five cents per one hundred dollars of taxable valuation of property subject to the levy plus an additional five cents per one hundred dollars of taxable valuation to provide financing for the municipality's share of revenue required under an agreement or agreements executed pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act. The maximum levy shall include amounts levied to pay for sums to support a library pursuant to section 51-201, museum pursuant to section 51-501, visiting community nurse, home health nurse, or home health agency pursuant to section 71-1637, or statue, memorial, or monument pursuant to section 80-202.

(b) Incorporated cities and villages which are within the boundaries of a municipal county may levy a maximum levy of ninety cents per one hundred dollars of taxable valuation of property subject to the levy. The maximum levy shall include amounts paid to a municipal county for county services, amounts levied to pay for sums to support a library pursuant to section 51-201, a museum pursuant to section 51-501, a visiting community nurse, home health nurse, or home health agency pursuant to section 71-1637, or a statue, memorial, or monument pursuant to section 80-202.

(7) Sanitary and improvement districts which have been in existence for more than five years may levy a maximum levy of forty cents per one hundred dollars of taxable valuation of property subject to the levy, and sanitary and improvement districts which have been in existence for five years or less shall not have a maximum levy. Unconsolidated sanitary and improvement districts which have been in existence for more than five years and are located in a municipal county may levy a maximum of eighty-five cents per hundred dollars of taxable valuation of property subject to the levy.

(8) Counties may levy or authorize a maximum levy of fifty cents per one hundred dollars of taxable valuation of property subject to the levy, except that five cents per one hundred dollars of taxable valuation of property subject to the levy may only be levied to provide financing for the county's share of revenue required under an agreement or agreements executed pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act. The maximum levy shall include amounts levied to pay for sums to support a library pursuant to section 51-201 or museum pursuant to section 51-501. The county may allocate up to fifteen cents of its authority to other political subdivisions subject to allocation of property tax authority under subsection (1) of section 77-3443 and not specifically covered in this section to levy taxes as authorized by law which do not collectively exceed fifteen cents per one hundred dollars of taxable valuation on any parcel or item of taxable property. The county may allocate to one or more other political subdivisions subject to allocation of property tax authority by the county under subsection (1) of section 77-3443 some or all of the county's five cents per one hundred dollars of valuation authorized for support of an agreement or agreements to be levied by the political subdivision for the purpose of supporting that political subdivision's share of revenue required under an agreement or agreements executed pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act. If an allocation by a county would cause another county to exceed its levy authority under this section, the second county may exceed the levy authority in order to levy the amount allocated.

(9) Municipal counties may levy or authorize a maximum levy of one dollar per one hundred dollars of taxable valuation of property subject to the levy. The municipal county may allocate levy authority to any political subdivision or entity subject to allocation under section 77-3443.

(10) Property tax levies for judgments, except judgments or orders from the Commission of Industrial Relations, obtained against a political subdivision which require or obligate a political subdivision to pay such judgment, to the extent such judgment is not paid by liability insurance coverage of a political subdivision, for preexisting lease-purchase contracts approved prior to July 1, 1998, for bonded indebtedness approved according to law and secured by a levy on property except as provided in section 44-4317 for bonded indebtedness issued by educational service units and school districts, and for payments by a

public airport to retire interest-free loans from the Department of Aeronautics in lieu of bonded indebtedness at a lower cost to the public airport are not included in the levy limits established by this section.

(11) The limitations on tax levies provided in this section are to include all other general or special levies provided by law. Notwithstanding other provisions of law, the only exceptions to the limits in this section are those provided by or authorized by sections 77-3442 to 77-3444.

(12) Tax levies in excess of the limitations in this section shall be considered unauthorized levies under section 77-1606 unless approved under section 77-3444.

(13) For purposes of sections 77-3442 to 77-3444, political subdivision means a political subdivision of this state and a county agricultural society.

(14) For school districts that file a binding resolution on or before May 9, 2008, with the county assessors, county clerks, and county treasurers for all counties in which the school district has territory pursuant to subsection (7) of section 79-458, if the combined levies, except levies for bonded indebtedness approved by the voters of the school district and levies for the refinancing of such bonded indebtedness, are in excess of the greater of (a) one dollar and twenty cents per one hundred dollars of taxable valuation of property subject to the levy or (b) the maximum levy authorized by a vote pursuant to section 77-3444, all school district levies, except levies for bonded indebtedness approved by the voters of the school district and levies for the refinancing of such bonded indebtedness, shall be considered unauthorized levies under section 77-1606.

Source: Laws 1996, LB 1114, § 1; Laws 1997, LB 269, § 56; Laws 1998, LB 306, § 36; Laws 1998, LB 1104, § 17; Laws 1999, LB 87, § 87; Laws 1999, LB 141, § 11; Laws 1999, LB 437, § 26; Laws 2001, LB 142, § 57; Laws 2002, LB 568, § 9; Laws 2002, LB 898, § 1; Laws 2002, LB 1085, § 19; Laws 2003, LB 540, § 2; Laws 2004, LB 962, § 110; Laws 2004, LB 1093, § 1; Laws 2005, LB 38, § 2; Laws 2006, LB 968, § 12; Laws 2006, LB 1024, § 14; Laws 2006, LB 1226, § 30; Laws 2007, LB342, § 31; Laws 2007, LB641, § 4; Laws 2007, LB701, § 33; Laws 2008, LB988, § 2; Laws 2008, LB1154, § 5.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB988, section 2, with LB1154, section 5, to reflect all amendments.

Note: Changes made by LB988 became effective April 3, 2008. Changes made by LB1154 became effective July 18, 2008.

Cross References

Community College Foundation and Equalization Act, see section 85-2201.

Interlocal Cooperation Act, see section 13-801.

Joint Public Agency Act, see section 13-2501.

Nebraska Ground Water Management and Protection Act, see section 46-701.

Tax Equity and Educational Opportunities Support Act, see section 79-1001.

77-3444 Authority to exceed maximum levy; procedure.

(1) A political subdivision, other than a Class I school district, may exceed the limits provided in section 77-3442 or a final levy allocation determination as provided in section 77-3443 by an amount not to exceed a maximum levy approved by a majority of registered voters voting on the issue in a primary, general, or special election at which the issue is placed before the registered voters. A vote to exceed the limits provided in section 77-3442 or a final levy allocation as provided in section 77-3443 must be approved prior to October 10

of the fiscal year which is to be the first to exceed the limits or final levy allocation. The governing body of the political subdivision may call for the submission of the issue to the voters (a) by passing a resolution calling for exceeding the limits or final levy allocation by a vote of at least two-thirds of the members of the governing body and delivering a copy of the resolution to the county clerk or election commissioner of every county which contains all or part of the political subdivision or (b) upon receipt of a petition by the county clerk or election commissioner of every county containing all or part of the political subdivision requesting an election signed by at least five percent of the registered voters residing in the political subdivision. The resolution or petition shall include the amount of levy which would be imposed in excess of the limits provided in section 77-3442 or the final levy allocation as provided in section 77-3443 and the duration of the excess levy authority. The excess levy authority shall not have a duration greater than five years. Any resolution or petition calling for a special election shall be filed with the county clerk or election commissioner no later than thirty days prior to the date of the election, and the time of publication and providing a copy of the notice of election required in section 32-802 shall be no later than twenty days prior to the election. The county clerk or election commissioner shall place the issue on the ballot at an election as called for in the resolution or petition which is at least thirty days after receipt of the resolution or petition. The election shall be held pursuant to the Election Act. For petitions filed with the county clerk or election commissioner on or after May 1, 1998, the petition shall be in the form as provided in sections 32-628 to 32-631. Any excess levy authority approved under this section shall terminate pursuant to its terms, on a vote of the governing body of the political subdivision to terminate the authority to levy more than the limits, at the end of the fourth fiscal year following the first year in which the levy exceeded the limit or the final levy allocation, or as provided in subsection (4) of this section, whichever is earliest. A governing body may pass no more than one resolution calling for an election pursuant to this section during any one calendar year. Only one election may be held in any one calendar year pursuant to a petition initiated under this section.

(2) The ballot question may include any terms and conditions set forth in the resolution or petition and shall include the following: "Shall (name of political subdivision) be allowed to levy a property tax not to exceed cents per one hundred dollars of taxable valuation in excess of the limits prescribed by law until fiscal year for the purposes of (general operations; building construction, remodeling, or site acquisition; or both general operations and building construction, remodeling, or site acquisition)?" If a majority of the votes cast upon the ballot question are in favor of such tax, the county board shall authorize a tax in excess of the limits in section 77-3442 or the final levy allocation in section 77-3443 but such tax shall not exceed the amount stated in the ballot question. If a majority of those voting on the ballot question are opposed to such tax, the governing body of the political subdivision shall not impose such tax.

(3) In lieu of the election procedures in subsection (1) of this section, any political subdivision subject to section 77-3443, other than a Class I school district, and villages may approve a levy in excess of the limits in section 77-3442 or the final levy allocation provided in section 77-3443 for a period of one year at a meeting of the residents of the political subdivision or village, called after notice is published in a newspaper of general circulation in the

political subdivision or village at least twenty days prior to the meeting. At least ten percent of the registered voters residing in the political subdivision or village shall constitute a quorum for purposes of taking action to exceed the limits or final levy allocation. A record shall be made of the registered voters residing in the political subdivision or village who are present at the meeting. The method of voting at the meeting shall protect the secrecy of the ballot. If a majority of the registered voters present at the meeting vote in favor of exceeding the limits or final levy allocation, a copy of the record of that action shall be forwarded to the county board prior to October 10 and the county board shall authorize a levy as approved by the residents for the year. If a majority of the registered voters present at the meeting vote against exceeding the limits or final allocation, the limit or allocation shall not be exceeded and the political subdivision shall have no power to call for an election under subsection (1) of this section.

(4) A political subdivision, other than a Class I school district, may rescind or modify a previously approved excess levy authority prior to its expiration by a majority of registered voters voting on the issue in a primary, general, or special election at which the issue is placed before the registered voters. A vote to rescind or modify must be approved prior to October 10 of the fiscal year for which it is to be effective. The governing body of the political subdivision may call for the submission of the issue to the voters (a) by passing a resolution calling for the rescission or modification by a vote of at least two-thirds of the members of the governing body and delivering a copy of the resolution to the county clerk or election commissioner of every county which contains all or part of the political subdivision or (b) upon receipt of a petition by the county clerk or election commissioner of every county containing all or part of the political subdivision requesting an election signed by at least five percent of the registered voters residing in the political subdivision. The resolution or petition shall include the amount and the duration of the previously approved excess levy authority and a statement that either such excess levy authority will be rescinded or such excess levy authority will be modified. If the excess levy authority will be modified, the amount and duration of such modification shall be stated. The modification shall not have a duration greater than five years. The county clerk or election commissioner shall place the issue on the ballot at an election as called for in the resolution or petition which is at least thirty days after receipt of the resolution or petition, and the time of publication and providing a copy of the notice of election required in section 32-802 shall be no later than twenty days prior to the election. The election shall be held pursuant to the Election Act.

(5) For purposes of this section, when the political subdivision is a sanitary and improvement district, registered voter means a person qualified to vote as provided in section 31-735. Any election conducted under this section for a sanitary and improvement district shall be conducted and counted as provided in sections 31-735 to 31-735.06.

(6) For purposes of this section, when the political subdivision is a school district or a multiple-district school system, registered voter includes both (a) persons qualified to vote for the members of the school board of the school district which is voting to exceed the maximum levy limits pursuant to this section and (b) persons in those portions of any Class I district which are affiliated with or a part of the school district which is voting pursuant to this

section, if such voter is also qualified to vote for the school board of the affected Class I school district.

Source: Laws 1996, LB 1114, § 3; Laws 1997, LB 269, § 58; Laws 1997, LB 343, § 1; Laws 1997, LB 806, § 4; Laws 1998, LB 306, § 38; Laws 1998, LB 1104, § 18; Laws 1999, LB 141, § 13; Laws 2007, LB289, § 1.

Cross References

Election Act, see section 32-101.

ARTICLE 35

HOMESTEAD EXEMPTION

Section

- 77-3501.01. Exempt amount, defined.
- 77-3504. Household income, defined.
- 77-3505.02. Maximum value, defined.
- 77-3506.02. County assessor; duties.
- 77-3508. Homesteads; assessment; exemptions; individuals; based on disability and income.
- 77-3509. Homesteads; assessment; exemptions; certain veterans or unremarried widow or widower; percentage of exemption.
- 77-3510. Homesteads; exemptions; transfers; claimants; forms; contents; county assessor; furnish; confidentiality.
- 77-3513. Homestead; exemption; filing requirements; notice; contents.
- 77-3514. Homestead; exemption; certification of status; notice; failure to certify; penalty; lien.
- 77-3519. Homestead; exemption; county assessor; rejection; applicant; complaint; contents; hearing; appeal.
- 77-3520. Homestead; exemption; Tax Commissioner; rejection or reduction; petition; contents; hearing; appeal.
- 77-3526. Paraplegic, multiple amputee; terms, defined.
- 77-3527. Property taxable; paraplegic veteran; multiple amputee; exempt; value; transfer of property; effect.
- 77-3530. Repealed. Laws 2004, LB 811, § 3.

77-3501.01 Exempt amount, defined.

(1) For purposes of section 77-3507, exempt amount shall mean the lesser of (a) the taxable value of the homestead or (b) one hundred percent of the average assessed value of single-family residential property in the claimant's county of residence as determined in section 77-3506.02 or forty thousand dollars, whichever is greater.

(2) For purposes of sections 77-3508 and 77-3509, exempt amount shall mean the lesser of (a) the taxable value of the homestead or (b) one hundred twenty percent of the average assessed value of single-family residential property in the claimant's county of residence as determined in section 77-3506.02 or fifty thousand dollars, whichever is greater.

Source: Laws 1994, LB 902, § 27; Laws 2006, LB 968, § 13.

77-3504 Household income, defined.

Household income means the total federal adjusted gross income, as defined in the Internal Revenue Code, plus (1) any Nebraska adjustments increasing the total federal adjusted gross income, (2) any interest or dividends received by the owner regarding obligations of the State of Nebraska or any political subdivi-

sion, authority, commission, or instrumentality thereof to the extent excluded in the computation of gross income for federal income tax purposes, and (3) any social security or railroad retirement benefit to the extent excluded in the computation of gross income for federal income tax purposes, of the claimant and spouse, and any additional owners who are natural persons and who occupy the homestead, for the taxable year of the claimant immediately prior to the year for which the claim for exemption is made, less all medical expenses actually incurred and paid by the claimant, his or her spouse, or any owner-occupant which are in excess of four percent of household income calculated prior to the deduction for medical expenses. For purposes of this section, medical expenses means the costs of health insurance premiums and the costs of goods and services purchased from a person licensed under the Uniform Credentialing Act or a health care facility or health care service licensed under the Health Care Facility Licensure Act for purposes of restoring or maintaining health, including insulin and prescription medicine, but not including nonprescription medicine.

Source: Laws 1979, LB 65, § 4; Laws 1987, LB 376A, § 3; Laws 1988, LB 1105, § 1; Laws 1994, LB 902, § 26; Laws 1995, LB 574, § 74; Laws 1996, LB 1039, § 3; Laws 2000, LB 819, § 152; Laws 2007, LB463, § 1309.

Cross References

Health Care Facility Licensure Act, see section 71-401.
Uniform Credentialing Act, see section 38-101.

77-3505.02 Maximum value, defined.

Maximum value shall mean:

(1) For applicants eligible under section 77-3507, two hundred percent of the average assessed value of single-family residential property in the claimant's county of residence as determined in section 77-3506.02 or ninety-five thousand dollars, whichever is greater; and

(2) For applicants eligible under sections 77-3508 and 77-3509, two hundred twenty-five percent of the average assessed value of single-family residential property in the claimant's county of residence as determined in section 77-3506.02 or one hundred ten thousand dollars, whichever is greater.

Source: Laws 1994, LB 902, § 29; Laws 1995, LB 483, § 3; Laws 1996, LB 1039, § 4; Laws 1997, LB 182, § 3; Laws 2006, LB 968, § 14.

77-3506.02 County assessor; duties.

After county board of equalization action pursuant to sections 77-1502 to 77-1504.01 and on or before September 1 each year, the county assessor shall certify to the Department of Revenue the average assessed value of single-family residential property in the county for the current year for purposes of sections 77-3507 to 77-3509.

The county assessor shall determine the current average assessed value of single-family residential property from all real property records containing dwellings, mobile homes, and duplexes all of which are designed for occupancy as single-family residential property and any associated land not to exceed one acre.

The county assessor shall also report to the Department of Revenue the computed exempt amounts pursuant to section 77-3501.01.

Source: Laws 1994, LB 902, § 32; Laws 1995, LB 499, § 1; Laws 2004, LB 973, § 43.

77-3508 Homesteads; assessment; exemptions; individuals; based on disability and income.

(1)(a) All homesteads in this state shall be assessed for taxation the same as other property, except that there shall be exempt from taxation, on any homestead described in subdivision (b) of this subsection, a percentage of the exempt amount as limited by section 77-3506.03. The exemption shall be based on the household income of a claimant pursuant to subsections (2) through (4) of this section.

(b) The exemption described in subdivision (a) of this subsection shall apply to homesteads of:

(i) Veterans as defined in section 80-401.01 who were discharged or otherwise separated with a characterization of honorable or general (under honorable conditions) and who are totally disabled by a non-service-connected accident or illness;

(ii) Individuals who have a permanent physical disability and have lost all mobility so as to preclude locomotion without the regular use of a mechanical aid or prostheses; and

(iii) Individuals who have undergone amputation of both arms above the elbow or who have a permanent partial disability of both arms in excess of seventy-five percent.

(c) Application for the exemption described in subdivision (a) of this subsection shall include certification from a qualified medical physician, physician assistant, or advanced practice registered nurse for subdivisions (b)(i) through (b)(iii) of this subsection or certification from the United States Department of Veterans Affairs affirming that the homeowner is totally disabled due to non-service-connected accident or illness for subdivision (b)(i) of this subsection. Such certification from a qualified medical physician, physician assistant, or advanced practice registered nurse shall be made on forms prescribed by the Department of Revenue.

(2) For 2000, for a married or closely related claimant as described in subsection (1) of this section, the percentage of the exempt amount for which the claimant shall be eligible shall be the percentage in Column B which corresponds with the claimant's household income in Column A in the table found in this subsection.

Column A Household Income In Dollars	Column B Percentage Of Relief
0 through 24,700	100
24,701 through 25,900	85
25,901 through 27,100	70
27,101 through 28,300	55
28,301 through 29,500	40
29,501 through 30,700	25
30,701 and over	0

(3) For 2000, for a single claimant as described in subsection (1) of this section, the percentage of the exempt amount for which the claimant shall be eligible shall be the percentage in Column B which corresponds with the claimant's household income in Column A in the table found in this subsection.

Column A Household Income In Dollars	Column B Percentage Of Relief
0 through 21,600	100
21,601 through 22,600	85
22,601 through 23,600	70
23,601 through 24,600	55
24,601 through 25,600	40
25,601 through 26,600	25
26,601 and over	0

(4) For exemption applications filed in calendar year 2001 and each year thereafter, the income eligibility amounts in subsections (2) and (3) of this section shall be adjusted for inflation by the method provided in section 151 of the Internal Revenue Code. The income eligibility amounts shall be adjusted for cumulative inflation since 2000. If any amount is not a multiple of one hundred dollars, the amount shall be rounded to the next lower multiple of one hundred dollars.

Source: Laws 1979, LB 65, § 8; Laws 1980, LB 647, § 5; Laws 1981, LB 478, § 1; Laws 1983, LB 195, § 2; Laws 1986, LB 1258, § 2; Laws 1987, LB 376A, § 5; Laws 1988, LB 1105, § 3; Laws 1991, LB 2, § 17; Laws 1994, LB 902, § 34; Laws 1995, LB 483, § 5; Laws 1997, LB 182, § 5; Laws 1999, LB 179, § 2; Laws 2000, LB 1279, § 2; Laws 2005, LB 17, § 1; Laws 2005, LB 54, § 17.

77-3509 Homesteads; assessment; exemptions; certain veterans or unremarried widow or widower; percentage of exemption.

(1)(a) All homesteads in this state shall be assessed for taxation the same as other property, except that there shall be exempt from taxation, on any homestead described in subdivision (b) of this subsection, a percentage of the exempt amount as limited by section 77-3506.03.

(b) The exemption described in subdivision (a) of this subsection shall apply to homesteads of:

(i) A veteran described in section 80-401.01 who was discharged or otherwise separated with a characterization of honorable or general (under honorable conditions), who is drawing compensation from the United States Department of Veterans Affairs because of one hundred percent disability, and who is not eligible for total exemption under sections 77-3526 to 77-3528 or the unremarried widow or widower of a veteran described in this subdivision (i);

(ii) An unremarried widow or widower of any veteran, including a veteran other than a veteran described in section 80-401.01, who was discharged or otherwise separated with a characterization of honorable or general (under honorable conditions) and who died because of a service-connected disability;

(iii) An unremarried widow or widower of a serviceman or servicewoman who died while on active duty during the periods described in section 80-401.01; and

(iv) An unremarried widow or widower of a serviceman or servicewoman, including a veteran other than a veteran described in section 80-401.01, whose death while on active duty was service-connected.

(c) The exemption described in subdivision (a) of this subsection shall be based on the household income of a claimant pursuant to subsections (2) through (4) of this section. Application for exemption under this section shall include certification of the status set forth in this section from the United States Department of Veterans Affairs.

(2) For 2000, for a married or closely related claimant as described in subsection (1) of this section, the percentage of the exempt amount for which the claimant shall be eligible shall be the percentage in Column B which corresponds with the claimant's household income in Column A in the table found in this subsection.

Column A Household Income In Dollars	Column B Percentage Of Relief
0 through 24,700	100
24,701 through 25,900	85
25,901 through 27,100	70
27,101 through 28,300	55
28,301 through 29,500	40
29,501 through 30,700	25
30,701 and over	0

(3) For 2000, for a single claimant as described in subsection (1) of this section, the percentage of the exempt amount for which the claimant shall be eligible shall be the percentage in Column B which corresponds with the claimant's household income in Column A in the table found in this subsection.

Column A Household Income In Dollars	Column B Percentage Of Relief
0 through 21,600	100
21,601 through 22,600	85
22,601 through 23,600	70
23,601 through 24,600	55
24,601 through 25,600	40
25,601 through 26,600	25
26,601 and over	0

(4) For exemption applications filed in calendar year 2001 and each year thereafter, the income eligibility amounts in subsections (2) and (3) of this section shall be adjusted for inflation by the method provided in section 151 of the Internal Revenue Code. The income eligibility amounts shall be adjusted for cumulative inflation since 2000. If any amount is not a multiple of one hundred dollars, the amount shall be rounded to the next lower multiple of one hundred dollars.

Source: Laws 1979, LB 65, § 9; Laws 1983, LB 195, § 3; Laws 1986, LB 1258, § 3; Laws 1989, LB 762, § 10; Laws 1994, LB 902, § 35; Laws 1995, LB 483, § 6; Laws 1997, LB 182, § 6; Laws 1999, LB 179, § 3; Laws 2005, LB 54, § 18.

77-3510 Homesteads; exemptions; transfers; claimants; forms; contents; county assessor; furnish; confidentiality.

On or before February 1 of each year, the Tax Commissioner shall prescribe forms to be used by all claimants for homestead exemption or for transfer of homestead exemption. Such forms shall contain provisions for the showing of all information which the Tax Commissioner may deem necessary to (1) enable the county officials and the Tax Commissioner to determine whether each claim for exemption under sections 77-3507 to 77-3509 should be allowed and (2) enable the county assessor to determine whether each claim for transfer of homestead exemption pursuant to section 77-3509.01 should be allowed. It shall be the duty of the county assessor of each county in this state to furnish such forms, upon request, to each person desiring to make application for homestead exemption or for transfer of homestead exemption. The forms so prescribed shall be used uniformly throughout the state, and no application for exemption or for transfer of homestead exemption shall be allowed unless the applicant uses the prescribed form in making an application. The forms shall require the attachment of an income statement as prescribed by the Tax Commissioner fully accounting for all household income. The Tax Commissioner shall provide to each county assessor printed claim forms and address lists of applicants from the prior year. The application and information contained on any attachments to the application shall be confidential and available to tax officials only.

Source: Laws 1979, LB 65, § 10; Laws 1983, LB 494, § 2; Laws 1983, LB 396, § 1; Laws 1984, LB 809, § 6; Laws 1985, Second Spec. Sess., LB 6, § 3; Laws 1986, LB 1258, § 4; Laws 1987, LB 376A, § 8; Laws 1989, LB 84, § 10; Laws 1991, LB 9, § 4; Laws 1994, LB 902, § 36; Laws 1995, LB 135, § 1; Laws 1996, LB 921, § 3; Laws 1997, LB 397, § 26; Laws 2003, LB 192, § 1; Laws 2007, LB145, § 1.

77-3513 Homestead; exemption; filing requirements; notice; contents.

(1) Except as required by section 77-3514, if an owner is granted a homestead exemption as provided in section 77-3507 or 77-3509 or subdivision (1)(b)(ii) or (iii) of section 77-3508, no reapplication need be filed for succeeding years, in which case the county assessor and Tax Commissioner shall determine whether the claimant qualifies for the homestead exemption in such succeeding years as otherwise provided in sections 77-3501 to 77-3529 as though a claim were made.

(2) It shall be the duty of each claimant who wants the homestead exemption provided in subdivision (1)(b)(i) of section 77-3508 to file an application therefor with the county assessor on or before June 30 of each year. Failure to do so shall constitute a waiver of the exemption for such year, except that the county board of the county in which the homestead is located may, by majority vote, extend the deadline to on or before July 20 of each year. An extension shall not be granted to an applicant who received an extension in the immediately preceding year. The county assessor shall mail a notice on or before April 1 to claimants who are the owners of a homestead which was granted an exemption under subdivision (1)(b)(i) of section 77-3508 in the preceding year unless the claimant has already filed the application for the current year or the county assessor has reason to believe there has been a change of circumstances

so that the claimant no longer qualifies. The notice shall include the claimant's name, the application deadlines for the current year, a list of documents that must be filed with the application, and the county assessor's office address and telephone number.

Source: Laws 1979, LB 65, § 13; Laws 1980, LB 647, § 8; Laws 1983, LB 195, § 6; Laws 1983, LB 396, § 3; Laws 1984, LB 809, § 9; Laws 1985, Second Spec. Sess., LB 6, § 5; Laws 1986, LB 1258, § 6; Laws 1987, LB 376A, § 10; Laws 1991, LB 773, § 22; Laws 1994, LB 902, § 38; Laws 1995, LB 133, § 2; Laws 1996, LB 1039, § 6; Laws 1997, LB 397, § 28; Laws 1999, LB 179, § 4; Laws 2005, LB 54, § 19; Laws 2007, LB145, § 2.

77-3514 Homestead; exemption; certification of status; notice; failure to certify; penalty; lien.

A claimant who is the owner of a homestead which has been granted an exemption under sections 77-3507 to 77-3509, except subdivision (1)(b)(i) of section 77-3508, shall certify to the county assessor on or before June 30 of each year that a change in the homestead exemption status has occurred or that no change in the homestead exemption status has occurred. The county board of the county in which the homestead is located may, by majority vote, extend the deadline to on or before July 20 of each year. An extension shall not be granted to an applicant who received an extension in the immediately preceding year. The county assessor shall mail a notice on or before April 1 to claimants who are the owners of a homestead which has been granted an exemption under sections 77-3507 to 77-3509, except subdivision (1)(b)(i) of section 77-3508, in the preceding year unless the claimant has already filed the certification for the current year or the county assessor has reason to believe there has been a change of circumstances so that the claimant no longer qualifies. The notice shall include the claimant's name, the certification deadlines for the current year, a list of documents that must be filed with the certification, and the county assessor's office address and telephone number. For purposes of this section, change in the homestead exemption status shall include any change in the name of the owner, ownership, residence, occupancy, marital status, veteran status, or rating by the United States Department of Veterans Affairs or any other change that would affect the qualification for or type of exemption granted, except income checked by the Tax Commissioner under section 77-3517. The certificate shall require the attachment of an income statement as prescribed by the Tax Commissioner fully accounting for all household income. The certification and the information contained on any attachments to the certification shall be confidential and available to tax officials only. In addition, a claimant who is the owner of a homestead which has been granted an exemption under sections 77-3507 to 77-3509 may notify the county assessor by August 15 of each year of any change in the homestead exemption status occurring in the preceding portion of the calendar year as a result of a transfer of the homestead exemption pursuant to sections 77-3509.01 and 77-3509.02. If by his or her failure to give such notice any property owner permits the allowance of the homestead exemption for any year, or in the year of application in the case of transfers pursuant to sections 77-3509.01 and 77-3509.02, after the homestead exemption status of such property has changed, an amount equal to the amount of the taxes lawfully due but not paid

by reason of such unlawful and improper allowance of homestead exemption, together with penalty and interest on such total sum as provided by statute on delinquent ad valorem taxes, shall be due and shall upon entry of the amount thereof on the books of the county treasurer be a lien on such property while unpaid. Such lien may be enforced in the manner provided for liens for other delinquent taxes. Any person who has permitted the improper and unlawful allowance of such homestead exemption on his or her property shall, as an additional penalty, also forfeit his or her right to a homestead exemption on any property in this state for the two succeeding years.

Source: Laws 1979, LB 65, § 14; Laws 1983, LB 494, § 4; Laws 1983, LB 195, § 7; Laws 1983, LB 396, § 4; Laws 1984, LB 809, § 10; Laws 1985, Second Spec. Sess., LB 6, § 6; Laws 1987, LB 376A, § 11; Laws 1988, LB 834, § 3; Laws 1988, LB 1105, § 5; Laws 1991, LB 2, § 18; Laws 1991, LB 773, § 23; Laws 1994, LB 902, § 39; Laws 1995, LB 133, § 3; Laws 1995, LB 135, § 2; Laws 1996, LB 1039, § 7; Laws 1997, LB 397, § 29; Laws 2005, LB 54, § 20; Laws 2007, LB145, § 3.

77-3519 Homestead; exemption; county assessor; rejection; applicant; complaint; contents; hearing; appeal.

In any case when the county assessor rejects an application for homestead exemption, such applicant may obtain a hearing before the county board of equalization by filing a written complaint with the county clerk within thirty days from receipt of the notice from the county assessor showing such rejection. Such complaint shall specify his or her grievances and the pertinent facts in relation thereto, in ordinary and concise language and without repetition, and in such manner as to enable a person of common understanding to know what is intended. The board may take evidence pertinent to such complaint, and for that purpose may compel the attendance of witnesses and the production of books, records, and papers by subpoena. Notice of the board's decision shall be mailed by the county clerk to the applicant within seven days after the decision. The taxpayer shall have the right to appeal from the board's decision with reference to the application for homestead exemption to the Tax Equalization and Review Commission in accordance with section 77-5013 within thirty days after the decision.

Source: Laws 1979, LB 65, § 19; Laws 1987, LB 376A, § 14; Laws 1995, LB 490, § 177; Laws 2004, LB 973, § 44.

77-3520 Homestead; exemption; Tax Commissioner; rejection or reduction; petition; contents; hearing; appeal.

In any case when the Tax Commissioner rejects or reduces a claim for exemption, the applicant may obtain a hearing before the Tax Commissioner by filing a written petition with the Tax Commissioner within thirty days from the receipt of the notice of rejection or reduction. The petition shall state, in clear and concise language, (1) the amount in controversy, (2) the issues involved, (3) the name and address of the applicant, and (4) a demand for relief. The hearing shall be conducted in accordance with the Administrative Procedure Act. Notice of the Tax Commissioner's decision shall be mailed to the applicant

within seven days after the decision. The applicant may appeal the Tax Commissioner's decision to the Tax Equalization and Review Commission in accordance with section 77-5013 within thirty days after the decision.

Source: Laws 1979, LB 65, § 20; Laws 1987, LB 376A, § 15; Laws 2004, LB 973, § 45.

Cross References

Administrative Procedure Act, see section 84-920.

77-3526 Paraplegic, multiple amputee; terms, defined.

As used in sections 77-3526 to 77-3528:

(1) Paraplegic shall mean a veteran who is paralyzed in both legs such as to preclude locomotion without the aid of braces, crutches, canes, or wheelchair;

(2) Multiple amputee shall mean a veteran who has undergone amputation of (a) either both lower extremities or one lower extremity and one upper extremity, such as to preclude locomotion without the aid of braces, crutches, canes, wheelchair, or artificial limbs, or (b) both upper extremities;

(3) Home shall mean one housing unit and necessary land therefor not to exceed one acre occupied by the veteran or his or her unmarried surviving spouse when the veteran or surviving spouse is the owner of record from January 1 through August 15 in each year; and

(4) Substantially contributed by the United States Department of Veterans Affairs shall mean any amount received by a veteran from the department under Public Law 85-857 adopted September 2, 1958, as amended and in effect on January 1, 1979.

Source: Laws 1979, LB 65, § 26; Laws 1987, LB 376A, § 17; Laws 1991, LB 2, § 19; Laws 2004, LB 986, § 1.

77-3527 Property taxable; paraplegic veteran; multiple amputee; exempt; value; transfer of property; effect.

The value of a home substantially contributed by the United States Department of Veterans Affairs for a paraplegic veteran or multiple amputee shall be exempt from taxation during the life of such veteran or until the death of his or her surviving spouse or his or her remarriage. If such veteran or his or her unmarried surviving spouse disposes of such home and within one year uses the proceeds therefrom or part of such proceeds to acquire another home for occupancy by such veteran or his or her surviving spouse, such home shall be deemed to be one substantially contributed to by the department and the exemption provided for in this section shall apply to such substituted home during the life of such veteran or until the death of his or her surviving spouse or his or her remarriage. Application for exemption under this section shall include certification from the department affirming that the department has substantially contributed to the purchase, construction, remodeling, or special adaptation of a home by the applicant.

Source: Laws 1979, LB 65, § 27; Laws 1983, LB 195, § 9; Laws 1991, LB 2, § 20; Laws 2004, LB 986, § 2.

77-3530 Repealed. Laws 2004, LB 811, § 3.**ARTICLE 38****FINANCIAL INSTITUTION TAXATION**

Section

77-3806. Franchise tax; filing requirements; general provisions applicable; refunds; credit.

77-3807. Tax Commissioner; powers and duties.

77-3806 Franchise tax; filing requirements; general provisions applicable; refunds; credit.

(1) The tax return shall be filed and the total amount of the franchise tax shall be due on the fifteenth day of the third month after the end of the taxable year. No extension of time to pay the tax shall be granted. If the Tax Commissioner determines that the amount of tax can be computed from available information filed by the financial institutions with either state or federal regulatory agencies, the Tax Commissioner may, by regulation, waive the requirement for the financial institutions to file returns.

(2) Sections 77-2714 to 77-27,135 relating to deficiencies, penalties, interest, the collection of delinquent amounts, and appeal procedures for the tax imposed by section 77-2734.02 shall also apply to the tax imposed by section 77-3802. If the filing of a return is waived by the Tax Commissioner, the payment of the tax shall be considered the filing of a return for purposes of sections 77-2714 to 77-27,135.

(3) No refund of the tax imposed by section 77-3802 shall be allowed unless a claim for such refund is filed within ninety days of the date on which (a) the tax is due or was paid, whichever is later, or (b) a change is made to the amount of deposits or the net financial income of the financial institution by a state or federal regulatory agency.

(4) Any such financial institution shall receive a credit on the franchise tax as provided under the Community Development Assistance Act.

Source: Laws 1986, LB 774, § 6; Laws 1990, LB 1241, § 16; Laws 2001, LB 433, § 7; Laws 2007, LB367, § 25.

Cross References

Community Development Assistance Act, see section 13-201.

77-3807 Tax Commissioner; powers and duties.

(1) The Tax Commissioner shall prescribe the necessary forms and the supporting documentation to be filed for the reporting and payment of the tax imposed by section 77-3802 and for the calculation of credits allowable under subsection (5) of section 77-2715.07.

(2) The Tax Commissioner shall adopt and promulgate rules and regulations to carry out sections 77-3801 to 77-3807.

(3) The Tax Commissioner may use electronic funds transfers to collect the tax imposed by section 77-3802 or to pay any refunds allowed under section 77-3806. The use of electronic funds transfers shall not change the rights of any

party from the rights such party would have if a different method of payment is used.

Source: Laws 1986, LB 774, § 7; Laws 2007, LB456, § 3.

ARTICLE 39

UNIFORM STATE TAX LIEN REGISTRATION AND ENFORCEMENT

Section

- 77-3901. Act, how cited.
- 77-3902. Terms, defined.
- 77-3903. Notice of lien; filing; requirements; fee.
- 77-3904. Failure to pay tax or fee; lien; procedures; priority; extension; termination; release or subordination.
- 77-3905. Action to collect delinquent amount; procedures; evidence; satisfaction of amount; trust fund; when constituted.
- 77-3906. Distraint and sale of taxpayer's property; procedures; conditions; powers and duties.
- 77-3907. Demand upon security; authorized; abatement; when.
- 77-3908. Actions prohibited; construction of act.
- 77-3909. Repealed. Laws 2004, LB 811, § 3.

77-3901 Act, how cited.

Sections 77-3901 to 77-3908 shall be known and may be cited as the Uniform State Tax Lien Registration and Enforcement Act.

Source: Laws 1986, LB 1027, § 214; Laws 1993, LB 345, § 74; Laws 2004, LB 811, § 1.

77-3902 Terms, defined.

For purposes of the Uniform State Tax Lien Registration and Enforcement Act:

(1) Appropriate filing officer means (a) with respect to real property subject to a tax lien, the register of deeds of the county or counties in which the real property is situated and (b) with respect to personal property subject to a tax lien, the Secretary of State; and

(2) Any reference to tax, taxes, fee, or tax program shall be construed to include any tax, fee, or in-lieu-of-tax contribution which is imposed by the laws of this state and administered or collected and enforced by the Tax Commissioner or Commissioner of Labor, unless a tax lien is otherwise provided for by law.

Source: Laws 1986, LB 1027, § 215; Laws 1987, LB 523, § 31; Laws 1995, LB 490, § 178; Laws 1998, LB 1321, § 99; Laws 1999, LB 165, § 3; Laws 1999, LB 550, § 45; Laws 2007, LB334, § 88.

77-3903 Notice of lien; filing; requirements; fee.

(1)(a) A notice of lien provided for in the Uniform State Tax Lien Registration and Enforcement Act upon real property shall be presented in the office of the Secretary of State. Such notice of lien shall be transmitted by the Secretary of State to and filed in the office of the register of deeds by the register of deeds of the county or counties in which the real property subject to the lien is situated as designated in the notice of lien. The register of deeds shall enter the notice in the alphabetical state tax lien index, showing on one line the name and residence of the person liable named in such notice, the last four digits of the

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social security number or the federal tax identification number of such person, the Tax Commissioner's or Commissioner of Labor's serial number of such notice, the date and hour of filing, and the amount due. Such presentments to the Secretary of State may be made by direct input to the Secretary of State's data base or by other electronic means. All such notices of lien shall be retained in numerical order in a file designated state tax lien notices, except that in offices filing by the roll form of microfilm pursuant to section 23-1517.01, the original notices need not be retained. A lien subject to this subsection shall be effective upon real property when filed by the register of deeds as provided in this subsection.

(b) A notice of lien provided for in the Uniform State Tax Lien Registration and Enforcement Act upon personal property shall be filed in the office of the Secretary of State. The Secretary of State shall enter the notice in the state's central tax lien index, showing on one line the name and residence of the person liable named in such notice, the last four digits of the social security number or the federal tax identification number of such person, the Tax Commissioner's or Commissioner of Labor's serial number of such notice, the date and hour of filing, and the amount due. Such filings with the Secretary of State may be filed by direct input to the Secretary of State's data base or by other electronic means. All such notices of lien shall be retained in numerical order in a file designated state tax lien notices.

(2) Beginning July 1, 1999, the uniform fee, payable to the Secretary of State, for presenting for filing, releasing, continuing, or subordinating or for filing, releasing, continuing, or subordinating each tax lien pursuant to the Uniform State Tax Lien Registration and Enforcement Act shall be six dollars. There shall be no fee for the filing of a termination statement. The uniform fee for each county more than one designated pursuant to subdivision (1)(a) of this section shall be three dollars. The Secretary of State shall deposit each fee received pursuant to this section in the Uniform Commercial Code Cash Fund. Of the fees received and deposited pursuant to this section, the Secretary of State shall remit three dollars to the register of deeds of a county for each designation of such county in a filing pursuant to subdivision (1)(a) of this section.

(3) The Secretary of State shall bill the Tax Commissioner or Commissioner of Labor on a monthly basis for fees for documents presented to or filed with the Secretary of State. No payment of any fee shall be required at the time of presenting or filing any such lien document.

Source: Laws 1986, LB 1027, § 216; Laws 1987, LB 523, § 32; Laws 1995, LB 490, § 179; Laws 1998, LB 1321, § 100; Laws 1999, LB 165, § 4; Laws 1999, LB 550, § 46; Laws 2007, LB223, § 23; Laws 2007, LB334, § 89.

77-3904 Failure to pay tax or fee; lien; procedures; priority; extension; termination; release or subordination.

(1) If any person liable to pay any tax or fee under any tax program administered by the Tax Commissioner or Commissioner of Labor neglects or refuses to pay such tax or fee after demand, the amount of such tax or fee, including any interest, penalty, and additions to such tax and such additional costs that may accrue, shall be a lien in favor of the State of Nebraska upon all property and rights to property, whether real or personal, then owned by such

person or acquired by him or her thereafter and prior to the expiration of the lien. Unless another date is specifically provided by law, such lien shall arise at the time of the assessment and shall remain in effect (a) for three years from the time of the assessment if the notice of lien is not filed for record in the office of the appropriate filing officer, (b) for ten years from the time of filing for record in the office of the appropriate filing officer, or (c) until such amounts have been paid or a judgment against such person arising out of such liability has been satisfied or has become unenforceable by reason of lapse of time, unless a continuation statement is filed prior to the lapse.

(2)(a) The Tax Commissioner or Commissioner of Labor may present for filing or file for record in the office of the appropriate filing officer a notice of lien specifying the year the tax was due, the tax program, and the amount of the tax and any interest, penalty, or addition to such tax that are due. Such notice shall be filed for record in the office of the appropriate filing officer within three years after the time of assessment. Such notice shall contain the name and last-known address of the taxpayer, the last four digits of the taxpayer's social security number or federal identification number, the Tax Commissioner's or Commissioner of Labor's serial number, and a statement to the effect that the Tax Commissioner or Commissioner of Labor has complied with all provisions of the law for the particular tax program which he or she administers in the determination of the amount of the tax and any interest, penalty, and addition to such tax required to be paid.

(b) If the assets of the taxpayer are in the control or custody of the court in any proceeding before any court of the United States or of any state or the District of Columbia, before the end of the three-year period in subdivision (2)(a) of this section, the notice shall be filed for record within the three-year period or within six months after the assets are released by the court, whichever is later.

(3)(a)(i) A lien imposed upon real property pursuant to the Uniform State Tax Lien Registration and Enforcement Act shall be valid against any subsequent creditor when notice of such lien and the amount due has been presented for filing by the Tax Commissioner or Commissioner of Labor in the office of the Secretary of State and filed in the office of the register of deeds.

(ii) A lien imposed upon personal property pursuant to the Uniform State Tax Lien Registration and Enforcement Act shall be valid against any subsequent creditor when notice of such lien and the amount due has been filed by the Tax Commissioner or Commissioner of Labor in the office of the Secretary of State.

(b) In the case of any prior mortgage on real property or secured transaction covering personal property so written as to secure a present debt and future advances, the lien provided in the act, when notice thereof has been filed in the office of the appropriate filing officer, shall be subject to such prior lien unless the Tax Commissioner or Commissioner of Labor has notified the lienholder in writing of the recording of such tax lien, in which case the lien of any indebtedness thereafter created under such mortgage or secured transaction shall be junior to the lien provided for in the act.

(4) The lien may, within ten years from the date of filing for record of the notice of lien in the office of the appropriate filing officer, be extended by filing for record a continuation statement. Upon timely filing of the continuation statement, the effectiveness of the original notice shall be continued for ten years after the last date to which the filing was effective. After such period the

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notice shall lapse in the manner prescribed in subsection (1) of this section unless another continuation statement is filed prior to such lapse.

(5) When a termination statement of any tax lien issued by the Tax Commissioner or Commissioner of Labor is filed in the office where the notice of lien is filed, the appropriate filing officer shall enter such statement with the date of filing in the state tax lien index where notice of the lien so terminated is entered and shall file the termination statement with the notice of the lien.

(6) The Tax Commissioner or Commissioner of Labor may at any time, upon request of any party involved, release from a lien all or any portion of the property subject to any lien provided for in the Uniform State Tax Lien Registration and Enforcement Act or subordinate a lien to other liens and encumbrances if he or she determines that (a) the tax amount and any interest, penalties, and additions to such tax have been paid or secured sufficiently by a lien on other property, (b) the lien has become legally unenforceable, (c) a surety bond or other satisfactory security has been posted, deposited, or pledged with the Tax Commissioner or Commissioner of Labor in an amount sufficient to secure the payment of such taxes and any interest, penalties, and additions to such taxes, or (d) the release, partial release, or subordination of the lien will not jeopardize the collection of such taxes and any interest, penalties, and additions to such tax.

(7) A certificate by the Tax Commissioner or Commissioner of Labor stating that any property has been released from the lien or the lien has been subordinated to other liens and encumbrances shall be conclusive evidence that the property has in fact been released or the lien has been subordinated pursuant to the certificate.

Source: Laws 1986, LB 1027, § 217; Laws 1987, LB 523, § 33; Laws 1993, LB 345, § 75; Laws 1995, LB 490, § 180; Laws 1999, LB 165, § 5; Laws 1999, LB 550, § 47; Laws 2007, LB223, § 24; Laws 2007, LB334, § 90.

77-3905 Action to collect delinquent amount; procedures; evidence; satisfaction of amount; trust fund; when constituted.

(1) At any time within three years after any amount of tax to be collected under any tax program administered by the Tax Commissioner or Commissioner of Labor is assessed or within ten years after the last filing for record as set forth in the Uniform State Tax Lien Registration and Enforcement Act, the Tax Commissioner or Commissioner of Labor may bring an action in the courts of this state, any other state, or the United States in the name of the people of the State of Nebraska to collect the delinquent amount together with penalties, any additions to such tax, costs, and interest.

(2)(a) The Attorney General shall prosecute the action on behalf of the Tax Commissioner, (b) the Commissioner of Labor shall be represented in an action under the act as provided in section 48-667, and (c) the rules of civil procedure relating to service of summons, pleadings, proofs, trials, and appeals shall be applicable to the proceedings.

(3) In the action, a writ of attachment may issue, and no bond or affidavit previous to the issuing of the attachment shall be required.

(4) In the action, a certificate by the Tax Commissioner or Commissioner of Labor showing the delinquency shall be prima facie evidence of the determina-

tion of such tax or the amount of such tax, the delinquency of the amounts set forth, and the compliance by the Tax Commissioner or Commissioner of Labor with all provisions of the applicable tax program which he or she administers in relation to the computation and determination of the amounts set forth.

(5) The tax amounts required to be paid by any person under any tax program administered by the Tax Commissioner or Commissioner of Labor together with any interest, penalties, and additions to such tax shall be satisfied first in any of the following cases: When the person is insolvent; when the person makes a voluntary assignment of his or her assets; when the estate of the person in the hands of executors, personal representatives, administrators, or heirs is insufficient to pay all the debts due from the deceased; or when the estate and effects of an absconding, concealed, or absent person required to pay any amount under any tax program administered by the Tax Commissioner or Commissioner of Labor are levied upon by process of law.

(6) Any tax which by law must be deducted and withheld by an employer or payor or is collected by a retailer or any other designated person as agent for the State of Nebraska on any transaction governed by a tax program administered by the Tax Commissioner or Commissioner of Labor shall constitute a trust fund in the hands of the employer, payor, or retailer or such other designated person and shall be owned by the state as of the time the tax is deducted and withheld or is owing to the employer, payor, or retailer or such other designated person.

Source: Laws 1986, LB 1027, § 218; Laws 1987, LB 523, § 34; Laws 1993, LB 345, § 76; Laws 1995, LB 490, § 181; Laws 1999, LB 165, § 6; Laws 2007, LB334, § 91.

77-3906 Distraint and sale of taxpayer's property; procedures; conditions; powers and duties.

(1) In addition to all other remedies or actions provided by law under any tax program administered by the Tax Commissioner or Commissioner of Labor, it shall be lawful for the Tax Commissioner or Commissioner of Labor, after making demand for payment, to collect any delinquent taxes, together with any interest, penalties, and additions to such tax by distraint and sale of the real and personal property of the taxpayer. If the Tax Commissioner finds that the collection of any tax is in jeopardy pursuant to section 77-2710, 77-27,111, or 77-4311, notice and demand for immediate payment of such tax may be made by the Tax Commissioner and, upon failure or refusal to pay such tax, collection by levy shall be lawful.

(2)(a) In case of failure to pay taxes or deficiencies, the Tax Commissioner, or his or her authorized employee, may levy or, by warrant issued under his or her own hand, authorize a sheriff or duly authorized employee of the Tax Commissioner to levy upon, seize, and sell such real and personal property belonging to the taxpayer, except exempt property, as is necessary to satisfy the liability for the payment of the amount due.

(b) In case of failure to pay taxes or deficiencies, the Commissioner of Labor, or his or her authorized employee, may levy or, by warrant issued under his or her own hand, authorize a sheriff or duly authorized employee of the Department of Labor to levy upon, seize, and sell such real and personal property belonging to the taxpayer, except exempt property, as is necessary to satisfy the liability for the payment of the amount due.

(c) As used in this section, exempt property shall mean such property as is exempt from execution under the laws of this state.

(3) When a warrant is issued or a levy is made by the Tax Commissioner or Commissioner of Labor, or his or her duly authorized employee, for the collection of any tax and any interest, penalty, or addition to such tax imposed by law under any tax program administered by the Tax Commissioner or Commissioner of Labor or for the enforcement of any tax lien authorized by the Uniform State Tax Lien Registration and Enforcement Act, such warrant or levy shall have the same force and effect of a levy and sale pursuant to a writ of execution. Such warrant or levy may be issued and sale made pursuant to it in the same manner and with the same force and effect of a levy and sale pursuant to a writ of execution. The Tax Commissioner or Commissioner of Labor shall pay the levying sheriff the same fees, commissions, and expenses pursuant to such warrant as are provided by law for similar services pursuant to a writ of execution, except that fees for publications in a newspaper shall be subject to approval by the Tax Commissioner or Commissioner of Labor. Such fees, commissions, and expenses shall be an obligation of the taxpayer and may be collected from the taxpayer by virtue of the warrant. Any such warrant shall show the name and last-known address of the taxpayer, the identity of the tax program, the year for which such tax and any interest, penalty, or addition to such tax is due and the amount thereof, the fact that the Tax Commissioner or Commissioner of Labor has complied with all provisions of the law for the applicable tax program which he or she administers in the determination of the amount required to be paid, and that the tax and any interest, penalty, or addition to such tax is due and payable according to law.

(4)(a) Any person upon whom a levy is served who fails or refuses to honor the levy without cause may be held liable for the amount of the levy up to the value of the assets of the taxpayer under his or her control at the time the levy was served or thereafter. Such person may be subject to collection provisions as set forth in the act.

(b) The effect of a levy on salary, wages, or other regular payments due to or received by a taxpayer shall be continuous from the date the levy is served until the amount of the levy, with accrued interest, is satisfied.

(5) Notice of the sale and the time and place of the sale shall be given, to the delinquent taxpayer and to any other person with an interest in the property who has filed for record with the appropriate filing officer on such property, in writing at least twenty days prior to the date of such sale in the following manner: The notice shall be sent by certified mail, return receipt requested, to the taxpayer and to any other person with such interest at his or her last-known residence or place of business in this state. The notice shall also be given by publication at least once each week for four weeks prior to the date of the sale in the newspaper of general circulation published in the county in which the property seized is to be sold. If there is no newspaper of general circulation in the county, notice shall be posted in three public places in the county twenty days prior to the date of the sale. The notice shall contain a description of the property to be sold, a statement of the type of tax due and of the amount due, including interest, penalties, additions to tax, and costs, the name of the delinquent taxpayer, and the further statement that unless the amount due, including interest, penalties, additions to tax, and costs, is paid on or before the time fixed in the notice for the sale or such security as may be determined by the Tax Commissioner or Commissioner of Labor is placed with the Tax

Commissioner or Commissioner of Labor, or his or her duly authorized representative, on or before such time, the property, or so much of it as may be necessary, will be sold in accordance with law and the notice.

(6) At the sale the Tax Commissioner or Commissioner of Labor, or his or her duly authorized representative, shall sell the property in accordance with law and the notice and shall deliver to the purchaser a bill of sale for the property. The bill of sale shall vest the interest or title of the person liable for the amount in the purchaser. The unsold portion of any property seized shall remain in the custody and control of the Tax Commissioner or Commissioner of Labor, or his or her duly authorized representative, until offered for sale again in accordance with this section or redeemed by the taxpayer.

(7) Whenever any property which is seized and sold under this section is not sufficient to satisfy the claim of the state for which distraint or seizure is made, the sheriff or duly authorized employee of the Tax Commissioner or Department of Labor may thereafter, and as often as the same may be necessary, proceed to seize and sell in like manner any other property liable to seizure of the taxpayer against whom such claim exists until the amount due from such taxpayer, together with all expenses, is fully paid.

(8) If after the sale the money received exceeds the total of all amounts due the state, including any interest, penalties, additions to tax, and costs, and if there is no other interest in or lien upon such money received, the Tax Commissioner or Commissioner of Labor shall return the excess to the person liable for the amounts and obtain a receipt. If any person having an interest or lien upon the property files with the Tax Commissioner or Commissioner of Labor prior to the sale notice of his or her interest or lien, the Tax Commissioner or Commissioner of Labor shall withhold any excess pending a determination of the rights of the respective parties thereto by a court of competent jurisdiction. If for any reason the receipt of the person liable for the amount is not available, the Tax Commissioner or Commissioner of Labor shall deposit the excess money with the State Treasurer, as trustee for the owner, subject to the order of the person liable for the amount or his or her heirs, successors, or assigns. No interest earned, if any, shall become the property of the person liable for the amount.

(9) All persons and officers of companies or corporations shall, on demand of a sheriff or duly authorized employee of the Tax Commissioner or Department of Labor about to distraint or having distrained any property or right to property, exhibit all books containing evidence or statements relating to the property or rights of property liable to distraint for the tax due.

Source: Laws 1986, LB 1027, § 219; Laws 1990, LB 260, § 17; Laws 1993, LB 345, § 77; Laws 1995, LB 490, § 182; Laws 1999, LB 36, § 33; Laws 1999, LB 165, § 7; Laws 2007, LB334, § 92.

77-3907 Demand upon security; authorized; abatement; when.

(1) To enforce collection of any tax not paid when due, the Tax Commissioner or Commissioner of Labor may make demand upon any security which is provided for by law and which has been submitted to the Tax Commissioner or Commissioner of Labor on behalf of the person liable for the tax, together with any interest, penalties, additions to tax, and costs thereon. The security may, if necessary, be sold by the Tax Commissioner or Commissioner of Labor in the manner provided by section 77-27,131.

(2) The Tax Commissioner or Commissioner of Labor may abate the unpaid portion of the assessment of any tax, or other liability in respect thereof, if he or she determines that the administration and collection costs involved would not warrant collection of the amount due.

Source: Laws 1986, LB 1027, § 220; Laws 1995, LB 490, § 183; Laws 1999, LB 165, § 8; Laws 2007, LB334, § 93.

77-3908 Actions prohibited; construction of act.

(1) No injunction or writ of mandamus or other legal or equitable process shall issue in any suit, action, or proceeding in any court against this state to enjoin the collection of any tax, fee, or any amount of tax required to be collected under any tax program administered by the Tax Commissioner or Commissioner of Labor.

(2) The methods of enforcement and collection provided in the Uniform State Tax Lien Registration and Enforcement Act, including distraint and sale, shall be fully independent so that pursuit of any one method shall not be conditioned upon pursuit of any other, nor shall pursuit of any one method in any way affect or limit the right of the Tax Commissioner or Commissioner of Labor to subsequently pursue any of the other methods of enforcement or collection.

Source: Laws 1986, LB 1027, § 221; Laws 1995, LB 490, § 184; Laws 1999, LB 165, § 9; Laws 2007, LB334, § 94.

77-3909 Repealed. Laws 2004, LB 811, § 3.

ARTICLE 41

EMPLOYMENT AND INVESTMENT GROWTH ACT

Section

77-4103.	Terms, defined.
77-4104.	Incentives; application; contents; fee; approval; agreements; contents.
77-4104.01.	Incentives; credits or benefits; limitation.
77-4105.	Incentives; income tax, personal property tax, sales and use tax; credits.
77-4109.	Application; valid; when; limitation on new applications.
77-4110.	Annual report; contents.

77-4103 Terms, defined.

For purposes of the Employment and Investment Growth Act, unless the context otherwise requires:

- (1) Any term shall have the same meaning as used in Chapter 77, article 27;
- (2) Base year shall mean the year immediately preceding the year during which the application was submitted;
- (3) Base-year employee shall mean any individual who was employed in Nebraska and subject to the Nebraska income tax on compensation received from the taxpayer or its predecessors during the base year and who is employed at the project;
- (4) Compensation shall mean the wages and other payments subject to withholding for federal income tax purposes;
- (5) Entitlement period shall mean the year during which the required increases in employment and investment were met or exceeded, and the next six years;

(6) Equivalent employees shall mean the number of employees computed by dividing the total hours paid in a year by the product of forty times the number of weeks in a year;

(7) Investment shall mean the value of qualified property incorporated into or used at the project. For qualified property owned by the taxpayer, the value shall be the original cost of the property. For qualified property rented by the taxpayer, the average net annual rent shall be multiplied by the number of years of the lease for which the taxpayer was originally bound, not to exceed ten years or the end of the third year after the entitlement period, whichever is earlier. The rental of land included in and incidental to the leasing of a building shall not be excluded from the computation;

(8) Motor vehicle shall mean any motor vehicle, semitrailer, or trailer as defined in the Motor Vehicle Registration Act and subject to licensing for operation on the highways;

(9) Nebraska employee shall mean an individual who is either a resident or partial-year resident of Nebraska;

(10) Number of new employees shall mean the excess of the number of equivalent employees employed at the project during a year over the number of equivalent employees during the base year;

(11) Qualified business shall mean any business engaged in the activities listed in subdivisions (b)(i) through (v) of this subdivision or in the storage, warehousing, distribution, transportation, or sale of tangible personal property. Qualified business shall not include any business activity in which eighty percent or more of the total sales are sales to the ultimate consumer of food prepared for immediate consumption or are sales to the ultimate consumer of tangible personal property which is not (a) assembled, fabricated, manufactured, or processed by the taxpayer or (b) used by the purchaser in any of the following activities:

(i) The conducting of research, development, or testing for scientific, agricultural, animal husbandry, food product, or industrial purposes;

(ii) The performance of data processing, telecommunication, insurance, or financial services. Financial services for purposes of this subdivision shall only include financial services provided by any financial institution subject to tax under Chapter 77, article 38, or any person or entity licensed by the Department of Banking and Finance or the Securities and Exchange Commission;

(iii) The assembly, fabrication, manufacture, or processing of tangible personal property;

(iv) The administrative management of any activities, including headquarter facilities relating to such activities; or

(v) Any combination of the activities listed in this subdivision;

(12) Qualified employee leasing company shall mean a company which places all employees of a client-lessee on its payroll and leases such employees to the client-lessee on an ongoing basis for a fee and, by written agreement between the employee leasing company and a client-lessee, grants to the client-lessee input into the hiring and firing of the employees leased to the client-lessee;

(13) Qualified property shall mean any tangible property of a type subject to depreciation, amortization, or other recovery under the Internal Revenue Code of 1986, or the components of such property, that will be located and used at the project. Qualified property shall not include (a) aircraft, barges, motor

vehicles, railroad rolling stock, or watercraft or (b) property that is rented by the taxpayer qualifying under the Employment and Investment Growth Act to another person;

(14) Related persons shall mean any corporations, partnerships, limited liability companies, or joint ventures which are or would otherwise be members of the same unitary group, if incorporated, or any persons who are considered to be related persons under either section 267(b) and (c) or section 707(b) of the Internal Revenue Code of 1986;

(15) Taxpayer shall mean any person subject to the sales and use taxes and either an income tax imposed by the Nebraska Revenue Act of 1967 or a franchise tax under sections 77-3801 to 77-3807, any corporation, partnership, limited liability company, or joint venture that is or would otherwise be a member of the same unitary group, if incorporated, which is, or whose partners, members, or owners representing an ownership interest of at least ninety percent of such entity are, subject to such taxes, and any other partnership, limited liability company, S corporation, or joint venture when the partners, shareholders, or members representing an ownership interest of at least ninety percent of such entity are subject to such taxes; and

(16) Year shall mean the taxable year of the taxpayer.

The changes made in this section by Laws 1997, LB 264, apply to investments made or employment on or after January 1, 1997, and for all agreements in effect on or after January 1, 1997.

Source: Laws 1987, LB 775, § 3; Laws 1988, LB 1234, § 4; Laws 1993, LB 121, § 517; Laws 1997, LB 264, § 2; Laws 1999, LB 539, § 5; Laws 2004, LB 1065, § 10; Laws 2005, LB 274, § 278.

Cross References

Motor Vehicle Registration Act, see section 60-301.
Nebraska Revenue Act of 1967, see section 77-2701.

77-4104 Incentives; application; contents; fee; approval; agreements; contents.

(1) In order to utilize the incentives set forth in the Employment and Investment Growth Act, the taxpayer shall file an application for an agreement with the Tax Commissioner.

(2) The application shall contain:

(a) A written statement describing the plan of employment and investment for a qualified business in this state;

(b) Sufficient documents, plans, and specifications as required by the Tax Commissioner to support the plan and to define a project;

(c) If more than one location within this state is involved, sufficient documentation to show that the employment and investment at different locations are interdependent parts of the plan. A headquarters shall be presumed to be interdependent with any other location directly controlled by such headquarters. A showing that the parts of the plan would be considered parts of a unitary business for corporate income tax purposes shall not be sufficient to show interdependence for the purposes of this subdivision;

(d) A nonrefundable application fee of five hundred dollars. The fee shall be deposited into the Nebraska Incentives Fund; and

(e) A timetable showing the expected sales tax refunds and what year they are expected to be claimed. The timetable shall include both direct refunds due to investment and credits taken as sales tax refunds as accurately as possible.

The application and all supporting information shall be confidential except for the name of the taxpayer, the location of the project, the amounts of increased employment and investment, and the information required to be reported by sections 77-4110 and 77-4113.

(3) Once satisfied that the plan in the application defines a project consistent with the purposes stated in section 77-4102 in one or more qualified business activities within this state, that the plans will result in either (a) the investment in qualified property of at least three million dollars and the hiring of at least thirty new employees or (b) the investment in qualified property resulting in a net gain in the total value of tangible property in this state of a type subject to depreciation, amortization, or other recovery under the Internal Revenue Code of 1986 of at least twenty million dollars, and that the required levels of employment and investment for the project will be met prior to the end of the sixth year after the year in which the application was submitted, the Tax Commissioner shall approve the application. In determining the net gain in value for purposes of this subsection, all tangible personal property shall be valued in a manner consistent with the value determined for qualified property, and the total value on the last day of each year shall be compared with the total value on the last day of the base year.

(4) After approval, the taxpayer and the Tax Commissioner shall enter into a written agreement. The taxpayer shall agree to complete the project, and the Tax Commissioner, on behalf of the State of Nebraska, shall designate the approved plans of the taxpayer as a project and, in consideration of the taxpayer's agreement, agree to allow the taxpayer to use the incentives contained in the Employment and Investment Growth Act. The application, and all supporting documentation, to the extent approved, shall be considered a part of the agreement. The agreement shall state:

(a) The levels of employment and investment required by the act for the project;

(b) The time period under the act in which the required levels must be met;

(c) The documentation the taxpayer will need to supply when claiming an incentive under the act;

(d) The date the application was filed; and

(e) A requirement that the company update the Department of Revenue annually on any changes in plans or circumstances which affect the timetable of sales tax refunds as set out in the application. If the company fails to comply with this requirement, the Tax Commissioner may defer any pending sales tax refunds until the company does comply.

(5) The incentives contained in section 77-4105 shall be in lieu of the tax credits allowed by section 77-27,188 for any project. In computing credits under section 77-27,188, any investment or employment which is eligible for benefits under the Employment and Investment Growth Act shall be subtracted from the increases computed for determining the credits under section 77-27,188.

(6) A taxpayer and the Tax Commissioner may enter into agreements for more than one project and may include more than one project in a single

agreement. The projects may be either sequential or concurrent. A project may involve the same location as another project. No new employment or new investment shall be included in more than one project for either the meeting of the employment or investment requirements or the creation of credits. When projects overlap and the plans do not clearly specify, then the taxpayer shall specify in which project the employment and investment belongs.

Source: Laws 1987, LB 775, § 4; Laws 1988, LB 1234, § 5; Laws 1990, LB 431, § 2; Laws 1994, LB 1066, § 86; Laws 1996, LB 1290, § 2; Laws 1999, LB 87A, § 1; Laws 2008, LB914, § 18.
Operative date July 18, 2008.

77-4104.01 Incentives; credits or benefits; limitation.

The following transactions or activities shall not create any credits or allow any benefits under the Employment and Investment Growth Act except as specifically allowed by this section:

(1) The acquisition of a business which is continued by the taxpayer and which was operated in this state during the three hundred sixty-six days prior to the date of application or the date of acquisition, whichever is later. All employees of the acquired business during such period shall be considered base-year employees, and the compensation paid during the base year or the year before acquisition, whichever is later shall be the base-year compensation. Any investment in the acquisition of such business shall be considered as being made before the date of application;

(2) The moving of a business from one location to another, which business was operated in this state during the three hundred sixty-six days prior to the date of application. All employees of the business during such three hundred sixty-six days shall be considered base-year employees;

(3) The purchase or lease of any property which was previously owned by the taxpayer or a related person. The first purchase by either the taxpayer or a related person shall be treated as investment if the item was first placed in service in this state after the date of the application;

(4) The renegotiation of any lease in existence on the date of application which does not materially change any of the terms of the lease, other than the expiration date, shall be presumed to be a transaction entered into for the purpose of generating benefits under the act and shall not be allowed in the computation of any benefit or the meeting of any required levels under the agreement;

(5) Any purchase or lease of property from a related person, except that the taxpayer will be allowed any benefits under the Employment and Investment Growth Act to which the related person would have been entitled on the purchase or lease of the property if the related person was considered the taxpayer;

(6) Any transaction entered into primarily for the purpose of receiving benefits under the act which is without a business purpose and does not result in increased economic activity in the state; and

(7) For applications received after April 16, 2004, any activity that results in benefits under the Ethanol Development Act.

Source: Laws 1988, LB 1234, § 6; Laws 2004, LB 479, § 9.

Ethanol Development Act, see section 66-1330.

77-4105 Incentives; income tax, personal property tax, sales and use tax; credits.

(1) A taxpayer who has signed an agreement under section 77-4104 may elect to determine taxable income for purposes of the Nebraska income tax using the sales factor only. The election may be made for the year during which the application was filed and for each year thereafter through the eighth year after the end of the entitlement period. The election shall be made for the year of the election by computing taxable income using the sales factor only on the tax return.

(2) A taxpayer who has signed an agreement under section 77-4104 shall receive the incentive provided in this subsection if the agreement contains one or more projects which together will result in the investment in qualified property of at least ten million dollars and the hiring of at least one hundred new employees. Such ten-million-dollar investment and hiring of at least one hundred new employees shall be considered a required level of investment and employment for this subsection and for the recapture of personal property tax only.

The following property used in connection with such project or projects and acquired by the taxpayer, whether by lease or purchase, after the date the application was filed shall constitute separate classes of personal property:

(a) Turbine-powered aircraft, including turboprop, turbojet, and turbofan aircraft, except when any such aircraft is used for fundraising for or for the transportation of an elected official;

(b) Computer systems, made up of equipment that is interconnected in order to enable the acquisition, storage, manipulation, management, movement, control, display, transmission, or reception of data involving computer software and hardware, used for business information processing which require environmental controls of temperature and power and which are capable of simultaneously supporting more than one transaction and more than one user. A computer system includes peripheral components which require environmental controls of temperature and power connected to such computers. Peripheral components shall be limited to additional memory units, tape drives, disk drives, power supplies, cooling units, data switches, and communication controllers; and

(c) Personal property which is business equipment located in a single project if (i) the business equipment is involved directly in the manufacture or processing of agricultural products and (ii) the investment in the single project exceeds ten million dollars.

Such property shall be eligible for exemption from the tax on personal property from the first January 1 following the date of acquisition for property in subdivision (2)(a) of this section, or from the first January 1 following the end of the year during which the required levels were exceeded for property in subdivisions (2)(b) and (2)(c) of this section, through the sixteenth December 31 after the filing of the application. In order to receive the property tax exemptions allowed by subdivisions (2)(a), (2)(b), and (2)(c) of this section, the taxpayer shall annually file a claim for exemption with the Tax Commissioner on or before May 1. The form and supporting schedules shall be prescribed by

the Tax Commissioner and shall list all property for which exemption is being sought under this section. A separate claim for exemption must be filed for each project and each county in which property is claimed to be exempt. A copy of this form must also be filed with the county assessor in each county in which the applicant is requesting exemption. The Tax Commissioner shall determine the eligibility of each item listed for exemption and, on or before August 1, certify such to the taxpayer and to the affected county assessor.

(3) When the taxpayer has met the required levels of employment and investment contained in the agreement, the taxpayer shall also be entitled to the following incentives:

(a) A refund of all sales and use taxes paid under the Nebraska Revenue Act of 1967, the Local Option Revenue Act, and sections 13-319, 13-324, and 13-2813 from the date of the application through the meeting of the required levels of employment and investment for all purchases, including rentals, of:

(i) Qualified property used as a part of the project;

(ii) Property, excluding motor vehicles, based in this state and used in both this state and another state in connection with the project except when any such property is to be used for fundraising for or for the transportation of an elected official;

(iii) Tangible personal property by the owner of the improvement to real estate that is incorporated into real estate as a part of a project; and

(iv) Tangible personal property by a contractor or repairperson after appointment as a purchasing agent of the owner of the improvement to real estate. The refund shall be based on fifty percent of the contract price, excluding any land, as the cost of materials subject to the sales and use tax; and

(b) A refund of the sales and use taxes paid under the Nebraska Revenue Act of 1967, the Local Option Revenue Act, and sections 13-319, 13-324, and 13-2813 on the types of purchases, including rentals, listed in subdivision (a) of this subsection for such taxes paid during each year of the entitlement period in which the taxpayer is at or above the required levels of employment and investment.

(4) Any taxpayer who qualifies for the incentives contained in subsections (1) and (3) of this section and who has added at least thirty new employees at the project shall also be entitled to:

(a) A credit equal to five percent of the amount by which the total compensation paid during the year to employees who are either Nebraska employees or base-year employees while employed at the project exceeds the average compensation paid at the project multiplied by the number of equivalent base-year employees.

For the computation of such credit, average compensation shall mean the total compensation paid at the project divided by the total number of equivalent employees at the project; and

(b) A credit equal to ten percent of the investment made in qualified property at the project.

The credits prescribed in subdivisions (a) and (b) of this subsection shall be allowable for compensation paid and investments made during each year of the entitlement period that the taxpayer is at or above the required levels of employment and investment.

The credit prescribed in subdivision (b) of this subsection shall also be allowable during the first year of the entitlement period for investment in qualified property at the project after the date of the application and before the required levels of employment and investment were met.

Source: Laws 1987, LB 775, § 5; Laws 1988, LB 1234, § 7; Laws 1996, LB 1177, § 20; Laws 2000, LB 968, § 73; Laws 2001, LB 142, § 59; Laws 2007, LB223, § 25; Laws 2007, LB334, § 95; Laws 2008, LB965, § 19.

Operative date April 15, 2008.

Cross References

Local Option Revenue Act, see section 77-27,148.

Nebraska Revenue Act of 1967, see section 77-2701.

77-4109 Application; valid; when; limitation on new applications.

(1) Any complete application filed on or after the date of passage of Laws 1987, LB 775, shall be considered a valid application on the date submitted for the purposes of the Employment and Investment Growth Act.

(2) No new applications shall be filed under the act on or after January 1, 2006. All project applications filed before January 1, 2006, shall be considered by the Tax Commissioner and approved if the project and taxpayer qualify for benefits. Agreements may be executed with regard to project applications filed before January 1, 2006. All project agreements pending, approved, or entered into before such date with respect to the act shall continue in full force and effect.

Source: Laws 1987, LB 775, § 9; Laws 2005, LB 312, § 57.

77-4110 Annual report; contents.

(1) The Tax Commissioner shall submit an annual report to the Legislature no later than July 15 of each year.

(2) The report shall list (a) the agreements which have been signed during the previous calendar year, (b) the agreements which are still in effect, (c) the identity of each taxpayer, and (d) the location of each project.

(3) The report shall also state by industry group (a) the specific incentive options applied for under the Employment and Investment Growth Act, (b) the refunds allowed on the investment, (c) the credits earned, (d) the credits used to reduce the corporate income tax and the credits used to reduce the individual income tax, (e) the credits used to obtain sales and use tax refunds, (f) the number of jobs created, (g) the total number of employees employed in the state by the taxpayer on the last day of the calendar quarter prior to the application date and the total number of employees employed in the state by the taxpayer on subsequent reporting dates, (h) the expansion of capital investment, (i) the estimated wage levels of jobs created subsequent to the application date, (j) the total number of qualified applicants, (k) the projected future state revenue gains and losses, (l) the sales tax refunds owed to the applicants, (m) the credits outstanding, and (n) the value of personal property exempted by class in each county.

(4) No information shall be provided in the report that is protected by state or federal confidentiality laws.

Source: Laws 1987, LB 775, § 10; Laws 1990, LB 431, § 3; Laws 2007, LB223, § 26.

ARTICLE 42

PROPERTY TAX CREDIT ACT

Section

77-4209. Act, how cited.

77-4210. Purpose of act.

77-4211. Property Tax Credit Cash Fund; created; use; investment.

77-4212. Property tax credit; county treasurer; duties; disbursement to counties; State Treasurer; duties.

77-4209 Act, how cited.

Sections 77-4209 to 77-4212 shall be known and may be cited as the Property Tax Credit Act.

Source: Laws 2007, LB367, § 1.

77-4210 Purpose of act.

The purpose of the Property Tax Credit Act is to provide property tax relief for property taxes levied against real property. The property tax relief will be made to owners of real property in the form of a property tax credit.

Source: Laws 2007, LB367, § 2.

77-4211 Property Tax Credit Cash Fund; created; use; investment.

The Property Tax Credit Cash Fund is created. The fund shall only be used pursuant to the Property Tax Credit Act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2007, LB367, § 3.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

77-4212 Property tax credit; county treasurer; duties; disbursement to counties; State Treasurer; duties.

(1) For tax year 2007, the amount of relief granted under the Property Tax Credit Act shall be one hundred five million dollars. For tax year 2008, the amount of relief granted under the act shall be one hundred fifteen million dollars. It is the intent of the Legislature to fund the Property Tax Credit Act for tax years after tax year 2008 using available revenue. The relief shall be in the form of a property tax credit which appears on the property tax statement.

(2) To determine the amount of the property tax credit, the county treasurer shall multiply the amount disbursed to the county under subsection (4) of this section by the ratio of the real property valuation of the parcel to the total real property valuation in the county. The amount determined shall be the property tax credit for the property.

(3) If the real property owner qualifies for a homestead exemption under sections 77-3501 to 77-3529, the owner shall also be qualified for the relief provided in the act to the extent of any remaining liability after calculation of the relief provided by the homestead exemption. If the credit results in a property tax liability on the homestead that is less than zero, the amount of the credit which cannot be used by the taxpayer shall be returned to the State Treasurer by July 1 of the year the amount disbursed to the county was disbursed. The State Treasurer shall immediately credit any funds returned under this section to the Property Tax Credit Cash Fund.

(4) The amount disbursed to each county shall be equal to the amount available for disbursement determined under subsection (1) of this section multiplied by the ratio of the real property valuation in the county to the real property valuation in the state. By September 15, the Property Tax Administrator shall determine the amount to be disbursed under this subsection to each county and certify such amounts to the State Treasurer and to each county. The disbursements to the counties shall occur in two equal payments, the first on or before January 31 and the second on or before April 1. After retaining one percent of the receipts for costs, the county treasurer shall allocate the remaining receipts to each taxing unit levying taxes on taxable property in the tax district in which the real property is located in the same proportion that the levy of such taxing unit bears to the total levy on taxable property of all the taxing units in the tax district in which the real property is located.

(5) The State Treasurer shall transfer from the General Fund to the Property Tax Credit Cash Fund one hundred five million dollars by August 1, 2007, and one hundred fifteen million dollars by August 1, 2008.

(6) The Legislature shall have the power to transfer funds from the Property Tax Credit Cash Fund to the General Fund.

Source: Laws 2007, LB367, § 4.

ARTICLE 45

RENTAL OF MOTOR VEHICLES

Section

77-4501. Rental company; collect fee; when; use; effect on growth limit on budget; collection.

77-4501 Rental company; collect fee; when; use; effect on growth limit on budget; collection.

(1) Except as provided in subsection (6) of this section, rental companies engaged in the business of renting private passenger motor vehicles used to carry fifteen passengers or less for periods of thirty-one days or less shall collect, at the time the vehicle is rented in Nebraska, a fee of four and one-half percent of each rental contract amount, not including sales tax. For purposes of this section, a vehicle is rented in Nebraska if it is picked up by the renter in Nebraska. The fee shall be computed in accordance with the method used for the sales tax imposed by the state on those charges subject to sales tax. The fee shall not be subject to sales tax. The fee shall be noted in the rental contract and collected in accordance with the terms of the contract. The fee shall be retained by the vehicle owner or the rental company engaged in the business of renting private passenger motor vehicles. Fees collected pursuant to this section shall be used by the vehicle owner or the rental company for reimburse-

ment of the amount of motor vehicle taxes and fees imposed and paid in Nebraska upon the vehicles by the vehicle owner or rental company.

(2) On February 15 of each year, the fees imposed by this section for the preceding calendar year, to the extent the fees exceed the motor vehicle taxes and fees imposed and paid in Nebraska upon the vehicles for the preceding calendar year, shall be due and payable to the county treasurer of the county where the transactions occurred. The fee shall be remitted on forms prescribed by the county treasurer. The county shall allocate and distribute such proceeds in the same manner as the proceeds from motor vehicle taxes are allocated and distributed pursuant to section 60-3,186. The revenue received by the county under this section may be expended for any lawful purpose.

(3) The revenue received by the county under this section shall be included and considered as proceeds of motor vehicle taxes and fees for purposes of any growth limitation on budgets of political subdivisions funded by property taxes.

(4) The fee imposed under this section shall be in addition to any other tax or fee authorized by law to be levied on the business activities described in this section and shall be in addition to the sales tax imposed by the state or any municipality.

(5) The county treasurer, county board, and county sheriff may use any method specified in Chapter 77, article 17, for the collection of property taxes to collect the fee imposed by this section.

(6) A fee shall not be collected if the renter is exempt from the payment of sales tax.

Source: Laws 1993, LB 345, § 79; Laws 1993, LB 346, § 21; Laws 1994, LB 1083, § 1; Laws 1997, LB 271, § 52; Laws 2005, LB 274, § 279.

ARTICLE 49

QUALITY JOBS ACT

Section

77-4928. Wage benefit credit; application for agreement; contents; fee; approval.

77-4933. Report; contents.

77-4928 Wage benefit credit; application for agreement; contents; fee; approval.

(1) In order for the employee and company to be eligible for the wage benefit credit, the company shall file an application for an agreement with the board.

(2) The application shall contain:

(a) The exact name of the company and any related companies which will be included in the project;

(b) A statement describing, in detail, the nature of the company’s business, including the products sold and respective markets;

(c) A detailed narrative that describes the proposed project, including how the company intends to attain and maintain the job and investment requirements;

(d) A request that the company be considered for approval under the Quality Jobs Act;

(e) If more than one location within this state is to be involved in the project, sufficient documentation to show that the employment and investment at the different locations are interdependent parts of the project plan;

(f) A copy of the corporate authorization for the project;

(g) A copy of the company's most recent financial report, federal income tax return, Nebraska income tax return, Nebraska reconciliation of income tax withheld, and Nebraska sales and use tax identification number;

(h) The number of base-year employees, the expected number of new employees, the expected timing of the hiring of the new employees, the anticipated timing and amounts of new investment in buildings and equipment, and the average salaries expected by category for the new employees to be employed at the project; and

(i) A five-thousand-dollar nonrefundable application fee payable to the Department of Revenue. The fee shall be remitted to the Nebraska Incentives Fund.

(3) The application and all supporting information shall be confidential except for the name of the company, the location of the project, the amounts of increased employment and investment, the result of the net benefit calculations, and whether the application has been approved.

(4) The board shall determine whether to approve the company's application by majority vote based on its determination as to whether the project will sufficiently help enable the state to accomplish the purposes of the Quality Jobs Act. The board shall be governed by and shall take into consideration all of the following factors in making its determination:

(a) The timing, number, wage levels, employee benefit package, and types of new jobs to be created by the project;

(b) The type of industry in which the company and the project would be engaged;

(c) The timing, amount, and types of investment in qualified property to be made at the project; and

(d) Whether the board believes the project would occur in this state regardless of whether the application was approved.

(5) The board shall notify the company in writing as to whether it has approved or not approved the application. The board shall decide and mail such notice within thirty days after receipt of the application whether it approves or disapproves the application, unless such time is extended by mutual written consent of the board and the company.

(6) A project shall be considered eligible under the act and may be approved by the board only if the application defines a project consistent with the legislative purposes contained in section 77-4902 in one or more qualified business activities within this state that will result in (a) the investment in qualified property of at least fifty million dollars and the hiring of a number of new employees of at least five hundred or (b) the investment in qualified property of at least one hundred million dollars and the hiring of a number of new employees of at least two hundred fifty. The new investment and employment shall occur within seven years, meaning by the end of the sixth year after the end of the year the application was filed, and shall be maintained for the entire entitlement period. These thresholds shall constitute the required levels of employment and investment for purposes of the act.

(7) If the project application is approved by the board, the company and the state shall enter into a written agreement, which shall be executed on behalf of the state by the Tax Commissioner. In the agreement the company shall agree to complete the project and the state shall designate the approved plans of the company as a project and, in consideration of the company's agreement, agree to allow the wage benefit credit as provided for in the act. The application, and all supporting documentation, to the extent approved, shall be considered a part of the agreement. The agreement shall contain such terms and conditions as the board shall specify in order to carry out the legislative purposes of the act. The agreement shall contain provisions to allow the Department of Revenue to verify that the required levels of employment have been attained and maintained.

(8) The address of the board shall be the address of the Department of Revenue.

Source: Laws 1995, LB 829, § 28; Laws 1998, LB 939, § 1; Laws 2008, LB914, § 19.
Operative date July 18, 2008.

77-4933 Report; contents.

(1) The Department of Revenue shall submit an annual report to the Legislature no later than July 15 each year. The report shall list (a) the agreements which have been signed during the previous calendar year, (b) the agreements which are still in effect, (c) the identity of each company, and (d) the location of each project.

(2) The report shall also state by industry group (a) the amount of wage benefit credits allowed under the Quality Jobs Act, (b) the number of direct jobs created at the project, (c) the amount of direct capital investment under the act, (d) the estimated wage levels of jobs created by the companies at the projects, (e) the estimated indirect jobs and investment created on account of the projects, and (f) the projected future state and local revenue gains and losses from all revenue sources on account of the direct and indirect jobs and investment created on account of the project.

(3) No information shall be provided in the report that is protected by state or federal confidentiality laws.

Source: Laws 1995, LB 829, § 33; Laws 2007, LB223, § 27.

ARTICLE 50

TAX EQUALIZATION AND REVIEW COMMISSION ACT

Section	
77-5001.	Act, how cited.
77-5003.	Tax Equalization and Review Commission; created; commissioners; term.
77-5004.	Commissioner; qualifications; conflict of interests; continuing education; expenses.
77-5005.	Commission; meetings; quorum; orders.
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§ 77-5001**REVENUE AND TAXATION**

Section

- 77-5016. Hearing or proceeding; commission; powers and duties; false statement; penalty; costs.
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- 77-5016.07. Witness; demand for fees; effect.
- 77-5016.08. Prohibited acts; penalty.
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- 77-5018. Appeals; decisions and orders; requirements; correction of errors.
- 77-5019. Appeals; judicial review; procedure.
- 77-5020. County assessor or deputy assessor; invalidation or suspension of certificate; appeal.
- 77-5022. Commission; annual meeting; powers and duties.
- 77-5023. Commission; power to change value; acceptable range.
- 77-5024. Repealed. Laws 2005, LB 261, § 13.
- 77-5024.01. Notice; contents.
- 77-5025. Repealed. Laws 2005, LB 261, § 13.
- 77-5026. Commission; change of value; hearing; procedure.
- 77-5027. Commission; change valuation; Property Tax Administrator; duties.
- 77-5028. Commission; enter order.
- 77-5029. County assessor; recertify county abstract; Property Tax Administrator; duties.
- 77-5032. Repealed. Laws 2005, LB 15, § 15.

77-5001 Act, how cited.

Sections 77-5001 to 77-5031 shall be known and may be cited as the Tax Equalization and Review Commission Act.

Source: Laws 1995, LB 490, § 1; Laws 1997, LB 270, § 100; Laws 1997, LB 397, § 34; Laws 1998, LB 1104, § 23; Laws 2003, LB 291, § 4; Laws 2004, LB 973, § 46.

77-5003 Tax Equalization and Review Commission; created; commissioners; term.

(1) The Tax Equalization and Review Commission is created. The Tax Commissioner has no supervision, authority, or control over the actions or decisions of the commission relating to its duties prescribed by law. The commission shall have three commissioners, one from each congressional district, and beginning on and after January 1, 2002, the commission shall have four commissioners. One at-large commissioner shall be appointed in addition to the commissioners representing the congressional districts. All commissioners shall be appointed by the Governor with the approval of a majority of the members of the Legislature.

(2) The term of the commissioner from district 1 expires January 1, 2010, the term of the commissioner from district 2 expires January 1, 2012, and the term of the commissioner from district 3 expires January 1, 2008. The term of the at-large commissioner expires on January 1, 2008. After the terms of the commissioners are completed as provided in this section, each subsequent term shall be for six years beginning and ending on January 1 of the applicable year. Vacancies occurring during a term shall be filled by appointment for the

unexpired term. Upon the expiration of his or her term of office, a commissioner shall continue to serve until his or her successor has been appointed.

(3) The Governor shall designate one commissioner, who is an attorney admitted to practice before the Nebraska Supreme Court, to serve as the chairperson of the commission from January 1, 2002, through December 31, 2003. Beginning on January 1, 2004, the commission shall designate pursuant to rule and regulation its chairperson and vice-chairperson on a two-year, rotating basis among the commissioners who are attorneys admitted to practice before the Nebraska Supreme Court.

(4) A commissioner may be removed by the Governor for misfeasance, malfeasance, or willful neglect of duty or other cause after notice and a public hearing unless notice and hearing are expressly waived in writing by the commissioner.

Source: Laws 1995, LB 490, § 3; Laws 1998, LB 1104, § 24; Laws 2001, LB 465, § 3; Laws 2003, LB 291, § 5; Laws 2007, LB167, § 4.

77-5004 Commissioner; qualifications; conflict of interests; continuing education; expenses.

(1) Each commissioner shall be a qualified voter and resident of the state and, for each commissioner representing a congressional district, a domiciliary of the district he or she represents.

(2) Each commissioner shall devote his or her full time and efforts to the discharge of his or her duties and shall not hold any other office under the laws of this state, any city or county in this state, or the United States Government while serving on the commission. Each commissioner shall possess:

(a) Appropriate knowledge of terms commonly used in or related to real property appraisal and of the writing of appraisal reports;

(b) Adequate knowledge of depreciation theories, cost estimating, methods of capitalization, and real property appraisal mathematics;

(c) An understanding of the principles of land economics, appraisal processes, and problems encountered in the gathering, interpreting, and evaluating of data involved in the valuation of real property, including complex industrial properties and mass appraisal techniques;

(d) Knowledge of the law relating to taxation, civil and administrative procedure, due process, and evidence in Nebraska;

(e) At least thirty hours of successfully completed class hours in courses of study, approved by the Real Property Appraiser Board, which relate to appraisal and which include the fifteen-hour National Uniform Standards of Professional Appraisal Practice Course. If a commissioner has not received such training prior to his or her appointment, such training shall be completed within one year after appointment; and

(f) Such other qualifications and skills as reasonably may be requisite for the effective and reliable performance of the commission's duties.

(3) One commissioner shall possess any certification or training required to become a licensed real property appraiser as set forth in section 76-2230.

(4) Prior to January 1, 2002, the chairperson, and on and after January 1, 2002, at least two commissioners, shall have been engaged in the practice of law in the State of Nebraska for at least five years, which may include prior

service as a judge, and shall be currently admitted to practice before the Nebraska Supreme Court.

(5) No commissioner or employee of the commission shall hold any position of profit or engage in any occupation or business interfering with or inconsistent with his or her duties as a commissioner or employee. A person is not eligible for appointment and may not hold the office of commissioner or be appointed by the commission to or hold any office or position under the commission if he or she holds any official office or position.

(6)(a) Each commissioner who meets the requirements of subsection (4) of this section on or after January 1, 2002, shall annually attend a seminar or class of at least two days' duration that is:

(i) Sponsored by a recognized assessment or appraisal organization, in each of these areas: Utility and railroad appraisal; appraisal of complex industrial properties; appraisal of other hard to assess properties; and mass appraisal, residential or agricultural appraisal, or assessment administration; or

(ii) Pertaining to management, law, civil or administrative procedure, or other knowledge or skill necessary for performing the duties of the office.

(b) Each commissioner who does not meet the requirements of subsection (4) of this section on or after January 1, 2002, shall within two years after his or her appointment attend at least thirty hours of instruction that constitutes training for judges or administrative law judges.

(7) The commissioners shall be considered employees of the state for purposes of sections 81-1320 to 81-1328 and 84-1601 to 84-1615.

(8) The commissioners shall be reimbursed as prescribed in sections 81-1174 to 81-1177 for their actual and necessary expenses in the performance of their official duties pursuant to the Tax Equalization and Review Commission Act.

Source: Laws 1995, LB 490, § 4; Laws 1996, LB 1038, § 2; Laws 1999, LB 32, § 1; Laws 2001, LB 170, § 19; Laws 2001, LB 465, § 4; Laws 2002, LB 994, § 28; Laws 2003, LB 292, § 15; Laws 2004, LB 973, § 47; Laws 2006, LB 778, § 73; Laws 2007, LB186, § 25; Laws 2008, LB965, § 20.

Operative date April 15, 2008.

77-5005 Commission; meetings; quorum; orders.

(1) Within ten days after appointment, the commissioners shall meet at their office in Lincoln, Nebraska, and enter upon the duties of their office.

(2) A majority of the commission or, in cases when a panel of three commissioners hears a case, a majority of the panel shall at all times constitute a quorum to transact business, and one vacancy shall not impair the right of the remaining commissioners to exercise all the powers of the commission.

(3) Any investigation, inquiry, or hearing held or undertaken by the commission may be held or undertaken by or before a panel of three commissioners.

(4) All investigations, inquiries, hearings, and decisions of a panel of commissioners and every order made by a panel of commissioners shall be deemed to be the order of the commission. The full commission may grant a rehearing and determine de novo any decisions of or orders made by a panel of commissioners. The thirty-day filing period for appeals under subsection (2) of section 77-5019 shall be tolled while a motion for rehearing is pending.

(5) All hearings or proceedings of the commission shall be open to the public.

(6) The Open Meetings Act applies only to hearings or proceedings of the commission held pursuant to the rulemaking authority of the commission.

Source: Laws 1995, LB 490, § 5; Laws 1998, LB 1104, § 25; Laws 2001, LB 465, § 5; Laws 2003, LB 291, § 6; Laws 2004, LB 821, § 23; Laws 2005, LB 15, § 7.

Cross References

Open Meetings Act, see section 84-1407.

77-5007 Commission; powers and duties.

The commission has the power and duty to hear and determine appeals of:

(1) Decisions of any county board of equalization equalizing the value of individual tracts, lots, or parcels of real property so that all real property is assessed uniformly and proportionately;

(2) Decisions of any county board of equalization granting or denying tax-exempt status for real or personal property or an exemption from motor vehicle taxes and fees;

(3) Decisions of the Tax Commissioner, and decisions of the Property Tax Administrator made before July 1, 2007, determining the taxable property of a railroad company, car company, public service entity, or air carrier within the state;

(4) Decisions of the Tax Commissioner, and decisions of the Property Tax Administrator made before July 1, 2007, determining adjusted valuation pursuant to section 79-1016;

(5) Decisions of any county board of equalization on the valuation of personal property or any penalties imposed under sections 77-1233.04 and 77-1233.06;

(6) Decisions of any county board of equalization on claims that a levy is or is not for an unlawful or unnecessary purpose or in excess of the requirements of the county;

(7) Decisions of any county board of equalization granting or rejecting an application for a homestead exemption;

(8) Decisions of the Department of Motor Vehicles determining the taxable value of motor vehicles pursuant to section 60-3,188;

(9) Decisions of the Tax Commissioner, and decisions of the Property Tax Administrator made before July 1, 2007, made under section 77-1330;

(10) Any other decision of any county board of equalization;

(11) Any other decision of the Property Tax Administrator made before July 1, 2007, and decisions made by the Tax Commissioner regarding property valuation, exemption, or taxation made on or after July 1, 2007;

(12) Decisions of the Tax Commissioner pursuant to section 77-3520; and

(13) Any other decision, determination, action, or order from which an appeal to the commission is authorized.

The commission has the power and duty to hear and grant or deny relief on petitions.

Source: Laws 1995, LB 490, § 7; Laws 1996, LB 1038, § 3; Laws 1997, LB 270, § 102; Laws 1997, LB 397, § 35; Laws 1998, LB 306, § 40; Laws 1999, LB 140, § 2; Laws 1999, LB 194, § 33; Laws

2001, LB 170, § 20; Laws 2004, LB 973, § 48; Laws 2005, LB 15, § 8; Laws 2005, LB 261, § 8; Laws 2005, LB 274, § 280; Laws 2007, LB334, § 96.

77-5008 Commission; writs of mandamus.

In addition to its other powers and duties, the commission may issue writs of mandamus compelling compliance with its orders and compelling the Tax Commissioner to enforce its orders and may charge the party which has not complied with the commission's orders with costs borne by the Tax Commissioner or by the Property Tax Administrator before July 1, 2007.

Source: Laws 1995, LB 490, § 8; Laws 2007, LB334, § 97.

77-5009 Personnel; special masters; referees.

(1) The commission may employ legal, clerical, and other assistants as may be necessary to carry out the powers and duties of the commission.

(2)(a) For purposes of finding facts or conducting an investigation on behalf of the commission with regard to any matters relating to taxation or assessment, the commission may appoint by an order in writing a special master or special masters whose duties are prescribed in the order, except that the duties of a special master shall not include the determination of conclusions of law or the final disposition of any case or controversy.

(b) Special masters may be paid a salary or fee in the discretion of the commission. If a salary is paid, the amount paid shall be fixed by the commission, and if a fee is paid, the amount paid shall be in accordance with the value of the service rendered and shall be agreed upon and approved by the commission before the special master renders service under his or her appointment.

(c) The claim for services rendered shall be certified by the commission and paid as provided by law for other claims against the state.

(3) In the discharge of his or her duties, a special master shall have all the investigative and factfinding powers of the commission.

(4)(a) The commission may conduct a number of factfindings or investigations contemporaneously through different special masters and may delegate to a special master the taking of all testimony bearing upon any investigation or hearing.

(b) The decision of the commission shall be based upon its examination of all testimony and records.

(c) The recommendations made by any special master shall be advisory only and shall not preclude the taking of further testimony if the commission orders further investigation.

(5)(a) For purposes of mediating valuation disputes between the county and the owner of the property, the commission by order may also contract with or appoint a referee or referees. The purpose of the referee is to meet with the parties and facilitate agreement on facts and issues prior to the hearing on the appeal. The referee may not be called as a witness in a hearing on the merits nor may evidence of any statements made by the parties or the referee pertaining to or at the referee meeting be received by the commission in a hearing on the merits. If the parties fail to resolve their differences, a hearing on the merits of the appeal shall be held before the commission. If the parties

resolve their differences, the commission shall enter an order that reflects the agreement of the parties.

(b) Referees may be paid a salary or fee in the discretion of the commission. If a salary is paid, the amount paid shall be fixed by the commission, and if a fee is paid, the amount paid shall be in accordance with the value of the service rendered and shall be agreed upon and approved by the commission before the referee renders service under his or her appointment.

(c) The claim for services rendered shall be certified by the commission and paid as provided by law for other claims against the state.

Source: Laws 1995, LB 490, § 9; Laws 1998, LB 1104, § 27; Laws 2000, LB 968, § 74; Laws 2001, LB 465, § 6; Laws 2006, LB 808, § 41.

77-5011 Chairperson; powers and duties.

The chairperson may call special meetings of the commission at such times as its business requires. The chairperson may also administer oaths and affirmations and sign all orders, certificates, and process in the name of the commission. The chairperson shall attest all orders, certificates, and process with the official seal of the commission. In the absence of the chairperson the vice-chairperson may perform the duties of the chairperson. Orders, certificates, and process under the official seal of the commission may be enforced by the district court for Lancaster County.

Source: Laws 1995, LB 490, § 11; Laws 1997, LB 397, § 36; Laws 2003, LB 291, § 7; Laws 2007, LB167, § 5.

77-5013 Commission; jurisdiction; time for filing; filing fee.

(1) The commission obtains exclusive jurisdiction over an appeal or petition when:

- (a) The commission has the power or authority to hear the appeal or petition;
- (b) An appeal or petition is timely filed;
- (c) The filing fee, if applicable, is timely received and thereafter paid; and
- (d) In the case of an appeal, a copy of the decision, order, determination, or action appealed from, or other information that documents the decision, order, determination, or action appealed from, is timely filed.

Only the requirements of this subsection shall be deemed jurisdictional.

(2) A petition, an appeal, or the information required by subdivision (1)(d) of this section is timely filed and the filing fee, if applicable, is timely received if placed in the United States mail, postage prepaid, with a legible postmark for delivery to the commission, or received by the commission, on or before the date specified by law for filing the appeal or petition. If no date is otherwise provided by law, then an appeal shall be filed within thirty days after the decision, order, determination, or action appealed from is made.

(3) The filing fee for each appeal or petition filed with the commission is twenty-five dollars, except that no filing fee shall be required for an appeal by a county assessor acting in his or her official capacity or a county board of equalization acting in its official capacity.

(4) The form and requirements for execution of an appeal or petition may be specified by the commission in its rules and regulations.

Source: Laws 1995, LB 490, § 13; Laws 1998, LB 1104, § 28; Laws 2001, LB 170, § 21; Laws 2004, LB 973, § 49.

77-5014 Repealed. Laws 2007, LB 167, § 13.

77-5015 Appeals; hearing; notice.

Appeals regarding the valuation or exemption of multiple parcels involving the same owner and the same issues may be consolidated in the manner prescribed by the commission. Any multiple filing fees paid for consolidated appeals shall be refunded by the commission. In any case appealed to the commission all parties shall be afforded an opportunity for hearing after reasonable notice. The notice shall state the time and place of the hearing. Opportunity shall be afforded all parties to present evidence and argument. The commission shall prepare an official record, which includes testimony and exhibits, in each case, but it shall not be necessary to transcribe the record of the proceedings unless requested for purposes of rehearing, in which event the transcript and record shall be furnished by the commission upon request and tender of the cost of preparation. Informal disposition may also be made of any case by stipulation, agreed settlement, consent order, or default.

Source: Laws 1995, LB 490, § 15; Laws 1999, LB 140, § 3; Laws 2003, LB 291, § 8; Laws 2004, LB 973, § 50.

77-5016 Hearing or proceeding; commission; powers and duties; false statement; penalty; costs.

Any hearing or proceeding of the commission shall be conducted as an informal hearing unless a formal hearing is granted as determined by the commission according to its rules and regulations. In any hearing or proceeding heard by the commission or a panel of commissioners:

(1) The commission may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs excluding incompetent, irrelevant, immaterial, and unduly repetitious evidence and shall give effect to the privilege rules of evidence in sections 27-501 to 27-513 but shall not otherwise be bound by the usual common-law or statutory rules of evidence except during a formal hearing. Any party to an appeal filed under section 77-5007 may request a formal hearing by delivering a written request to the commission not more than thirty days after the appeal is filed. The requesting party shall be liable for the payment of fees and costs of a court reporter pending a final decision. The commission shall be bound by the rules of evidence applicable in district court in any formal hearing held by the commission. Fees and costs of a court reporter shall be paid by the party or parties against whom a final decision is rendered, and all other costs shall be allocated as the commission may determine;

(2) The commission may administer oaths, issue subpoenas, and compel the attendance of witnesses and the production of any papers, books, accounts, documents, statistical analysis, and testimony. The commission may adopt and promulgate necessary rules for discovery which are consistent with the rules adopted by the Supreme Court pursuant to section 25-1273.01;

(3) The commission may consider and utilize the provisions of the Constitution of the United States, the Constitution of Nebraska, the laws of the United States, the laws of Nebraska, the Code of Federal Regulations, the Nebraska Administrative Code, any decision of the several courts of the United States or the State of Nebraska, and the legislative history of any law, rule, or regulation, without making the document a part of the record. The commission may without inclusion in the record consider and utilize published treatises, periodicals, and reference works pertaining to the valuation or assessment of real or personal property or the meaning of words and phrases if the document is identified in the commission's rules and regulations. All other evidence, including records and documents in the possession of the commission of which it desires to avail itself, shall be offered and made a part of the record in the case. No other factual information or evidence other than that set forth in this section shall be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts or by incorporation by reference;

(4) Every party shall have the right of cross-examination of witnesses who testify and shall have the right to submit rebuttal evidence;

(5) The commission may take notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within its specialized knowledge or statistical information regarding general levels of assessment within a county or a class or subclass of real property within a county and measures of central tendency within such county or classes or subclasses within such county which have been made known to the commission. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material so noticed. They shall be afforded an opportunity to contest the facts so noticed. The commission may utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it;

(6) Any person testifying under oath at a hearing who knowingly and intentionally makes a false statement to the commission or its designee is guilty of perjury. For the purpose of this section, perjury is a Class I misdemeanor;

(7) The commission may determine any question raised in the proceeding upon which an order, decision, determination, or action appealed from is based. The commission may consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal;

(8) In all appeals, excepting those arising under section 77-1606, if the appellant presents no evidence to show that the order, decision, determination, or action appealed from is incorrect, the commission shall deny the appeal. If the appellant presents any evidence to show that the order, decision, determination, or action appealed from is incorrect, such order, decision, determination, or action shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary;

(9) If the appeal concerns a decision by the county board of equalization that property is, in whole or in part, exempt from taxation, the decision to be rendered by the commission shall only determine the exemption status of the property. The decision shall not determine the taxable value of the property unless stipulated by the parties according to subsection (2) of section 77-5017;

(10) If the appeal concerns a decision by the county board of equalization that property owned by the state or a political subdivision is or is not exempt

and there has been no final determination of the value of the property, the decision to be rendered by the commission shall only determine the exemption status of the property. The decision shall not determine the taxable value of the property unless stipulated by the parties according to subsection (2) of section 77-5017;

(11) The costs of any appeal, including the costs of witnesses, may be taxed by the commission as it deems just, except costs payable by the appellant pursuant to section 77-1510.01, unless the appellant is the county assessor or county clerk in which case the costs shall be paid by the county; and

(12) The commission shall deny relief to the appellant or petitioner in any hearing or proceeding unless a majority of the commissioners present determine that the relief should be granted.

Source: Laws 1995, LB 490, § 16; Laws 1997, LB 397, § 38; Laws 1999, LB 140, § 4; Laws 2000, LB 968, § 75; Laws 2001, LB 170, § 22; Laws 2001, LB 419, § 1; Laws 2001, LB 465, § 7; Laws 2002, LB 994, § 29; Laws 2003, LB 291, § 9; Laws 2004, LB 973, § 51; Laws 2005, LB 15, § 9; Laws 2007, LB167, § 6.

77-5016.01 Oath, affirmation, or statement; perjury.

Each appeal or petition filed with the commission shall be deemed to include an oath, affirmation, or statement to the effect that its representations are true as far as the person executing or filing it knows or should know. Any person who willfully falsifies any such representation shall be guilty of perjury and shall, upon conviction thereof, be punished as provided by section 28-915.

Source: Laws 2004, LB 973, § 52.

77-5016.02 Subpoena for witness; authorized.

The chairperson of the commission shall, on application of any person having a cause or any matter pending before it, issue a subpoena for a witness or witnesses under the seal of the commission, inserting all the names required by the applicant in one subpoena.

Source: Laws 2004, LB 973, § 53.

77-5016.03 Subpoena for witness; contents.

A subpoena of the commission shall be directed to the person named therein, requiring him or her to attend at a particular time and place and to testify as a witness. The subpoena may contain a clause directing the witness to bring with him or her any book, writing, or other thing under his or her control, which he or she is bound by law to produce as evidence.

Source: Laws 2004, LB 973, § 54.

77-5016.04 Subpoena for witness; service.

The subpoena shall be served in the manner requested by the applicant, by either (1) personally serving a copy or (2) mailing a copy by registered or certified mail, return receipt requested, not less than six days before the day of the hearing or deposition which the witness is required to attend. The person making such service shall make a return thereof showing the manner of service. A subpoena may be served by any person not interested in the matter or by the sheriff. When served by any person other than a sheriff, proof of service shall be

shown by affidavit, but no costs of serving shall be allowed, except when served by a sheriff.

Source: Laws 2004, LB 973, § 55.

77-5016.05 Witnesses; attendance required; fees.

(1) Witnesses cannot be compelled to attend a hearing out of the state where they are served or at a distance of more than one hundred miles from the place of their residence or from the place where they are served with a subpoena, unless within the same county. Witnesses shall not be obliged to attend a deposition outside the county of their residence or outside the county where the subpoena is served.

(2) The chairperson of the commission may, upon deposit with the commission of sufficient money to pay the legal fees and mileage and reasonable expenses for hotel and meals of such a witness who attends at points so far removed from his or her residence as to make it reasonably necessary that such expenses be incurred, order a subpoena to issue requiring the hearing attendance, but excluding a deposition appearance, of such witness from a greater distance within the state than that provided in subsection (1) of this section. Mileage shall be computed at the rate provided in section 81-1176. The subpoena shall show that it is issued under this section. After the appearance of such witness in response to any such subpoena, the chairperson of the commission shall enter an order directing the payment to the witness from such deposit of such legal fees, mileage, and the actual expenses for hotel and meals incurred by such witness. If such deposit is not adequate for such purpose, the chairperson of the commission shall direct the party procuring the issuance of such subpoena to pay to such witness the deficiency.

Source: Laws 2004, LB 973, § 56.

77-5016.06 Witness; demand fees; when.

(1) Except as provided in subsection (2) of this section, a witness may demand his or her traveling fees and fee for one day's attendance when the subpoena is served upon him or her, and if the same is not paid, the witness shall not be obliged to obey the subpoena. The fact of such demand and nonpayment shall be stated in the return.

(2) When a subpoena is issued at the request of any agency of state government, the witness shall not be entitled to demand his or her traveling fees and fee for one day's attendance but shall be required to obey the subpoena if, at the time of service upon him or her, he or she is furnished a statement prepared by the agency advising him or her of the rate of travel fees allowable, the fee for each day's attendance pursuant to the subpoena, and that he or she will be paid at such rates following his or her attendance.

Source: Laws 2004, LB 973, § 57.

77-5016.07 Witness; demand for fees; effect.

At the commencement of each day, after the first day, a witness may demand his or her fees for that day's attendance in obedience to a subpoena, and if the same is not paid he or she shall not be required to remain.

Source: Laws 2004, LB 973, § 58.

77-5016.08 Prohibited acts; penalty.

Disobedience of a subpoena or a refusal to be sworn, to answer as a witness, or to subscribe a deposition, when lawfully ordered, shall be a Class V misdemeanor.

Source: Laws 2004, LB 973, § 59.

77-5016.09 Death or disability of party; transfer of property; effect on proceeding.

An appeal or petition shall not be dismissed by reason of the death or other disability of a party or by the transfer of any interest in property during its pendency. In the case of the death or other disability of a party, the commission may allow the action to continue by the party's representative or successor in interest. In case of any other transfer of interest in property, the action may be continued in the name of the original party or the commission may allow the party to whom the transfer is made to be substituted in the action in accordance with the party's interests.

Source: Laws 2004, LB 973, § 60.

77-5017 Appeals or petitions; orders authorized.

(1) In resolving an appeal or petition, the commission may make such orders as are appropriate for resolving the dispute but in no case shall the relief be excessive compared to the problems addressed. The commission may make prospective orders requiring changes in assessment practices which will improve assessment practices or affect the general level of assessment or the measures of central tendency in a positive way. If no other relief is adequate to resolve disputes, the commission may order a reappraisal of property within a county, an area within a county, or classes or subclasses of property within a county.

(2) In an appeal specified in subdivision (9) or (10) of section 77-5016 for which the commission determines exempt property to be taxable, the commission shall order the county board of equalization to determine the taxable value of the property, unless the parties stipulate to such taxable value during the hearing before the commission. The order shall require the county board of equalization to (a) assess such property using procedures for assessing omitted property, (b) determine such taxable value within ninety days after the issuance of the commission's order, and (c) apply interest, but not penalty, to the taxable value as of the date the commission's order was issued or the date the taxes were delinquent, whichever is later.

(3) A determination of the taxable value of the property made by the county board of equalization pursuant to subsection (2) of this section may be appealed to the commission within thirty days after the board's decision.

Source: Laws 1995, LB 490, § 17; Laws 2001, LB 419, § 2; Laws 2004, LB 973, § 61; Laws 2007, LB167, § 7.

77-5018 Appeals; decisions and orders; requirements; correction of errors.

(1) The commission may issue decisions and orders which are supported by the evidence and appropriate for resolving the matters in dispute. Every final decision and order adverse to a party to the proceeding, rendered by the commission in a case appealed to the commission, shall be in writing or stated

in the record and shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the conclusions upon each contested issue of fact. Parties to the proceeding shall be notified of the decision and order in person or by mail. A copy of the decision and order shall be delivered or mailed upon request to each party or his or her attorney of record. Any decision rendered by the commission shall be certified to the county treasurer and to the officer charged with the duty of preparing the tax list, and if and when such decision becomes final, such officers shall correct their records accordingly and the tax list pursuant to section 77-1613.02.

(2) The commission may, on its own motion, modify or change its findings or orders, at any time before an appeal and within ten days after the date of such findings or orders, for the purpose of correcting any ambiguity, clerical error, or patent or obvious error. The time for appeal shall not be lengthened because of the correction unless the correction substantially changes the findings or order.

Source: Laws 1995, LB 490, § 18; Laws 1997, LB 397, § 39; Laws 2001, LB 465, § 8; Laws 2005, LB 15, § 10; Laws 2007, LB166, § 11.

77-5019 Appeals; judicial review; procedure.

(1) Any party aggrieved by a final decision in a case appealed to the commission, any party aggrieved by a final decision of the commission on a petition, or any party aggrieved by an order of the commission issued pursuant to section 77-5020 or sections 77-5023 to 77-5028 shall be entitled to judicial review in the Court of Appeals. Upon request of the county, the Attorney General may appear and represent the county or political subdivision in cases in which the commission is not a party. Nothing in this section shall be deemed to prevent resort to other means of review, redress, or relief provided by law.

(2)(a) Proceedings for review shall be instituted by filing a petition and the appropriate docket fees in the Court of Appeals within thirty days after the date on which a final appealable order is entered by the commission. All parties of record shall be made parties to the proceedings for review. The commission shall only be made a party of record if the action complained of is an order issued by the commission pursuant to section 77-1504.01 or 77-5020 or sections 77-5023 to 77-5028. Summons shall be served on all parties within thirty days after the filing of the petition in the manner provided for service of a summons in section 25-510.02. The court, in its discretion, may permit other interested persons to intervene. No bond or undertaking is required for an appeal to the Court of Appeals.

(b) A petition for review shall set forth: (i) The name and mailing address of the petitioner; (ii) the name and mailing address of the county whose action is at issue or the commission; (iii) identification of the final decision at issue together with a duplicate copy of the final decision; (iv) the identification of the parties in the case that led to the final decision; (v) the facts to demonstrate proper venue; (vi) the petitioner's reasons for believing that relief should be granted; and (vii) a request for relief, specifying the type and extent of the relief requested.

(3) The filing of the petition or the service of summons upon the commission shall not stay enforcement of a decision. The commission may order a stay. The court may order a stay after notice of the application for the stay to the commission and to all parties of record. The court may require the party

requesting the stay to give bond in such amount and conditioned as the court directs.

(4) Upon receipt of a petition the date for submission of the official record shall be determined by the court. The commission shall prepare a certified copy of the official record of the proceedings had before the commission in the case. The official record shall include: (a) Notice of all proceedings; (b) any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the commission pertaining to the case; (c) the transcribed record of the hearing before the commission, including all exhibits and evidence introduced during the hearing, a statement of matters officially noticed by the commission during the proceeding, and all proffers of proof and objections and rulings thereon; and (d) the final order appealed from. The official record in an appeal of a commission decision issued pursuant to sections 77-5023 to 77-5028 may be limited by the request of a petitioner to those parts of the record pertaining to a specific county. The commission shall charge the petitioner with the reasonable direct cost or require the petitioner to pay the cost for preparing the official record for transmittal to the court in all cases except when the petitioner is not required to pay a filing fee. If payment is required, payment of the cost, as estimated by the commission, for preparation of the official record shall be paid to the commission prior to preparation of the official record and the commission shall not transmit the official record to the court until payment of the actual costs of its preparation is received.

(5) The review shall be conducted by the court for error on the record of the commission. If the court determines that the interest of justice would be served by the resolution of any other issue not raised before the commission, the court may remand the case to the commission for further proceedings. The court may affirm, reverse, or modify the decision of the commission or remand the case for further proceedings.

(6) Appeals under this section shall be given precedence over all civil cases.

Source: Laws 1995, LB 490, § 19; Laws 1997, LB 165, § 4; Laws 1999, LB 140, § 5; Laws 2000, LB 968, § 76; Laws 2001, LB 465, § 9; Laws 2005, LB 15, § 11; Laws 2006, LB 808, § 42; Laws 2008, LB965, § 21.

Operative date April 15, 2008.

77-5020 County assessor or deputy assessor; invalidation or suspension of certificate; appeal.

The commission, subject to rules and regulations, shall have the power to invalidate or suspend the certificate issued pursuant to section 77-422 of any county assessor or deputy assessor who willfully fails or refuses to comply with any order of the commission. No certificate shall be invalidated or suspended except upon a hearing before the commission.

Any county assessor or deputy assessor whose certificate has been so invalidated or suspended may appeal the decision to the Court of Appeals in accordance with section 77-5019.

No action shall be brought under this section more than two years after the date of the act, last date of a series of actions complained of, or the last date the

county assessor or deputy assessor could have acted to comply, whichever is later.

Source: Laws 1995, LB 490, § 20; Laws 2004, LB 973, § 62; Laws 2007, LB167, § 8.

77-5022 Commission; annual meeting; powers and duties.

The commission shall annually equalize the assessed value, special value, or recapture value of all real property as submitted by the county assessors on the abstracts of assessments and equalize the values of real property that is valued by the state. The commission shall have the power to adjourn from time to time until the equalization process is complete. Meetings held pursuant to this section may be held by means of videoconference.

Source: Laws 1903, c. 73, § 130, p. 434; R.S.1913, § 6447; Laws 1921, c. 133, art. XI, § 4, p. 591; C.S.1922, § 5901; C.S.1929, § 77-1004; Laws 1933, c. 129, § 1, p. 505; C.S.Supp.,1941, § 77-1004; R.S. 1943, § 77-505; Laws 1969, c. 653, § 1, p. 2569; Laws 1987, LB 508, § 18; Laws 1992, LB 1063, § 57; Laws 1992, Second Spec. Sess., LB 1, § 55; R.S.1943, (1996), § 77-505; Laws 1997, LB 397, § 40; Laws 1999, LB 140, § 6; Laws 2003, LB 291, § 12; Laws 2004, LB 973, § 63; Laws 2006, LB 808, § 43.

77-5023 Commission; power to change value; acceptable range.

(1) Pursuant to section 77-5022, the commission shall have the power to increase or decrease the value of a class or subclass of real property in any county or taxing authority or of real property valued by the state so that all classes or subclasses of real property in all counties fall within an acceptable range.

(2) An acceptable range is the percentage of variation from a standard for valuation as measured by an established indicator of central tendency of assessment. Acceptable ranges are: (a) For agricultural land and horticultural land as defined in section 77-1359, sixty-nine to seventy-five percent of actual value; (b) for lands receiving special valuation, sixty-nine to seventy-five percent of special valuation as defined in section 77-1343 and sixty-nine to seventy-five percent of recapture valuation as defined in section 77-1343; and (c) for all other real property, ninety-two to one hundred percent of actual value.

(3) Any increase or decrease shall cause the level of value determined by the commission to be at the midpoint of the applicable acceptable range.

(4) Any decrease or increase to a subclass of property shall also cause the level of value determined by the commission for the class from which the subclass is drawn to be within the applicable acceptable range.

(5) Whether or not the level of value determined by the commission falls within an acceptable range or at the midpoint of an acceptable range may be determined to a reasonable degree of certainty relying upon generally accepted mass appraisal techniques.

Source: Laws 1903, c. 73, § 130, p. 434; R.S.1913, § 6447; Laws 1921, c. 133, art. XI, § 4, p. 591; C.S.1922, § 5901; C.S.1929, § 77-1004; Laws 1933, c. 129, § 1, p. 505; C.S.Supp.,1941, § 77-1004; R.S. 1943, § 77-506; Laws 1955, c. 289, § 4, p. 918; Laws 1957, c. 323, § 1, p. 1145; Laws 1957, c. 320, § 3, p. 1139; Laws 1979, LB

187, § 193; Laws 1985, LB 268, § 2; Laws 1987, LB 508, § 19; Laws 1992, LB 1063, § 58; Laws 1992, Second Spec. Sess., LB 1, § 56; Laws 1995, LB 137, § 1; R.S.1943, (1996), § 77-506; Laws 1997, LB 397, § 41; Laws 2000, LB 968, § 77; Laws 2001, LB 170, § 23; Laws 2003, LB 291, § 13; Laws 2004, LB 973, § 64; Laws 2006, LB 808, § 44; Laws 2006, LB 968, § 15; Laws 2007, LB167, § 9.

77-5024 Repealed. Laws 2005, LB 261, § 13.

77-5024.01 Notice; contents.

The commission shall give notice of the time and place of the first meeting held pursuant to sections 77-1504.01 and 77-5026 by publication in a newspaper of general circulation in the State of Nebraska. Such notice shall contain a statement that the agenda shall be readily available for public inspection at the principal office of the commission during normal business hours. The agenda shall be continually revised to remain current. The commission may thereafter modify the agenda and need only provide notice of the meeting to the affected counties in the manner provided in section 77-1504.01 or 77-5026. The commission shall publish in its notice a list of those counties certified under section 77-5027 as having assessments which may fail to satisfy the requirements of law.

Source: Laws 2003, LB 291, § 11; Laws 2005, LB 261, § 9.

77-5025 Repealed. Laws 2005, LB 261, § 13.

77-5026 Commission; change of value; hearing; procedure.

Pursuant to section 77-5023, if the commission finds that the level of value of a class or subclass of real property fails to satisfy the requirements of section 77-5023, the commission shall issue a notice to the counties which it deems either undervalued or overvalued and shall set a date for hearing at least five days following the mailing of the notice unless notice is waived. The notice unless waived shall be mailed to the county clerk, county assessor, and chairperson of the county board. At the hearing the county assessor or other legal representatives of the county may appear and show cause why the value of a class or subclass of real property of the county should not be adjusted. A county assessor or other legal representative of the county may waive notice of the hearing or consent to entry of an order adjusting the value of a class or subclass of real property without further notice. At the hearing, the commission may receive testimony from any interested person.

Source: Laws 1921, c. 133, art. XI, § 4, p. 591; C.S.1922, § 5901; C.S.1929, § 77-1004; Laws 1933, c. 129, § 1, p. 505; C.S.Supp.,1941, § 77-1004; R.S.1943, § 77-508; Laws 1969, c. 653, § 2, p. 2569; Laws 1987, LB 508, § 21; Laws 1992, LB 1063, § 60; Laws 1992, Second Spec. Sess., LB 1, § 58; Laws 1993, LB 734, § 44; Laws 1995, LB 490, § 56; R.S.1943, (1996), § 77-508; Laws 1997, LB 397, § 44; Laws 2001, LB 170, § 25; Laws 2005, LB 15, § 12; Laws 2007, LB167, § 10.

77-5027 Commission; change valuation; Property Tax Administrator; duties.

(1) The commission shall, pursuant to section 77-5026, raise or lower the valuation of any class or subclass of real property in a county when it is necessary to achieve equalization.

(2) On or before nineteen days following the final filing due date for the abstract of assessment for real property pursuant to section 77-1514, the Property Tax Administrator shall prepare and deliver to the commission and to each county assessor his or her annual reports and opinions.

(3) The annual reports and opinions of the Property Tax Administrator shall contain statistical and narrative reports informing the commission of the level of value and the quality of assessment of the classes and subclasses of real property within the county and a certification of the opinion of the Property Tax Administrator regarding the level of value and quality of assessment of the classes and subclasses of real property in the county.

(4) In addition to an opinion of level of value and quality of assessment in the county, the Property Tax Administrator may make nonbinding recommendations for consideration by the commission.

(5) The Property Tax Administrator shall employ the methods specified in section 77-112, the comprehensive assessment ratio study specified in section 77-1327, other statistical studies, and an analysis of the assessment practices employed by the county assessor. If necessary to determine the level of value and quality of assessment in a county, the Property Tax Administrator may use sales of comparable real property in market areas similar to the county or area in question or from another county as indicators of the level of value and the quality of assessment in a county. The Property Tax Administrator may use any other relevant information in providing the annual reports and opinions to the commission.

Source: Laws 1969, c. 628, § 1, p. 2528; Laws 1987, LB 508, § 22; Laws 1988, LB 1207, § 1; Laws 1989, LB 361, § 6; Laws 1995, LB 490, § 57; Laws 1997, LB 342, § 2; R.S.1943, (1996), § 77-508.01; Laws 1997, LB 397, § 45; Laws 2001, LB 170, § 26; Laws 2004, LB 973, § 65; Laws 2005, LB 263, § 15.

77-5028 Commission; enter order.

After a hearing conducted pursuant to section 77-5026, the commission shall enter its order based on information presented to it at the hearing. The order of the commission shall be sent by certified mail to the county assessor and by regular mail to the county clerk and chairperson of the county board on or before May 15 of each year or the date determined by the Property Tax Administrator if an extension is ordered pursuant to section 77-1514, unless the offices of the commission are closed, then the order of the commission shall be sent by the end of the next day the commission's offices are open. The order shall specify the percentage increase or decrease and the class or subclass of real property affected or the corrections or adjustments to be made to each parcel of real property in the class or subclass affected. The specified changes shall be made by the county assessor to each parcel of real property in the county so affected.

Source: Laws 1921, c. 133, art. XI, § 4, p. 591; C.S.1922, § 5901; C.S.1929, § 77-1004; Laws 1933, c. 129, § 1, p. 505; C.S.Supp.,1941, § 77-1004; R.S.1943, § 77-509; Laws 1959, c. 359, § 1, p. 1275; Laws 1969, c. 656, § 1, p. 2573; Laws 1969, c.

653, § 3, p. 2570; Laws 1979, LB 159, § 1; Laws 1987, LB 508, § 23; Laws 1991, LB 732, § 138; Laws 1992, LB 1063, § 61; Laws 1992, Second Spec. Sess., LB 1, § 59; Laws 1993, LB 734, § 45; Laws 1995, LB 452, § 14; Laws 1995, LB 490, § 58; Laws 1996, LB 1040, § 2; R.S.1943, (1996), § 77-509; Laws 1997, LB 397, § 46; Laws 2001, LB 170, § 27; Laws 2005, LB 15, § 13; Laws 2005, LB 261, § 10; Laws 2007, LB167, § 11.

77-5029 County assessor; recertify county abstract; Property Tax Administrator; duties.

On or before June 5 of each year, the county assessor of any county adjusted by an order of the commission shall recertify the county abstract of assessment to the Property Tax Administrator. On or before August 1 of each year, the Property Tax Administrator shall certify to the commission that any order issued pursuant to sections 77-5023 to 77-5028 was or was not implemented by the county assessor as of June 1 of each year pursuant to section 77-1315. The Property Tax Administrator shall audit the records of the county assessor to determine whether the orders were implemented.

Source: Laws 1992, LB 1063, § 62; Laws 1992, Second Spec. Sess., LB 1, § 60; Laws 1993, LB 734, § 46; Laws 1995, LB 452, § 15; R.S.1943, (1996), § 77-509.01; Laws 1997, LB 397, § 47; Laws 2006, LB 808, § 45.

77-5032 Repealed. Laws 2005, LB 15, § 15.

ARTICLE 52

BEGINNING FARMER TAX CREDIT ACT

Section	
77-5201.	Act, how cited.
77-5203.	Terms, defined.
77-5204.	Beginning Farmer Board; created; duties.
77-5208.	Board; meetings; application; approval.
77-5209.	Beginning farmer or livestock producer; qualifications.
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77-5209.02.	Personal property tax exemption; authorized; application; form; county assessor; duties; protest; hearing; appeal; continuation of exemption.
77-5211.	Owner of agricultural assets; tax credit; when.
77-5212.	Rental agreement; requirements; appeal.
77-5213.	Tax credit; amount; agreement; review.
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77-5201 Act, how cited.

Sections 77-5201 to 77-5215 shall be known and may be cited as the Beginning Farmer Tax Credit Act.

Source: Laws 1999, LB 630, § 2; Laws 2006, LB 990, § 8; Laws 2008, LB1027, § 2.
Effective date July 18, 2008.

77-5203 Terms, defined.

For purposes of the Beginning Farmer Tax Credit Act:

(1) Agricultural assets means agricultural land, livestock, farming, or livestock production facilities or buildings and machinery used for farming or livestock production located in Nebraska;

(2) Board means the Beginning Farmer Board created by section 77-5204;

(3) Farm means any tract of land over ten acres in area used for or devoted to the commercial production of farm products;

(4) Farm product means those plants and animals useful to man and includes, but is not limited to, forages and sod crops, grains and feed crops, dairy and dairy products, poultry and poultry products, livestock, including breeding and grazing livestock, fruits, and vegetables;

(5) Farming or livestock production means the active use, management, and operation of real and personal property for the production of a farm product;

(6) Financial management program means a program for beginning farmers or livestock producers which includes, but is not limited to, assistance in the creation and proper use of record-keeping systems, periodic private consultations with licensed financial management personnel, year-end monthly cash flow analysis, and detailed enterprise analysis;

(7) Owner of agricultural assets means:

(a) An individual or a trustee having an ownership interest in an agricultural asset located within the State of Nebraska who meets any qualifications determined by the board;

(b) A spouse, child, or sibling who acquires an ownership interest in agricultural assets as a joint tenant, heir, or devisee of an individual or trustee who would qualify as an owner of agricultural assets under subdivision (7)(a) of this section; or

(c) A partnership, corporation, limited liability company, or other business entity having an ownership interest in an agricultural asset located within the State of Nebraska which meets any additional qualifications determined by the board;

(8) Qualified beginning farmer or livestock producer means an individual who is a resident individual as defined in section 77-2714.01, who has entered farming or livestock production or is seeking entry into farming or livestock production, who intends to farm or raise crops or livestock on land located within the state borders of Nebraska, and who meets the eligibility guidelines established in section 77-5209 and such other qualifications as determined by the board; and

(9) Share-rent agreement means a rental agreement in which the principal consideration given to the owner of agricultural assets is a predetermined portion of the production of farm products from the rented agricultural assets.

Source: Laws 1999, LB 630, § 4; Laws 2000, LB 1223, § 3; Laws 2006, LB 990, § 9; Laws 2008, LB1027, § 3.
Effective date July 18, 2008.

77-5204 Beginning Farmer Board; created; duties.

For the purpose of developing and directing programs to provide increased and enhanced opportunities for beginning farmers and livestock producers, the Beginning Farmer Board is created. For administrative and budgetary pur-

poses only, the board shall be housed within the Department of Agriculture. The board shall be vested with the following duties and responsibilities:

(1) To approve and certify beginning farmers and livestock producers as eligible for the programs provided by the board, for eligibility to claim tax credits authorized by section 77-5209.01, and for eligibility to claim an exemption of taxable tangible personal property tax as provided by section 77-5209.02;

(2) To approve and certify owners of agricultural assets as eligible for the tax credits authorized by sections 77-5211 to 77-5213;

(3) To advocate joint ventures between beginning farmers or livestock producers and existing private and public credit and banking licensed institutions, as well as to advocate joint ventures with owners of agricultural assets desiring to assist beginning farmers and livestock producers seeking entry into farming or livestock production;

(4) To provide necessary and reasonable assistance and support to beginning farmers and livestock producers for qualification and participation in financial management programs approved by the board;

(5) To advocate appropriate changes in policies and programs of other public and private institutions or agencies which will directly benefit beginning farmers and livestock producers and may include changes regarding financing, taxation, and any other existing policies which prohibit or impede individuals from entering into farming or livestock production;

(6) To provide adequate explanations of facts and aspects of available programs offered or recommended by the board intended for beginning farmers and livestock producers;

(7) To assist and educate beginning farmers and livestock producers by acting as a liaison between beginning farmers or livestock producers and the Nebraska Investment Finance Authority;

(8) To encourage licensed financial institutions and individuals to use alternative amortization schedules for loans and land contracts granted to beginning farmers and livestock producers;

(9) To refer beginning farmers and livestock producers to agencies and organizations which may provide additional pertinent information and assistance;

(10) To provide any other assistance and support the board deems necessary and appropriate in order for entry into farming or livestock production;

(11) To adopt and promulgate rules and regulations necessary to carry out the purposes of the Beginning Farmer Tax Credit Act, including criteria required for tax credit eligibility and financial management program certification and guidelines which constitute a viably sized farm that is necessary to adequately support a beginning farmer or livestock producer. Such guidelines shall vary and take into account the region of the state, number of acres, land quality and type, type of operation, type of crops or livestock raised, and other factors of farming or livestock production; and

(12) To keep minutes of the board's meetings and other books and records which will adequately reflect actions and decisions of the board and to provide

an annual report to the Governor, the Legislative Fiscal Analyst, and the Clerk of the Legislature by December 1.

Source: Laws 1999, LB 630, § 5; Laws 2000, LB 1223, § 4; Laws 2008, LB1027, § 5.

Effective date July 18, 2008.

77-5208 Board; meetings; application; approval.

The board shall meet at least twice during the year. The board shall review pending applications in order to approve and certify beginning farmers and livestock producers as eligible for the programs provided by the board, to approve and certify owners of agricultural assets as eligible for the tax credits authorized by sections 77-5211 to 77-5213, and to approve and certify qualified beginning farmers and livestock producers as eligible for the tax credit authorized by section 77-5209.01 and for qualification to claim an exemption of taxable tangible personal property as provided by section 77-5209.02. Any action taken by the board regarding approval and certification of program eligibility, granting of tax credits, or termination of rental agreements shall require the affirmative vote of at least four members of the board.

Source: Laws 1999, LB 630, § 9; Laws 2006, LB 990, § 10; Laws 2008, LB1027, § 6.

Effective date July 18, 2008.

77-5209 Beginning farmer or livestock producer; qualifications.

The board shall determine who is qualified as a beginning farmer or livestock producer based on the qualifications found in this section. A qualified beginning farmer or livestock producer shall be an individual who: (1) Has a net worth of not more than two hundred thousand dollars, including any holdings by a spouse or dependent, based on fair market value; (2) provides the majority of the day-to-day physical labor and management of his or her farming or livestock production operations; (3) has, by the judgment of the board, adequate farming or livestock production experience or demonstrates knowledge in the type of farming or livestock production for which he or she seeks assistance from the board; (4) demonstrates to the board a profit potential by submitting board-approved projected earnings statements and agrees that farming or livestock production is intended to become his or her principal source of income; (5) demonstrates to the board a need for assistance; (6) participates in a financial management program approved by the board; (7) submits a nutrient management plan and a soil conservation plan to the board on any applicable agricultural assets purchased or rented from an owner of agricultural assets; and (8) has such other qualifications as specified by the board. A qualified beginning farmer or livestock producer who has participated in a board approved and certified three-year rental agreement with an owner of agricultural assets shall not be eligible to file a subsequent application with the board but may refer to the board for additional support and participate in programs, including educational and financial programs and seminars, established or recommended by the board that are applicable to the continued success of such farmer or livestock producer.

Source: Laws 1999, LB 630, § 10; Laws 2000, LB 1223, § 5; Laws 2006, LB 990, § 11; Laws 2008, LB1027, § 7.

Effective date July 18, 2008.

77-5209.01 Tax credit for financial management program participation.

A qualified beginning farmer or livestock producer in the first, second, or third year of a qualifying three-year rental agreement shall be allowed a one-time credit to be applied against the state income tax liability of such individual for the cost of participation in the financial management program required for eligibility under section 77-5209. The amount of the credit shall be the actual cost of participation in an approved program incurred during the tax year for which the credit is claimed, up to a maximum of five hundred dollars.

Source: Laws 2006, LB 990, § 12.

77-5209.02 Personal property tax exemption; authorized; application; form; county assessor; duties; protest; hearing; appeal; continuation of exemption.

(1) Agricultural and horticultural machinery and equipment of a qualified beginning farmer or livestock producer utilized in the beginning farmer's or livestock producer's operation may be exempt from tangible personal property tax to the extent provided in this section.

(2) A qualified beginning farmer or livestock producer seeking an exemption of taxable agricultural and horticultural machinery and equipment from tangible personal property tax under this section shall apply for an exemption to the county assessor on or before December 31 of the year preceding the year for which the exemption is to begin. Application shall be on forms prescribed by the Tax Commissioner. For the initial year of application, an applicant shall provide the original documentation of certification provided by the board pursuant to section 77-5208 with the application. Failure to provide the required documentation shall result in a denial of the exemption for the following year but shall be considered as an application for the year thereafter.

(3) The county assessor shall approve or deny the application for exemption. On or before February 1, the county assessor shall issue notice of approval or denial to the applicant. If the application is approved, the county assessor shall exempt no more than one hundred thousand dollars of taxable value of agricultural or horticultural machinery and equipment for each year. If the application is denied by the county assessor, a written protest of the denial of the application may be filed within thirty days after the mailing of the denial to the county board of equalization.

(4) All provisions of section 77-1502 except dates for filing of a protest, the period for hearing protests, and the date for mailing notice of the county board of equalization's decision are applicable to any protest filed pursuant to this section. The county board of equalization shall decide any protest filed pursuant to this section within thirty days after the filing of the protest. The county clerk shall mail a copy of any decision made by the county board of equalization on a protest filed pursuant to this section to the applicant within seven days after the board's decision. Any decision of the county board of equalization may be appealed to the Tax Equalization and Review Commission, in accordance with section 77-5013, within thirty days after the date of the decision. Any applicant may petition the Tax Equalization and Review Commission in accordance with section 77-5013, on or before December 31 of each year, to determine whether the agricultural and horticultural machinery and equipment will receive the exemption for that year if a failure to give notice as prescribed by this section prevented timely filing of a protest or appeal provided for in this section.

(5) A properly granted exemption for taxable agricultural and horticultural machinery and equipment under this section shall continue for a period of three years if each year a Nebraska personal property tax return and supporting schedules and depreciation worksheet, showing a list and value of all taxable tangible personal property, are provided and filed by the beginning farmer or livestock producer with the county assessor when due. The value of taxable agricultural and horticultural machinery and equipment exempted in any year shall not exceed one hundred thousand dollars. The exemption allowed under this section shall continue irrespective of whether the person claiming the exemption no longer meets the qualification of a beginning farmer or livestock producer pursuant to section 77-5209 during the exemption period unless the beginning farmer or livestock producer discontinues farming or livestock production.

(6) Any person whose agricultural and horticultural machinery and equipment has been exempted from tangible personal property tax pursuant to this section shall be permanently disqualified from any further exemption of agricultural and horticultural machinery and equipment from tangible personal property tax as a qualified beginning farmer or livestock producer.

Source: Laws 2008, LB1027, § 4.

Effective date July 18, 2008.

77-5211 Owner of agricultural assets; tax credit; when.

(1) Except as otherwise disallowed under subsection (5) of this section, an owner of agricultural assets shall be allowed a credit to be applied against the state income tax liability of such owner for agricultural assets rented on a rental agreement basis, including cash rent of agricultural assets or cash equivalent of a share-rent rental, to qualified beginning farmers or livestock producers. Such asset shall be rented at prevailing community rates as determined by the board.

(2) The credit allowed shall be for renting agricultural assets used for farming or livestock production. Such credit shall be granted by the Department of Revenue only after approval and certification by the board and a written three-year rental agreement for such assets is entered into between an owner of agricultural assets and a qualified beginning farmer or livestock producer. An owner of agricultural assets or qualified beginning farmer or livestock producer may terminate such agreement for reasonable cause upon approval by the board. If an agreement is terminated without fault on the part of the owner of agricultural assets as determined by the board, the tax credit shall not be retroactively disallowed. If an agreement is terminated with fault on the part of the owner of agricultural assets as determined by the board, any prior tax credits claimed by such owner shall be disallowed and recaptured and shall be immediately due and payable to the State of Nebraska.

(3) A credit may be granted to an owner of agricultural assets for renting agricultural assets, including cash rent of agricultural assets or cash equivalent of a share-rent agreement, to any qualified beginning farmer or livestock producer for a period of three years. An owner of agricultural assets shall not be eligible for further credits under the Beginning Farmer Tax Credit Act unless the rental agreement is terminated prior to the end of the three-year period through no fault of the owner of agricultural assets. If the board finds that such a termination was not the fault of the owner of agricultural assets, it may

approve the owner for credits arising from a subsequent qualifying rental agreement with a different qualified beginning farmer or livestock producer.

(4) Any credit allowable to a partnership, a corporation, a syndicate, or an estate or trust may be distributed to the partners, members, shareholders, or beneficiaries. Any credit distributed shall be distributed in the same manner as income is distributed.

(5) The credit allowed under this section shall not be allowed to an owner of agricultural assets for a rental agreement with a beginning farmer or livestock producer who is a relative, as defined in section 36-702, of the owner of agricultural assets or of a partner, member, shareholder, or trustee of the owner of agricultural assets unless the rental agreement is included in a written succession plan. Such succession plan shall be in the form of a written contract or other instrument legally binding the parties to a process and timetable for the transfer of agricultural assets from the owner of agricultural assets to the beginning farmer or livestock producer. The succession plan shall provide for the transfer of assets to be completed within a period of no longer than thirty years, except that when the asset to be transferred is land owned by an individual, the period of transfer may be for a period up to the date of death of the owner. The owner of agricultural assets shall be allowed the credit provided for qualified rental agreements under this section if the board certifies the plan as providing a reasonable manner and probability of successful transfer.

Source: Laws 1999, LB 630, § 12; Laws 2000, LB 1223, § 7; Laws 2006, LB 990, § 13; Laws 2008, LB1027, § 8.
Effective date July 18, 2008.

77-5212 Rental agreement; requirements; appeal.

In evaluating a rental agreement between an owner of agricultural assets and a qualified beginning farmer or livestock producer, the board shall not approve and certify credit for an owner of agricultural assets who (1) has, with fault, terminated a prior board approved and certified rental agreement with a qualified beginning farmer or livestock producer or (2) is proposing a rental agreement of agricultural assets which, if rented to a qualified beginning farmer or livestock producer, would cause the lessee to be responsible for managing or maintaining a farm which, based on the discretion of the board, is of greater scope and scale than necessary for a viably sized farm as established by the guidelines implemented by the board in order to adequately support a beginning farmer or livestock producer. Any person aggrieved by a decision of the board may appeal the decision, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1999, LB 630, § 13; Laws 2006, LB 990, § 14.

Cross References

Administrative Procedure Act, see section 84-920.

77-5213 Tax credit; amount; agreement; review.

(1) The tax credit approved and certified by the board under section 77-5211 for an owner of agricultural assets in the first, second, or third year of a qualifying rental agreement shall be equal to (a) ten percent of the gross rental income stated in a rental agreement that is a cash rent agreement or (b) fifteen percent of the cash equivalent of the gross rental income in a rental agreement

that is a share-rent agreement. Tax credits shall only be approved and certified for rental agreements that are approved and certified by the board under the Beginning Farmer Tax Credit Act.

(2) To qualify for the greater rate of credit allowed under subdivision (1)(b) of this section, a share-rent agreement shall provide for sharing of production expenses or risk of loss, or both, between the agricultural asset owner and the qualified beginning farmer or livestock producer. The board may adopt and promulgate rules and regulations, consistent with the policy objectives of the act, to further define the standards that share-rent agreements shall meet for approval and certification of the tax credit under the act.

(3) The board shall review each existing three-year rental agreement between a beginning farmer or livestock producer and an owner of agricultural assets on a semiannual basis and shall either certify or terminate program eligibility for beginning farmers or livestock producers or tax credits granted to owners of agricultural assets on an annual basis.

Source: Laws 1999, LB 630, § 14; Laws 2006, LB 990, § 15.

77-5215 Changes; when operative.

(1) The changes made in sections 77-5201, 77-5203, 77-5208, 77-5209, and 77-5211 to 77-5213 by Laws 2006, LB 990, shall become operative for all credits earned in tax years beginning or deemed to begin on and after January 1, 2007, under the Internal Revenue Code of 1986, as amended. For all credits earned in tax years beginning or deemed to begin prior to January 1, 2007, under the code, the provisions of the Beginning Farmer Tax Credit Act as they existed prior to such date shall apply.

(2) The changes made in sections 77-5203, 77-5209, and 77-5211 by Laws 2008, LB 1027, shall become operative for all credits earned in tax years beginning or deemed to begin on and after January 1, 2008, under the Internal Revenue Code of 1986, as amended. For all credits earned in tax years beginning or deemed to begin prior to January 1, 2008, under the code, the provisions of the Beginning Farmer Tax Credit Act as they existed prior to such date shall apply.

Source: Laws 2006, LB 990, § 16; Laws 2008, LB1027, § 9.
Effective date July 18, 2008.

ARTICLE 54

RURAL ECONOMIC OPPORTUNITIES ACT

Section

77-5403. Terms, defined.

77-5405. Incentives; application; fee; approval; written agreement.

77-5403 Terms, defined.

For purposes of the Rural Economic Opportunities Act:

(1) Any term defined in the Nebraska Revenue Act of 1967 and used in the Rural Economic Opportunities Act has the same meaning as in the Nebraska Revenue Act of 1967;

(2) Average annual total employment means the average total employment reported for the county of employment for the most recent calendar year reported as of July 1 by the Department of Labor;

(3) Base year means the year immediately before the year in which the application was submitted;

(4) Base-year employee means any individual who was employed in Nebraska and subject to the Nebraska income tax on compensation received from the taxpayer or its predecessors during the base year and who is employed at the project;

(5) Compensation means the wages and other payments subject to withholding for federal income tax purposes;

(6) County average annual wage means the most recent average annual wage paid by all employers in a county or in the state, whichever is lower, for the most recent calendar year reported as of July 1 by the Department of Labor. County average annual wage for a project located in more than one county means the county average annual wages for each county in which the project is located, multiplied by the total of the average annual total employment for each county in which the project is located, summing the products for all counties in which the project is located, then dividing the result by the average annual total employment for all counties in which the project is located;

(7) Entitlement period means the year during which the required increases in employment, wages, and investment were met or exceeded and the next six years;

(8) Equivalent employees means the number computed by dividing the total hours paid in a year by the product of forty times the number of weeks in a year;

(9) Investment, for qualified property owned by the taxpayer, means the original cost of the property. Investment, for qualified property rented by the taxpayer, means the average net annual rent multiplied by the number of years of the lease for which the taxpayer was originally bound, not to exceed ten years or the end of the third year after the entitlement period, whichever is earlier. The rental of land included in and incidental to the leasing of a building is included in the computation;

(10) Labor force means the total annual average county labor force for the most recent calendar year reported as of July 1 by the Department of Labor;

(11) Motor vehicle means any motor vehicle, trailer, or semitrailer as defined in the Motor Vehicle Registration Act and subject to registration for operation on the highways;

(12) Number of new employees means the number of equivalent employees at the project during the year minus the number of equivalent employees during the base year;

(13)(a) Qualified business means any business engaged in the storage, warehousing, distribution, transportation, or sale of tangible personal property. Qualified business also means any business engaged in any of the following activities:

(i) The conducting of research, development, or testing for scientific, agricultural, animal husbandry, food product, or industrial purposes;

(ii) The performance of data processing, telecommunication, insurance, or financial services. Financial services for purposes of this subdivision only includes services provided by any person or entity licensed by the Department of Banking and Finance or the Securities and Exchange Commission;

(iii) The assembly, fabrication, manufacture, or processing of tangible personal property;

(iv) The administrative management of any activities, including headquarter facilities relating to such activities; or

(v) Any combination of the activities listed in subdivisions (13)(a)(i) through (iv) of this section;

(b) Qualified business does not include (i) any business activity in which eighty percent or more of the total sales are (A) sales to the ultimate consumer of food prepared for immediate consumption or (B) sales to the ultimate consumer of tangible personal property which is not assembled, fabricated, manufactured, or processed by the taxpayer or which is not used by the purchaser in any of the activities listed in subdivisions (13)(a)(i) through (v) of this section or (ii) a livestock operation. For purposes of this subdivision, livestock operation means the feeding or holding of beef cattle, dairy cattle, horses, swine, sheep, poultry, or other livestock in buildings, lots, or pens;

(14) Qualified employee leasing company means a company which places all employees of a client-lessee on its payroll and leases such employees to the client-lessee on an ongoing basis for a fee and, by written agreement between the employee leasing company and client-lessee, grants to the client-lessee input into the hiring and firing of the employees leased to the client-lessee;

(15) Qualified property means any tangible property of a type subject to depreciation, amortization, or other recovery under the Internal Revenue Code, or the components of such property, that will be located and used at the project. Qualified property does not include (a) aircraft, barges, motor vehicles, railroad rolling stock, or watercraft or (b) property that is rented by the taxpayer qualifying under the Rural Economic Opportunities Act to another person;

(16) Qualifying wage means the greater of one hundred twenty-five percent of the county average annual wage in the county or counties in which the project is located or one hundred percent of the regional average annual wage in the region or regions in which the project is located;

(17) Region means the following regions:

(a) Panhandle region, composed of the counties of Banner, Box Butte, Cheyenne, Dawes, Deuel, Garden, Kimball, Morrill, Scotts Bluff, Sheridan, and Sioux;

(b) Mid-plains region, composed of the counties of Arthur, Chase, Cherry, Dawson, Dundy, Frontier, Furnas, Gosper, Grant, Hayes, Hitchcock, Hooker, Keith, Lincoln, Logan, McPherson, Perkins, Red Willow, and Thomas;

(c) Central region, composed of the counties of Adams, Blaine, Buffalo, Clay, Custer, Franklin, Garfield, Greeley, Hall, Hamilton, Harlan, Howard, Kearney, Loup, Merrick, Nance, Nuckolls, Phelps, Sherman, Valley, Webster, and Wheeler;

(d) Northeast region, composed of the counties of Antelope, Boone, Boyd, Brown, Burt, Cedar, Colfax, Cuming, Dakota, Dixon, Dodge, Holt, Keya Paha, Knox, Madison, Pierce, Platte, Rock, Stanton, Thurston, and Wayne;

(e) Southeast region, composed of the counties of Butler, Fillmore, Gage, Jefferson, Johnson, Nemaha, Otoe, Pawnee, Polk, Richardson, Saline, Saunders, Seward, Thayer, and York;

(f) Omaha region, composed of the counties of Douglas, Sarpy, Cass, and Washington; and

(g) Lincoln region, composed of the county of Lancaster;

(18) Regional average annual wage, for a project located in one region, means the most recent average annual wage paid by all employers in the region for the most recent calendar year calculated by multiplying the average annual wage for each county in the region for the most recent calendar year reported as of July 1 by the Department of Labor by the corresponding average annual total employment in each county, summing the products for all counties in the region, and then dividing the result by the average annual total employment of all counties in the region. Regional average annual wage, for a project located in more than one region, means the regional average annual wage for each region in which the project is located, multiplied by the total of the average annual total employment for each region in which the project is located, the product then divided by the sum of the average annual total employment for the regions;

(19) Related persons means any corporations, partnerships, limited liability companies, or joint ventures which are or would otherwise be members of the same unitary group, if incorporated, or any persons who are considered to be related persons under section 267(b) or (c) or 707(b) of the Internal Revenue Code;

(20) Taxpayer means any person subject to the sales and use taxes and an income tax imposed by the Nebraska Revenue Act of 1967; any corporation, partnership, limited liability company, or joint venture that is or would otherwise be a member of the same unitary group, if incorporated, which is, or whose partners, members, or owners are, subject to such tax; and any other partnership, limited liability company, subchapter S corporation, subchapter T cooperative, or joint venture when the partners, shareholders, or members are subject to such tax; and

(21) Year means the taxable year of the taxpayer.

Source: Laws 2000, LB 936, § 3; Laws 2005, LB 274, § 281.

Cross References

Motor Vehicle Registration Act, see section 60-301.

77-5405 Incentives; application; fee; approval; written agreement.

(1) In order to use the incentives in the Rural Economic Opportunities Act, the taxpayer shall file an application for an agreement with the Tax Commissioner.

(2) The application shall contain:

(a) A written statement describing the plan of employment, wages, and investment for a qualified business in Nebraska;

(b) Sufficient documents, plans, and specifications as required by the Tax Commissioner to support the plan and define a project;

(c) If more than one location within the state is involved, sufficient documentation to show that the employment, wages, and investment at different locations are interdependent parts of the plan. A headquarters shall be presumed to be interdependent with any other location directly controlled by such headquarters. A showing that the parts of the plan would be considered parts of a unitary

business for corporate income tax purposes shall not be sufficient to show interdependence for the purposes of this subdivision; and

(d) A nonrefundable application fee of five hundred dollars. The fee shall be deposited into the Nebraska Incentives Fund.

The application and all supporting information shall be confidential except for the name, location, and qualification level of approved projects and the information required to be reported by section 77-5412.

(3) The Tax Commissioner shall approve the application only if it satisfactorily meets the following conditions:

(a) Defines a project in one or more qualified business activities in the state;

(b) Shows that the project will result in (i) the hiring of a number of new employees equal to at least one-half of one percent of the labor force in the county or counties in which the project will be located, (ii) the paying of annual wages to the number of new employees that will average at least the qualifying wage, and (iii)(A) for a county or counties with a labor force greater than three thousand, the investment in qualified property of at least one hundred thousand dollars times one-half of one percent of the labor force in the county or counties in which the project will be located rounded to the nearest whole number or (B) for a county or counties with a labor force of three thousand or less, the investment in qualified property of at least fifty thousand dollars times one-half of one percent of the labor force in the county or counties in which the project will be located rounded to the nearest whole number; and

(c) Contains plans for achieving the required levels of employment, wages, and investment for the project prior to the end of the second year after the year in which the application is submitted and maintaining the required levels of employment, wages, and investment for the entitlement period.

(4) After approval, the taxpayer and Tax Commissioner shall enter into a written agreement. The taxpayer shall agree to complete the project, and the Tax Commissioner, on behalf of the State of Nebraska, shall designate the approved plans of the taxpayer as a project and, in consideration of the taxpayer's agreement, agree to allow the taxpayer to use the incentives contained in the Rural Economic Opportunities Act. The application, and all supporting documentation, to the extent approved, shall be considered a part of the agreement. The agreement shall state:

(a) The levels of employment, wages, and investment required by the act for the project based on the date of the application;

(b) The time period under the act in which the required levels must be met;

(c) The documentation the taxpayer will need to supply when claiming an incentive under the act;

(d) The date the application was filed; and

(e) That the required levels of employment, wages, and investment shall be achieved and maintained throughout the entitlement period or any incentives used will be subject to recapture.

(5) The incentives contained in section 77-5407 shall be in lieu of the tax credits allowed by sections 77-27,188 and 77-4105 for any project. Any employment, wages, or investment which is eligible for credits under the act shall be subtracted from the increases computed for determining the benefits under sections 77-27,188 and 77-4105.

(6) A taxpayer and the Tax Commissioner may enter into agreements for more than one project. The projects may be either sequential or concurrent. A project may involve the same location as another project. No new employment, new wages, or new investment shall be included in more than one project for either the meeting of the employment, wages, or investment requirements or the creation of credits. When projects overlap and the plans do not clearly specify, the taxpayer shall specify in which project the employment, wages, and investment belong.

Source: Laws 2000, LB 936, § 5; Laws 2008, LB914, § 20.
Operative date July 18, 2008.

ARTICLE 55 INVEST NEBRASKA ACT

Section

- 77-5509. Company, defined.
77-5534. Application; contents; fee; confidentiality.
77-5536. Application; approval; procedure.
77-5542. Report; contents.
77-5544. Audit; costs; confidentiality; violation; penalty.

77-5509 Company, defined.

Company means (1) any person subject to sales and use taxes and either the income tax imposed by the Nebraska Revenue Act of 1967 or the franchise tax under sections 77-3801 to 77-3807, (2) any corporation, partnership, limited liability company, or joint venture that is or would otherwise be a member of the same unitary group, if incorporated, which is, or whose partners, members, or owners are, subject to such taxes, and any other partnership, limited liability company, subchapter S corporation, or joint venture when the partners, owners, shareholders, or members are subject to such taxes, (3) any cooperative exempt from such taxes under section 521 of the Internal Revenue Code of 1986, as amended, and (4) any limited cooperative association.

Source: Laws 2001, LB 620, § 9; Laws 2007, LB368, § 138.

Cross References

Nebraska Revenue Act of 1967, see section 77-2701.

77-5534 Application; contents; fee; confidentiality.

(1) In order for the company to be eligible for the wage benefit credit or the investment tax credit, as applicable, the company shall file an application for an agreement with the board.

(2) The application shall contain:

(a) The exact name of the company and any related companies which will be included in the project;

(b) A statement describing, in detail, the nature of the company's business, including the products sold and respective markets;

(c) A detailed narrative that describes the proposed project, including how the company intends to attain and maintain the job and investment requirements and the expected start date for the project;

(d) A request that the company be considered for approval under the Invest Nebraska Act;

(e) If more than one location within this state is to be involved in the project, sufficient documentation to show that the employment and investment at the different locations are interdependent parts of the project plan;

(f) A copy of the company's authorization for the project;

(g) A copy of the company's most recent financial report, federal income tax return, Nebraska income tax return, Nebraska reconciliation of income tax withheld, and Nebraska sales and use tax identification number;

(h) The expected number of base-year employees, the expected number of new employees, the expected timing of the hiring of the new employees, the anticipated timing and amounts of new investment in buildings and equipment, and the average salaries expected by category for the new employees to be employed at the project;

(i) A copy of the written policy of the company which prohibits the company from requiring as a condition of employment or promotion at the project that an employee or an individual applying for employment at the project submit to a genetic test or provide genetic information outside of the scope of normal blood testing; and

(j) A five-thousand-dollar nonrefundable application fee payable to the Department of Revenue. The fee shall be remitted to the Nebraska Incentives Fund.

(3) Any representations made by the company, or the company's representatives, during the meeting before the board shall become a part of the application. The application and all supporting information and information received during a closed session of the board shall be confidential except for the name of the company, the location of the project, the amounts of increased employment and investment, and whether the application has been approved. The confidential information contained in an application shall be discussed only in a closed session of the board, unless the company waives its right to confidentiality in writing. The members of the board will respect the confidentiality of the information received and will not disclose any confidential information regarding the company to any person other than the representatives of the company, the Tax Commissioner, or other employees of the Department of Revenue, except as specifically provided in the Invest Nebraska Act. Any applications, or parts of applications, provided to the members of the board shall be numbered copies and shall be delivered to the offices of the board members in a double envelope. All applications, or parts of applications, shall be returned to the department at the conclusion of the meeting.

Source: Laws 2001, LB 620, § 34; Laws 2008, LB914, § 21.
Operative date July 18, 2008.

77-5536 Application; approval; procedure.

(1) The board shall determine whether to approve the company's application by majority vote based on its determination as to whether the project will sufficiently help enable the state to accomplish the purposes of the Invest Nebraska Act. The board shall be governed by and shall take into consideration all of the following factors in making its determination:

(a) The timing, number, wage levels, employee benefit package, and types of new jobs to be created by the project;

(b) The type of industry in which the company and the project would be engaged;

(c) The timing, amount, and types of investment in qualified property to be made at the project; and

(d) Whether the board believes the project would occur in this state regardless of whether the application was approved.

(2) The weight given to each factor shall be determined by each board member individually for each application. The decision of the board shall be made in open meeting and is not confidential.

(3) A project shall be considered eligible under the act and may be approved by the board only if the application defines a project consistent with the purposes contained in section 77-5502 in one or more qualified business activities within this state that will result in (a) the investment in qualified property of at least ten million dollars and the hiring of a number of new employees of at least twenty-five. The investment and new employees for such project shall count towards attaining and maintaining such thresholds only if the qualified property is located in, and the employee's principal place of employment for the company is located in, one or more Nebraska counties having a population of less than one hundred thousand individuals as of the end of the base year. For this purpose, the population shall be conclusively determined by the Department of Revenue, (b) the investment in qualified property of at least fifty million dollars and the hiring of a number of new employees of at least five hundred, (c) the investment in qualified property of at least one hundred million dollars and the hiring of a number of new employees of at least two hundred fifty, or (d) the investment in qualified property of at least two hundred million dollars and the hiring of a number of new employees of at least five hundred.

(4) The new investment and employment shall occur within seven years, meaning by the end of the sixth year after the end of the year the application was filed, and shall be maintained for the entire entitlement period. These thresholds shall constitute the required levels of employment and investment for purposes of the act.

(5)(a) An individual employed by the company, other than a base-year employee, shall be considered an employee for purposes of attaining and maintaining the required number of new employees and shall be considered an employee whose compensation is included in the calculation of the wage benefit credit only if the compensation paid by the company to such employee for the year is (i) for companies qualifying under the ten million dollar investment and twenty-five new employee threshold under subdivision (3)(a) of this section, at least one hundred percent of the Nebraska average annual wage, (ii) for companies qualifying under the fifty million dollar investment and five hundred new employee threshold under subdivision (3)(b) of this section or the one hundred million dollar investment and two hundred fifty new employee threshold under subdivision (3)(c) of this section, at least one hundred ten percent of the Nebraska average annual wage; and (iii) for the companies applying under the two hundred million dollar investment and five hundred new employee threshold of subdivision (3)(d) of this section, at least one hundred twenty percent of the Nebraska average annual wage.

(b) For the purposes of subdivision (a) of this subsection, compensation paid by the company to such employee for the year shall be the amount paid for the

entire year for regular hours worked, not including overtime, bonuses, or any other irregular payments. If the employee works for less than a year, the compensation paid will be annualized solely for the purpose of comparison with the Nebraska average annual wage.

(6) If the project application is approved by the board, the company and the state shall enter into a written agreement, which shall be executed on behalf of the state by the Tax Commissioner. In the agreement the company shall agree to complete the project and the state shall designate the approved plans of the company as a project and, in consideration of the company's agreement, agree to allow the wage benefit credit or the investment tax credit, as applicable, as provided for in the act. The application, and all supporting documentation, to the extent approved, shall be deemed a part of the agreement. The agreement shall contain such terms and conditions as the board shall specify in order to carry out the legislative purposes of the act. The agreement shall contain provisions to allow the Department of Revenue to verify that the required levels of employment and investment have been attained and maintained. The agreement shall contain provisions to require verification that the required levels have been attained before any credits are used. The agreement shall contain such other conditions or requirements, if any, for the company as established by the department to carry out the purposes of the act.

(7) Any investment or employment which is eligible for benefits under the Quality Jobs Act shall not be included in a project under the Invest Nebraska Act. A project under the Invest Nebraska Act may involve the same location as another project under the Invest Nebraska Act or under the Quality Jobs Act, except that no new employment or new investment shall be included in more than one project for either the meeting of the employment or investment requirements or the creation of tax incentives. When projects overlap and the project application does not otherwise clearly specify, the company shall specify in which project the employment and investment belongs.

(8) For applications for projects that are not receiving benefits under the Ethanol Development Act or applications filed before April 16, 2004, any employment or investment which is eligible for benefits under the Invest Nebraska Act may also be included in, and create incentives for, a project under the Employment and Investment Growth Act, the Nebraska Advantage Rural Development Act, and the Rural Economic Opportunities Act, to the extent otherwise allowable under such respective acts. For applications filed on or after April 16, 2004, a taxpayer that is receiving benefits under the Ethanol Development Act may not receive benefits under the Invest Nebraska Act for the project that generates the incentive under the Ethanol Development Act.

(9) In order to provide the degree of certainty necessary to enable a project to proceed, and notwithstanding any provision of Nebraska statute or common law to the contrary, to the extent any such right of appeal or challenge otherwise exists, no appeal or challenge of the board's decision by any person shall be filed after the expiration of thirty days after the board's decision.

Source: Laws 2001, LB 620, § 36; Laws 2004, LB 479, § 10; Laws 2005, LB 312, § 58.

Cross References

Employment and Investment Growth Act, see section 77-4101.

Ethanol Development Act, see section 66-1330.

Nebraska Advantage Rural Development Act, see section 77-27,187.

Quality Jobs Act, see section 77-4901.

Rural Economic Opportunities Act, see section 77-5401.

77-5542 Report; contents.

(1) The Department of Revenue shall submit an annual report to the Legislature no later than July 15 each year. The report shall list (a) the agreements which have been signed during the previous calendar year, (b) the agreements which are still in effect, (c) the identity of each company, and (d) the location of each project.

(2) The report shall also state by industry group (a) the amount of wage benefit credits and investment tax credits allowed under the Invest Nebraska Act, (b) the number of direct jobs created at the projects, (c) the amount of direct capital investment under the act, (d) the estimated wage levels of jobs created by the companies at the projects, (e) the estimated indirect jobs and investment created on account of the projects, and (f) the projected future state and local revenue gains and losses from all revenue sources on account of the direct and indirect jobs and investment created on account of the projects.

(3) No information shall be provided in the report that is protected by state or federal confidentiality laws.

Source: Laws 2001, LB 620, § 42; Laws 2007, LB223, § 28.

77-5544 Audit; costs; confidentiality; violation; penalty.

(1) By January 1, 2005, and each January 1 every five years thereafter for so long as there are companies that have qualified for benefits and remain within the entitlement period and there are sufficient companies qualified for benefits so as not to reveal confidential information that allows identification of any company, there shall be an audit to determine compliance with the Invest Nebraska Act. The Tax Commissioner shall contract with a qualified independent accounting firm to conduct the audit. The cost of the audit shall be paid from funds appropriated to the Department of Revenue by the Legislature. Such cost shall include, in addition to the fees and costs of such independent firm, the incremental costs to the department to comply with this section, as determined by the department. If a qualified independent accounting firm cannot be located or engaged to conduct such audit, then such audit shall instead be performed by the department. A qualified independent firm shall be a firm that meets all of the following requirements: (a) The firm must be an accounting firm employing or comprised of at least ten certified public accountants who are licensed under the Public Accountancy Act to practice accounting and auditing in Nebraska; (b) the firm, at the time of the beginning of such audit, and for the period of at least twenty-four months before such audit commences, has not performed any services for any of the companies that at such time have filed applications under the Invest Nebraska Act, and the firm must agree not to engage in and to withdraw from representing any companies that file applications after such audit commences and before the audit report is issued; (c) the firm must have executed such audit contract as required by the Tax Commissioner; and (d) the firm, and all such accountants and personnel of such firm who will be involved in the audit, must have executed such confidentiality and nondisclosure agreements as required by the Tax Commissioner. In hiring such firm, the Tax Commissioner shall comply with all Nebraska laws pertaining to the selection and hiring of outside private sector services.

(2) The purpose of the audit is to examine information collected by the department in order to determine:

(a) The extent the data collected from the companies receiving benefits is verified;

(b) The extent to which the projects receiving benefits from the act are in compliance with the act initially and throughout the entitlement period;

(c) Whether the requirements of the act regarding the investment threshold have been attained and maintained by the companies;

(d) Whether and to what extent new employees are added by the companies to their workforce and employed at the project locations;

(e) Whether and to what extent the new jobs created meet the minimum compensation requirements of the act;

(f) The industry or industries in which the new jobs are created, by North American Industry Classification System Code;

(g) The extent to which the minimum new job threshold of the act has been attained and maintained by the companies;

(h) By category of spending, what is purchased by the companies that is claimed as qualified investments; and

(i) Gross sales from output of the project if reasonably determinable.

(3) After the audit is conducted, and on or before January 1, 2005, and each January 1 every five years thereafter, the auditor shall issue a report to the Legislature and Governor detailing the results of the audit. The report shall be presented using aggregated information and other techniques so as not to reveal confidential information that allows identification of the company. The report shall not be issued until the Tax Commissioner has confirmed in writing that the report does not reveal any confidential information that allows identification of the company. For purposes of this section, confidential information includes all information that is (a) referred to as confidential in section 77-5534, (b) restricted from disclosure or treated as confidential under any federal or state law, or (c) provided by the company to the department in connection with the company's project under the act. The report shall detail all assumptions, methods, or models that were used in performing the analysis and shall report information by industry group or expenditure category so that further analysis can be performed. The firm shall have access to all records of the department with regard to the credits granted under the act and the companies receiving such credits. Such records shall remain confidential in the hands of the firm conducting the audit and shall not be revealed to any person that is not employed by the department or the firm conducting the audit. No officer or employee of the firm conducting the audit shall disclose any information to any other person if such information is protected by federal or state confidentiality laws. Notwithstanding any other provision of this section to the contrary, neither the independent accounting firm nor any of its personnel shall be provided by the department with any confidential information except to the extent and under conditions when the department is permitted without penalty to do so under applicable federal or state laws.

(4) All information provided by the department to the independent accounting firm shall be examined only on the premises of the department and shall be stored in a secure place. The firm shall make no copies of such information. Any qualified independent accounting firm, or any personnel of the firm, which

violates this section shall be guilty of a Class IV felony and, in the discretion of the court, may be assessed the costs of prosecution.

(5) Nothing in this section shall be construed to require the company to provide, or require the department to obtain from the company, any information beyond that required as part of the application or beyond that required by the department to confirm the company is entitled to the benefits of the act or to obtain the information required in subsection (2) of this section. The independent accounting firm shall not request any information from the company or its personnel. The independent accounting firm shall be permitted and expected to obtain additional outside public information available from sources outside of the company and the department in order to comply with the requirements for the report if copies of all such data, information, and sources are made available to the public or included with the report.

(6) Information obtained in connection with the audit from either the department or the company is confidential and is not discoverable or admissible in evidence in any civil action, and no department or company personnel shall be compelled to testify in regard thereto. Such information may be discovered and be admissible, and testimony compelled in regard thereto, by the department or by the company in an action relating to the determination of whether the company is entitled to the benefits of the act.

Source: Laws 2001, LB 620, § 44; Laws 2006, LB 1003, § 11.

Cross References

Public Accountancy Act, see section 1-105.

ARTICLE 56

TAX AMNESTY PROGRAM

Section

77-5601. Tax amnesty program; application; department; powers and duties; Department of Revenue Enforcement Fund; Department of Revenue Enforcement Technology Fund; created; investment.

77-5601 Tax amnesty program; application; department; powers and duties; Department of Revenue Enforcement Fund; Department of Revenue Enforcement Technology Fund; created; investment.

(1) From August 1, 2004, through October 31, 2004, there shall be conducted a tax amnesty program with regard to taxes due and owing that have not been reported to the Department of Revenue. Any person applying for tax amnesty shall pay all unreported taxes that were due on or before April 1, 2004. Any person that applies for tax amnesty and is accepted by the Tax Commissioner shall have any penalties and interest waived on unreported and delinquent taxes notwithstanding any other provisions of law to the contrary.

(2) To be eligible for the tax amnesty provided by this section, the person shall apply for amnesty within the amnesty period, file a return for each taxable period for which the amnesty is requested by December 31, 2004, if no return has been filed, and pay in full all taxes for which amnesty is sought with the return or within thirty days after the application if a return was filed prior to the amnesty period. Tax amnesty shall not be available for any person that is under civil or criminal audit, investigation, or prosecution for unreported or

delinquent taxes by this state or the United States Government on or before April 16, 2004.

(3) The department shall not seek civil or criminal prosecution against any person for any taxable period for which amnesty has been granted. The Tax Commissioner shall develop forms for applying for the tax amnesty program, develop procedures for qualification for tax amnesty, and conduct a public awareness campaign publicizing the program.

(4) If a person elects to participate in the amnesty program, the election shall constitute an express and irrevocable relinquishment of all administrative and judicial rights to challenge the imposition of the tax or its amount. Nothing in this section shall prohibit the department from adjusting a return as a result of any state or federal audit.

(5)(a) Except for any local option sales tax collected and returned to the appropriate municipality and any motor vehicle fuel, diesel fuel, and compressed fuel taxes, which shall be deposited in the Highway Trust Fund or Highway Allocation Fund as provided by law, no less than eighty percent of all revenue received pursuant to the tax amnesty program shall be deposited in the General Fund; ten percent, not to exceed five hundred thousand dollars, shall be deposited in the Department of Revenue Enforcement Fund; and ten percent, not to exceed five hundred thousand dollars, shall be deposited in the Department of Revenue Enforcement Technology Fund. Any amount that would otherwise be deposited in the Department of Revenue Enforcement Fund or the Department of Revenue Enforcement Technology Fund that is in excess of the five-hundred-thousand-dollar limitation shall be deposited in the General Fund.

(b) For fiscal year 2005-06, all proceeds in the Department of Revenue Enforcement Fund shall be appropriated to the department for purposes of employing investigators, agents, and auditors and otherwise increasing personnel for enforcement of the Nebraska Revenue Act of 1967. For fiscal year 2005-06, all proceeds in the Department of Revenue Enforcement Technology Fund shall be appropriated to the department for the purposes of acquiring lists, software, programming, computer equipment, and other technological methods for enforcing the act.

(c) For fiscal years after fiscal year 2005-06, twenty percent of all proceeds received during the previous calendar year due to the efforts of auditors and investigators hired pursuant to subdivision (5)(b) of this section, not to exceed seven hundred fifty thousand dollars, shall be deposited in the Department of Revenue Enforcement Fund for purposes of employing investigators and auditors or continuing such employment for purposes of increasing enforcement of the act.

(6)(a) The department shall prepare a report by April 1, 2005, and by February 1 of each year thereafter detailing the results of the tax amnesty program and the subsequent enforcement efforts. For the report due April 1, 2005, the report shall include (i) the amount of revenue obtained as a result of the tax amnesty program broken down by tax program, (ii) the amount obtained from in-state taxpayers and from out-of-state taxpayers, and (iii) the amount obtained from individual taxpayers and from business enterprises.

(b) For reports due in subsequent years, the report shall include (i) the number of personnel hired for purposes of subdivision (5)(b) of this section and their duties, (ii) a description of lists, software, programming, computer equipment, and other technological methods acquired pursuant to such subdivision

and the purposes of each, and (iii) the amount of new revenue obtained as a result of the new personnel and acquisitions during the prior calendar year, broken down into the same categories as described in subdivision (6)(a) of this section.

(7) The Department of Revenue Enforcement Fund and the Department of Revenue Enforcement Technology Fund are created. Any money in the funds 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 Department of Revenue Enforcement Technology Fund shall terminate on July 1, 2006. Any unobligated money in the fund at that time shall be deposited in the General Fund.

(8) For purposes of this section, taxes mean any taxes collected by the department, including, but not limited to state and local sales and use taxes, individual and corporate income taxes, financial institutions deposit taxes, motor vehicle fuel, diesel fuel, and compressed fuel taxes, cigarette taxes, transfer taxes, and charitable gaming taxes.

Source: Laws 2004, LB 1017, § 23.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska Revenue Act of 1967, see section 77-2701.

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

ARTICLE 57

NEBRASKA ADVANTAGE ACT

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77-5701 Act, how cited.

Sections 77-5701 to 77-5735 shall be known and may be cited as the Nebraska Advantage Act.

Source: Laws 2005, LB 312, § 23; Laws 2008, LB895, § 6.
Effective date April 18, 2008.

77-5702 Legislative findings.

The Legislature hereby finds and declares that it is the policy of this state to make revisions in Nebraska's tax structure in order to encourage new businesses to relocate to Nebraska, retain existing businesses and aid in their expansion, promote the creation and retention of new jobs in Nebraska, and attract and retain investment capital in the State of Nebraska.

Source: Laws 2005, LB 312, § 24.

77-5703 Definitions, where found.

For purposes of the Nebraska Advantage Act, the definitions found in sections 77-5704 to 77-5721 shall be used.

Source: Laws 2005, LB 312, § 25; Laws 2008, LB895, § 7.
Effective date April 18, 2008.

77-5704 Applicability of other definitions.

Any term shall have the same meaning as used in Chapter 77, article 27.

Source: Laws 2005, LB 312, § 26.

77-5705 Base year, defined.

Base year means the year immediately preceding the year of application.

Source: Laws 2005, LB 312, § 27.

77-5706 Base-year employee, defined.

Base-year employee means any individual who was employed in Nebraska and subject to the Nebraska income tax on compensation received from the taxpayer or its predecessors during the base year and who is employed at the project.

Source: Laws 2005, LB 312, § 28.

77-5707 Compensation, defined.

Compensation means the wages and other payments subject to withholding for federal income tax purposes.

Source: Laws 2005, LB 312, § 29.

77-5707.01 County average weekly wage, defined.

County average weekly wage for any calendar year means the most recent average weekly wage paid by all employers in the county as reported by the Department of Labor by October 1 of the year prior to application.

Source: Laws 2008, LB895, § 8.
Effective date April 18, 2008.

77-5708 Entitlement period, defined.

Entitlement period, for a tier 1 or tier 3 project, means the year during which the required increases in employment and investment were met or exceeded and each year thereafter until the end of the ninth year following the year of application or the sixth year after the year the required increases were met or exceeded, whichever is sooner. Entitlement period, for a tier 2, tier 4, or tier 5 project, means the year during which the required increases in employment and investment were met or exceeded and each year thereafter until the end of the sixth year after the year the required increases were met or exceeded. Entitlement period, for a tier 6 project, means the year during which the required increases in employment and investment were met or exceeded and each year thereafter until the end of the ninth year after the year the required increases were met or exceeded.

Source: Laws 2005, LB 312, § 30; Laws 2008, LB895, § 9.
Effective date April 18, 2008.

77-5709 Equivalent employees, defined.

Equivalent employees means the number of employees computed by dividing the total hours paid in a year by the product of forty times the number of weeks in a year.

Source: Laws 2005, LB 312, § 31.

77-5710 Investment, defined.

Investment means the value of qualified property incorporated into or used at the project. For qualified property owned by the taxpayer, the value shall be the original cost of the property. For qualified property rented by the taxpayer, the average net annual rent shall be multiplied by the number of years of the lease for which the taxpayer was originally bound, not to exceed ten years. The rental of land included in and incidental to the leasing of a building shall not be excluded from the computation.

Source: Laws 2005, LB 312, § 32.

77-5711 Motor vehicle, defined.

Motor vehicle means any motor vehicle, trailer, or semitrailer as defined in the Motor Vehicle Registration Act and subject to registration for operation on the highways.

Source: Laws 2005, LB 312, § 33.

Cross References

Motor Vehicle Registration Act, see section 60-301.

77-5712 Nebraska average weekly wage, defined.

Nebraska average weekly wage for any calendar year means the most recent average weekly wage paid by all employers in all counties in Nebraska as reported by the Department of Labor by October 1 of the year prior to application.

Source: Laws 2005, LB 312, § 34; Laws 2008, LB895, § 10.
Effective date April 18, 2008.

77-5713 Nebraska employee, defined.

Nebraska employee means an individual who is either a resident or partial-year resident of Nebraska.

Source: Laws 2005, LB 312, § 35.

77-5714 Number of new employees, defined.

(1) Number of new employees, for a tier 1, tier 2, tier 3, or tier 4 project, means the number of equivalent employees that are employed at the project during a year that are in excess of the number of equivalent employees during the base year, not to exceed the number of equivalent employees employed at the project during a year who are not base-year employees and who are paid wages at a rate equal to at least sixty percent of the Nebraska average weekly wage for the year of application.

(2) Number of new employees, for a tier 6 project, means the number of equivalent employees that are employed at the project during a year that are in excess of the number of equivalent employees during the base year, not to exceed the number of equivalent employees employed at the project during a year who are not base-year employees and who are paid at a rate equal to or greater than the tier 6 weekly required compensation for the year of application.

(3) Teleworkers working for wages or salaries in Nebraska from their residences for a taxpayer on tasks interdependent with the work performed at the project shall be considered to be employed at the project.

Source: Laws 2005, LB 312, § 36; Laws 2008, LB895, § 11.
Effective date April 18, 2008.

77-5715 Qualified business, defined.

(1) For a tier 2, tier 3, tier 4, or tier 5 project, qualified business means any business engaged in:

(a) The conducting of research, development, or testing for scientific, agricultural, animal husbandry, food product, or industrial purposes;

(b) The performance of data processing, telecommunication, insurance, or financial services. For purposes of this subdivision, financial services includes only financial services provided by any financial institution subject to tax under Chapter 77, article 38, or any person or entity licensed by the Department of Banking and Finance or the federal Securities and Exchange Commission and telecommunication services includes community antenna television service,

Internet access, satellite ground station, data center, call center, or telemarketing;

(c) The assembly, fabrication, manufacture, or processing of tangible personal property;

(d) The administrative management of the taxpayer's activities, including headquarter facilities relating to such activities or the administrative management of any of the activities of any business entity or entities in which the taxpayer or a group of its shareholders holds any direct or indirect ownership interest of at least ten percent, including headquarter facilities relating to such activities;

(e) The storage, warehousing, distribution, transportation, or sale of tangible personal property;

(f) The sale of software development services, computer systems design, product testing services, or guidance or surveillance systems design services or the licensing of technology if the taxpayer derives at least seventy-five percent of the sales or revenue attributable to such activities relating to the project from sales or licensing either to customers who are not related persons and located outside the state or to the United States Government;

(g) The research, development, and maintenance of an Internet web portal. For purposes of this subdivision, Internet web portal means an Internet site that allows users to access, search, and navigate the Internet; or

(h) Any combination of the activities listed in this subsection.

(2) For a tier 1 project, qualified business means any business engaged in:

(a) The conducting of research, development, or testing for scientific, agricultural, animal husbandry, food product, or industrial purposes;

(b) The assembly, fabrication, manufacture, or processing of tangible personal property;

(c) The sale of software development services, computer systems design, product testing services, or guidance or surveillance systems design services or the licensing of technology if the taxpayer derives at least seventy-five percent of the sales or revenue attributable to such activities relating to the project from sales or licensing either to customers who are not related persons and are located outside the state or to the United States Government; or

(d) Any combination of activities listed in this subsection.

(3) For a tier 6 project, qualified business means any business except a business excluded by subsection (4) of this section.

(4) Qualified business does not include any business activity in which eighty percent or more of the total sales are sales to the ultimate consumer of food prepared for immediate consumption or are sales to the ultimate consumer of tangible personal property which is not assembled, fabricated, manufactured, or processed by the taxpayer or used by the purchaser in any of the activities listed in subsection (1) or (2) of this section.

Source: Laws 2005, LB 312, § 37; Laws 2007, LB223, § 29; Laws 2008, LB895, § 12.

Effective date April 18, 2008.

77-5716 Qualified employee leasing company, defined.

Qualified employee leasing company means a company which places all employees of a client-lessee on its payroll and leases such employees to the client-lessee on an ongoing basis for a fee and, by written agreement between the employee leasing company and a client-lessee, grants to the client-lessee input into the hiring and firing of the employees leased to the client-lessee.

Source: Laws 2005, LB 312, § 38.

77-5717 Qualified property, defined.

Qualified property means any tangible property of a type subject to depreciation, amortization, or other recovery under the Internal Revenue Code of 1986, as amended, or the components of such property, that will be located and used at the project. Qualified property does not include (1) aircraft, barges, motor vehicles, railroad rolling stock, or watercraft or (2) property that is rented by the taxpayer qualifying under the Nebraska Advantage Act to another person. Qualified property of the taxpayer located at the residence of a teleworker working in Nebraska from his or her residence on tasks interdependent with the work performed at the project shall be deemed located and used at the project.

Source: Laws 2005, LB 312, § 39.

77-5718 Related persons, defined.

Related persons means any corporations, partnerships, limited liability companies, or joint ventures which are or would otherwise be members of the same unitary group, if incorporated, or any persons who are considered to be related persons under either section 267(b) and (c) or section 707(b) of the Internal Revenue Code of 1986, as amended.

Source: Laws 2005, LB 312, § 40.

77-5719 Taxpayer, defined.

Taxpayer means any person subject to sales and use taxes under the Nebraska Revenue Act of 1967 and subject to withholding under section 77-2753 and any corporation, partnership, limited liability company, cooperative, including a cooperative exempt under section 521 of the Internal Revenue Code of 1986, as amended, limited cooperative association, or joint venture that is or would otherwise be a member of the same unitary group, if incorporated, that is subject to such sales and use taxes or such withholding. Taxpayer does not include a political subdivision or an organization that is exempt from income taxes under section 501(a) of the Internal Revenue Code of 1986, as amended, or any partnership, limited liability company, cooperative, including a cooperative exempt under section 521 of the Internal Revenue Code of 1986, as amended, limited cooperative association, or joint venture in which political subdivisions or organizations described in section 501(c) or (d) of the code hold an ownership interest of ten percent or more.

Source: Laws 2005, LB 312, § 41; Laws 2006, LB 1003, § 12; Laws 2007, LB368, § 139.

Cross References

Nebraska Revenue Act of 1967, see section 77-2701.

77-5719.01 Tier 6 weekly required compensation, defined.

Tier 6 weekly required compensation means two hundred percent of the county average weekly wage for the county in which the project is located or one hundred fifty percent of the state average weekly wage, whichever is higher. If the project is located in more than one county, the higher county average weekly wage shall be used to determine the tier 6 weekly required compensation.

Source: Laws 2008, LB895, § 13.
Effective date April 18, 2008.

77-5719.02 Wages, defined.

Wages means compensation.

Source: Laws 2008, LB895, § 14.
Effective date April 18, 2008.

77-5720 Year, defined.

Year means the taxable year of the taxpayer.

Source: Laws 2005, LB 312, § 42.

77-5721 Year of application, defined.

Year of application means the year that a completed application is filed under the Nebraska Advantage Act.

Source: Laws 2005, LB 312, § 43.

77-5722 Qualified employee leasing company; employees; duty.

An employee of a qualified employee leasing company shall be considered to be an employee of the client-lessee for purposes of the Nebraska Advantage Act if the employee performs services for the client-lessee. A qualified employee leasing company shall provide the Department of Revenue access to the records of employees leased to the client-lessee.

Source: Laws 2005, LB 312, § 44.

77-5723 Incentives; application; contents; fee; approval; agreements; contents.

(1) In order to utilize the incentives set forth in the Nebraska Advantage Act, the taxpayer shall file an application, on a form developed by the Tax Commissioner, requesting an agreement with the Tax Commissioner.

(2) The application shall contain:

(a) A written statement describing the plan of employment and investment for a qualified business in this state;

(b) Sufficient documents, plans, and specifications as required by the Tax Commissioner to support the plan and to define a project;

(c) If more than one location within this state is involved, sufficient documentation to show that the employment and investment at different locations are interdependent parts of the plan. A headquarters shall be presumed to be interdependent with each other location directly controlled by such headquarters. A showing that the parts of the plan would be considered parts of a unitary business for corporate income tax purposes shall not be sufficient to show interdependence for the purposes of this subdivision;

(d) A nonrefundable application fee of one thousand dollars for a tier 1 project, two thousand five hundred dollars for a tier 2, tier 3, or tier 5 project, five thousand dollars for a tier 4 project, and ten thousand dollars for a tier 6 project. The fee shall be credited to the Nebraska Incentives Fund; and

(e) A timetable showing the expected sales tax refunds and what year they are expected to be claimed. The timetable shall include both direct refunds due to investment and credits taken as sales tax refunds as accurately as possible.

The application and all supporting information shall be confidential except for the name of the taxpayer, the location of the project, the amounts of increased employment and investment, and the information required to be reported by sections 77-5731 and 77-5734.

(3) An application must be complete to establish the date of the application. An application shall be considered complete once it contains the items listed in subsection (2) of this section, regardless of the Tax Commissioner's additional needs pertaining to information or clarification in order to approve or not approve the application.

(4) Once satisfied that the plan in the application defines a project consistent with the purposes stated in the Nebraska Advantage Act in one or more qualified business activities within this state, that the taxpayer and the plan will qualify for benefits under the act, and that the required levels of employment and investment for the project will be met prior to the end of the fourth year after the year in which the application was submitted for a tier 1, tier 3, or tier 6 project or the end of the sixth year after the year in which the application was submitted for a tier 2, tier 4, or tier 5 project, the Tax Commissioner shall approve the application.

(5) After approval, the taxpayer and the Tax Commissioner shall enter into a written agreement. The taxpayer shall agree to complete the project, and the Tax Commissioner, on behalf of the State of Nebraska, shall designate the approved plan of the taxpayer as a project and, in consideration of the taxpayer's agreement, agree to allow the taxpayer to use the incentives contained in the Nebraska Advantage Act. The application, and all supporting documentation, to the extent approved, shall be considered a part of the agreement. The agreement shall state:

(a) The levels of employment and investment required by the act for the project;

(b) The time period under the act in which the required levels must be met;

(c) The documentation the taxpayer will need to supply when claiming an incentive under the act;

(d) The date the application was filed; and

(e) A requirement that the company update the Department of Revenue annually on any changes in plans or circumstances which affect the timetable of sales tax refunds as set out in the application. If the company fails to comply with this requirement, the Tax Commissioner may defer any pending sales tax refunds until the company does comply.

(6) The incentives contained in section 77-5725 shall be in lieu of the tax credits allowed by the Nebraska Advantage Rural Development Act for any project. In computing credits under the act, any investment or employment which is eligible for benefits or used in determining benefits under the Nebraska Advantage Act shall be subtracted from the increases computed for deter-

mining the credits under section 77-27,188. New investment or employment at a project location that results in the meeting or maintenance of the employment or investment requirements, the creation of credits, or refunds of taxes under the Employment and Investment Growth Act shall not be considered new investment or employment for purposes of the Nebraska Advantage Act. The use of carryover credits under the Employment and Investment Growth Act, the Invest Nebraska Act, the Nebraska Advantage Rural Development Act, or the Quality Jobs Act shall not preclude investment and employment from being considered new investment or employment under the Nebraska Advantage Act. The use of property tax exemptions at the project under the Employment and Investment Growth Act shall not preclude investment not eligible for the property tax exemption from being considered new investment under the Nebraska Advantage Act.

(7) A taxpayer and the Tax Commissioner may enter into agreements for more than one project and may include more than one project in a single agreement. The projects may be either sequential or concurrent. A project may involve the same location as another project. No new employment or new investment shall be included in more than one project for either the meeting of the employment or investment requirements or the creation of credits. When projects overlap and the plans do not clearly specify, then the taxpayer shall specify in which project the employment or investment belongs.

Source: Laws 2005, LB 312, § 45; Laws 2006, LB 1003, § 13; Laws 2008, LB895, § 15; Laws 2008, LB914, § 22.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB895, section 15, with LB914, section 22, to reflect all amendments.

Note: Changes made by LB895 became effective April 18, 2008. Changes made by LB914 became operative July 18, 2008.

Cross References

Employment and Investment Growth Act, see section 77-4101.

Invest Nebraska Act, see section 77-5501.

Nebraska Advantage Rural Development Act, see section 77-27,187.

Quality Jobs Act, see section 77-4901.

77-5724 Incentives; credits or benefits; limitation.

The following transactions or activities shall not create any credits or allow any benefits under the Nebraska Advantage Act except as specifically allowed by this section:

(1) The acquisition of a business after the date of application which is continued by the taxpayer as a part of the project and which was operated in this state during the three hundred sixty-six days prior to the date of acquisition. All employees of the entities added to the taxpayer by the acquisition during the three hundred sixty-six days prior to the date of acquisition shall be considered employees during the base year. Any investment prior to the date of acquisition made by the entities added to the taxpayer by the acquisition or any investment in the acquisition of such business shall be considered as being made before the date of application;

(2) The moving of a business from one location to another, which business was operated in this state during the three hundred sixty-six days prior to the date of application. All employees of the business during such three hundred sixty-six days shall be considered base-year employees;

(3) The purchase or lease of any property which was previously owned by the taxpayer or a related person. The first purchase by either the taxpayer or a

related person shall be treated as investment if the item was first placed in service in the state after the date of the application;

(4) The renegotiation of any lease in existence on the date of application which does not materially change any of the terms of the lease, other than the expiration date, shall be presumed to be a transaction entered into for the purpose of generating benefits under the act and shall not be allowed in the computation of any benefit or the meeting of any required levels under the agreement;

(5) Any purchase or lease of property from a related person, except that the taxpayer will be allowed any benefits under the act to which the related person would have been entitled on the purchase or lease of the property if the related person was considered the taxpayer;

(6) Any transaction entered into primarily for the purpose of receiving benefits under the act which is without a business purpose and does not result in increased economic activity in the state; and

(7) Any activity that results in benefits under the Ethanol Development Act.

Source: Laws 2005, LB 312, § 46.

Cross References

Ethanol Development Act, see section 66-1330.

77-5725 Tiers; requirements; incentives; enumerated.

(1) Applicants may qualify for benefits under the Nebraska Advantage Act in one of six tiers:

(a) Tier 1, investment in qualified property of at least one million dollars and the hiring of at least ten new employees. There shall be no new project applications for benefits under this tier filed on or after January 1, 2011, without further authorization of the Legislature. All complete project applications filed before January 1, 2011, shall be considered by the Tax Commissioner and approved if the project and taxpayer qualify for benefits. Agreements may be executed with regard to completed project applications filed before January 1, 2011. All project agreements pending, approved, or entered into before such date shall continue in full force and effect;

(b) Tier 2, investment in qualified property of at least three million dollars and the hiring of at least thirty new employees;

(c) Tier 3, the hiring of at least thirty new employees. There shall be no new project applications for benefits under this tier filed on or after January 1, 2011, without further authorization of the Legislature. All complete project applications filed before January 1, 2011, shall be considered by the Tax Commissioner and approved if the project and taxpayer qualify for benefits. Agreements may be executed with regard to completed project applications filed before January 1, 2011. All project agreements pending, approved, or entered into before such date shall continue in full force and effect;

(d) Tier 4, investment in qualified property of at least ten million dollars and the hiring of at least one hundred new employees;

(e) Tier 5, investment in qualified property of at least thirty million dollars. Failure to maintain an average number of equivalent employees as defined in section 77-5727 greater than or equal to the number of equivalent employees in the base year shall result in a partial recapture of benefits; and

(f) Tier 6, investment in qualified property of at least ten million dollars and the hiring of at least seventy-five new employees or the investment in qualified property of at least one hundred million dollars and the hiring of at least fifty new employees. Agreements may be executed with regard to completed project applications filed before January 1, 2016. All project agreements pending, approved, or entered into before such date shall continue in full force and effect.

(2) When the taxpayer has met the required levels of employment and investment contained in the agreement for a tier 1, tier 2, tier 4, tier 5, or tier 6 project, the taxpayer shall be entitled to the following incentives:

(a) A refund of all sales and use taxes for a tier 2, tier 4, tier 5, or tier 6 project or a refund of one-half of all sales and use taxes for a tier 1 project paid under the Local Option Revenue Act, the Nebraska Revenue Act of 1967, and sections 13-319, 13-324, and 13-2813 from the date of the application through the meeting of the required levels of employment and investment for all purchases, including rentals, of:

(i) Qualified property used as a part of the project;

(ii) Property, excluding motor vehicles, based in this state and used in both this state and another state in connection with the project except when any such property is to be used for fundraising for or for the transportation of an elected official;

(iii) Tangible personal property by the owner of the improvement to real estate that is incorporated into real estate as a part of a project; and

(iv) Tangible personal property by a contractor or repairperson after appointment as a purchasing agent of the owner of the improvement to real estate. The refund shall be based on fifty percent of the contract price, excluding any land, as the cost of materials subject to the sales and use tax; and

(b) A refund of all sales and use taxes for a tier 2, tier 4, tier 5, or tier 6 project or a refund of one-half of all sales and use taxes for a tier 1 project paid under the Local Option Revenue Act, the Nebraska Revenue Act of 1967, and sections 13-319, 13-324, and 13-2813 on the types of purchases, including rentals, listed in subdivision (a) of this subsection for such taxes paid during each year of the entitlement period in which the taxpayer is at or above the required levels of employment and investment.

(3) Any taxpayer who qualifies for a tier 1, tier 2, tier 3, or tier 4 project shall be entitled to a credit equal to three percent times the average wage of new employees times the number of new employees if the average wage of the new employees equals at least sixty percent of the Nebraska average annual wage for the year of application. The credit shall equal four percent times the average wage of new employees times the number of new employees if the average wage of the new employees equals at least seventy-five percent of the Nebraska average annual wage for the year of application. The credit shall equal five percent times the average wage of new employees times the number of new employees if the average wage of the new employees equals at least one hundred percent of the Nebraska average annual wage for the year of application. The credit shall equal six percent times the average wage of new employees times the number of new employees if the average wage of the new employees equals at least one hundred twenty-five percent of the Nebraska average annual wage for the year of application. For computation of such credit:

(a) Average annual wage means the total compensation paid to employees during the year at the project who are not base-year employees and who are paid wages equal to at least sixty percent of the Nebraska average weekly wage for the year of application, excluding any compensation in excess of one million dollars paid to any one employee during the year, divided by the number of equivalent employees making up such total compensation;

(b) Average wage of new employees means the average annual wage paid to employees during the year at the project who are not base-year employees and who are paid wages equal to at least sixty percent of the Nebraska average weekly wage for the year of application, excluding any compensation in excess of one million dollars paid to any one employee during the year; and

(c) Nebraska average annual wage means the Nebraska average weekly wage times fifty-two.

(4) Any taxpayer who qualifies for a tier 6 project shall be entitled to a credit equal to ten percent times the total compensation paid to all employees, other than base-year employees, excluding any compensation in excess of one million dollars paid to any one employee during the year, employed at the project.

(5) Any taxpayer who has met the required levels of employment and investment for a tier 2 or tier 4 project shall receive a credit equal to ten percent of the investment made in qualified property at the project. Any taxpayer who has met the required levels of investment and employment for a tier 1 project shall receive a credit equal to three percent of the investment made in qualified property at the project. Any taxpayer who has met the required levels of investment and employment for a tier 6 project shall receive a credit equal to fifteen percent of the investment made in qualified property at the project.

(6) The credits prescribed in subsections (3), (4), and (5) of this section shall be allowable for compensation paid and investments made during each year of the entitlement period that the taxpayer is at or above the required levels of employment and investment.

(7) The credit prescribed in subsection (5) of this section shall also be allowable during the first year of the entitlement period for investment in qualified property at the project after the date of the application and before the required levels of employment and investment were met.

(8)(a) A taxpayer who has met the required levels of employment and investment for a tier 4 or tier 6 project shall receive the incentive provided in this subsection. A taxpayer who has a project for an Internet web portal and who has met the required level of investment for a tier 5 project shall receive the incentive provided in this subsection for property in subdivision (8)(b)(ii) of this section. Such investment and hiring of new employees shall be considered a required level of investment and employment for this subsection and for the recapture of benefits under this subsection only.

(b) The following property used in connection with such project or projects and acquired by the taxpayer, whether by lease or purchase, after the date the application was filed shall constitute separate classes of personal property:

(i) Turbine-powered aircraft, including turboprop, turbojet, and turbofan aircraft, except when any such aircraft is used for fundraising for or for the transportation of an elected official;

(ii) Computer systems, made up of equipment that is interconnected in order to enable the acquisition, storage, manipulation, management, movement, control, display, transmission, or reception of data involving computer software and hardware, used for business information processing which require environmental controls of temperature and power and which are capable of simultaneously supporting more than one transaction and more than one user. A computer system includes peripheral components which require environmental controls of temperature and power connected to such computer systems. Peripheral components shall be limited to additional memory units, tape drives, disk drives, power supplies, cooling units, data switches, and communication controllers;

(iii) Depreciable personal property used for a distribution facility, including, but not limited to, storage racks, conveyor mechanisms, forklifts, and other property used to store or move products;

(iv) Personal property which is business equipment located in a single project if the business equipment is involved directly in the manufacture or processing of agricultural products; and

(v) For a tier 6 project, any other personal property located at the project.

(c) Such property shall be eligible for exemption from the tax on personal property from the first January 1 following the date of acquisition for property in subdivision (8)(b)(i) of this section, or from the first January 1 following the end of the year during which the required levels were exceeded for property in subdivisions (8)(b)(ii), (iii), (iv), and (v) of this section, through the ninth December 31 after the first year any property included in subdivisions (8)(b)(ii), (iii), (iv), and (v) of this section qualifies for the exemption. In order to receive the property tax exemptions allowed by subdivision (8)(b) of this section, the taxpayer shall annually file a claim for exemption with the Tax Commissioner on or before May 1. The form and supporting schedules shall be prescribed by the Tax Commissioner and shall list all property for which exemption is being sought under this section. A separate claim for exemption must be filed for each project and each county in which property is claimed to be exempt. A copy of this form must also be filed with the county assessor in each county in which the applicant is requesting exemption. The Tax Commissioner shall determine the eligibility of each item listed for exemption and, on or before August 1, certify such to the taxpayer and to the affected county assessor. In determining the eligibility of items of personal property for exemption, the Tax Commissioner is limited to the question of whether the property claimed as exempt by the taxpayer falls within the classes of property described in subdivision (8)(b) of this section. The determination of whether a taxpayer is eligible to obtain exemption for personal property based on meeting the required levels of investment and employment is the responsibility of the Tax Commissioner.

(9) The investment thresholds in this section for a particular year of application shall be adjusted by the method provided in this subsection. Beginning October 1, 2006, and each October 1 thereafter, the Producer Price Index for all commodities, published by the United States Department of Labor, Bureau of Labor Statistics, for the most recent available period shall be divided by the Producer Price Index for the first quarter of 2006 and the result multiplied by the applicable investment threshold. The investment thresholds shall be adjusted for cumulative inflation since 2006. If the resulting amount is not a multiple of one million dollars, the amount shall be rounded to the next lowest one

million dollars. The investment thresholds established by this subsection apply for purposes of project qualifications for all applications filed on or after January 1 of the following year for all years of the project. Adjustments do not apply to projects after the year of application.

Source: Laws 2005, LB 312, § 47; Laws 2006, LB 1003, § 14; Laws 2007, LB223, § 30; Laws 2007, LB334, § 98; Laws 2008, LB895, § 16; Laws 2008, LB965, § 22.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB895, section 16, with LB965, section 22, to reflect all amendments.

Note: Changes made by LB965 became operative April 15, 2008. Changes made by LB895 became effective April 18, 2008.

Cross References

Local Option Revenue Act, see section 77-27,148.

Nebraska Revenue Act of 1967, see section 77-2701.

77-5726 Credits; use; refund claims; procedures; interest; appointment of purchasing agent; protest; appeal.

(1)(a) The credits prescribed in section 77-5725 shall be established by filing the forms required by the Tax Commissioner with the income tax return for the year. The credits may be used and shall be applied in the order in which they were first allowed. The credits may be used after any other nonrefundable credits to reduce the taxpayer's income tax liability imposed by sections 77-2714 to 77-27,135. Any decision on how part of the credit is applied shall not limit how the remaining credit could be applied under this section.

(b) The taxpayer may use the credit provided in subsections (3) and (4) of section 77-5725 to reduce the taxpayer's income tax withholding employer or payor tax liability under section 77-2756 or 77-2757 to the extent such liability is attributable to the number of new employees at the project. To the extent of the credit used, such withholding shall not constitute public funds or state tax revenue and shall not constitute a trust fund or be owned by the state. The use by the taxpayer of the credit shall not change the amount that otherwise would be reported by the taxpayer to the employee under section 77-2754 as income tax withheld and shall not reduce the amount that otherwise would be allowed by the state as a refundable credit on an employee's income tax return as income tax withheld under section 77-2755.

The amount of credits used against income tax withholding shall not exceed the withholding attributable to new employees at the project. If the amount of credit used by the taxpayer against income tax withholding exceeds this amount, the excess withholding shall be returned to the Department of Revenue in the manner provided in section 77-2756, such excess amount returned shall be considered unused, and the amount of unused credits may be used as otherwise permitted in this section or shall carry over to the extent authorized in subdivision (1)(d) of this section.

(c) Credits may be used to obtain a refund of sales and use taxes under the Local Option Revenue Act, the Nebraska Revenue Act of 1967, and sections 13-319, 13-324, and 13-2813 which are not otherwise refundable that are paid on purchases, including rentals, for use at the project for a tier 1, tier 2, tier 3, or tier 4 project or for use within this state for a tier 6 project.

(d) The credits earned for a tier 6 project may be used to obtain a payment from the state equal to the real property taxes due after the year the required levels of employment and investment were met and before the end of the carryover period, for real property that is included in such project and acquired

by the taxpayer, whether by lease or purchase, after the date the application was filed. The payment from the state shall be made only after payment of the real property taxes have been made to the county as required by law. Payments shall not be allowed for any taxes paid on real property for which the taxes are divided under section 18-2147 or 58-507.

(e) Credits may be carried over until fully utilized, except that such credits may not be carried over more than nine years after the year of application for a tier 1 or tier 3 project, fourteen years after the year of application for a tier 2 or tier 4 project, or more than one year past the end of the entitlement period for a tier 6 project.

(2)(a) No refund claims shall be filed until after the required levels of employment and investment have been met.

(b) Refund claims shall be filed no more than once each quarter for refunds under the Nebraska Advantage Act, except that any claim for a refund in excess of twenty-five thousand dollars may be filed at any time.

(c) Any refund claim for sales and use taxes on materials incorporated into real estate as a part of the project shall be filed by and the refund paid to the owner of the improvement to real estate. A refund claim for such materials purchased by a purchasing agent shall include a copy of the purchasing agent appointment, the contract price, and a certification by the contractor or repairperson of the percentage of the materials incorporated into the project on which sales and use taxes were paid to Nebraska after appointment as purchasing agent.

(d) All refund claims shall be filed, processed, and allowed as any other claim under section 77-2708, except that the amounts allowed to be refunded under the Nebraska Advantage Act shall be deemed to be overpayments and shall be refunded notwithstanding any limitation in subdivision (2)(a) of section 77-2708. The refund may be allowed if the claim is filed within three calendar years from the end of the year the required levels of employment and investment are met or within the period set forth in section 77-2708.

(e) If a claim for a refund of sales and use taxes under the Local Option Revenue Act or sections 13-319, 13-324, and 13-2813 of more than twenty-five thousand dollars is filed by June 15 of a given year, the refund shall be made on or after November 15 of the same year. If such a claim is filed on or after June 16 of a given year, the refund shall not be made until on or after November 15 of the following year. The Tax Commissioner shall notify the affected city, village, county, or municipal county of the amount of refund claims of sales and use taxes under the Local Option Revenue Act or sections 13-319, 13-324, and 13-2813 that are in excess of twenty-five thousand dollars on or before July 1 of the year before the claims will be paid under this section.

(f) Interest shall not be allowed on any taxes refunded under the Nebraska Advantage Act.

(3) The appointment of purchasing agents shall be recognized for the purpose of changing the status of a contractor or repairperson as the ultimate consumer of tangible personal property purchased after the date of the appointment which is physically incorporated into the project and becomes the property of the owner of the improvement to real estate. The purchasing agent shall be jointly liable for the payment of the sales and use tax on the purchases with the owner of the improvement to real estate.

(4) A determination that a taxpayer is not engaged in a qualified business or has failed to meet or maintain the required levels of employment or investment for incentives, exemptions, or recapture may be protested within sixty days after the mailing of the written notice of the proposed determination. If the notice of proposed determination is not protested within the sixty-day period, the proposed determination is a final determination. If the notice is protested, the Tax Commissioner shall issue a written order resolving such protests. The written order of the Tax Commissioner resolving a protest may be appealed to the district court of Lancaster County within thirty days after the issuance of the order.

Source: Laws 2005, LB 312, § 48; Laws 2008, LB895, § 17; Laws 2008, LB914, § 23.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB895, section 17, with LB914, section 23, to reflect all amendments.

Note: Changes made by LB895 became effective April 18, 2008. Changes made by LB914 became operative January 1, 2009.

Cross References

Local Option Revenue Act, see section 77-27,148.

Nebraska Revenue Act of 1967, see section 77-2701.

77-5727 Recapture or disallowance of incentives.

(1)(a) If the taxpayer fails either to meet the required levels of employment or investment for the applicable project by the end of the fourth year after the end of the year the application was submitted for a tier 1, tier 3, or tier 6 project or by the end of the sixth year after the end of the year the application was submitted for a tier 2, tier 4, or tier 5 project or to utilize such project in a qualified business at employment and investment levels at or above those required in the agreement for the entire entitlement period, all or a portion of the incentives set forth in the Nebraska Advantage Act shall be recaptured or disallowed.

(b) In the case of a taxpayer who has failed to meet the required levels of investment or employment within the required time period, all reduction in the personal property tax because of the act shall be recaptured.

(2) In the case of a taxpayer who has failed to maintain the project at the required levels of employment or investment for the entire entitlement period, any reduction in the personal property tax, any refunds in tax allowed under subsection (2) of section 77-5725, and any refunds or reduction in tax allowed because of the use of a credit allowed under section 77-5725 shall be partially recaptured from either the taxpayer or the owner of the improvement to real estate and any carryovers of credits shall be partially disallowed. One-seventh of the refunds, one-seventh of the reduction in personal property tax, and one-seventh of the credits used shall be recaptured and one-seventh of the remaining carryovers and the last remaining year of personal property tax exemption shall be disallowed for each year the taxpayer did not maintain such project at or above the required levels of employment or investment.

(3) In the case of a taxpayer qualified under tier 5 who has failed to maintain the average number of equivalent employees at the project at the end of the six years following the year the taxpayer attained the required amount of investment, any refunds in tax allowed under subdivision (2)(a) of section 77-5725 or any reduction in the personal property tax under section 77-5725 shall be partially recaptured from the taxpayer. The amount of recapture shall be the total amount of refunds and reductions in tax allowed for all years times the

reduction in the average number of equivalent employees employed at the end of the entitlement period from the number of equivalent employees employed in the base year divided by the number of equivalent employees employed in the base year. For purposes of this subsection, the average number of equivalent employees shall be calculated at the end of the entitlement period by adding the number of equivalent employees in the year the taxpayer attains the required level of investment and each of the next following six years and dividing the result by seven.

(4) If the taxpayer receives any refunds or reduction in tax to which the taxpayer was not entitled or which were in excess of the amount to which the taxpayer was entitled, the refund or reduction in tax shall be recaptured separate from any other recapture otherwise required by this section. Any amount recaptured under this subsection shall be excluded from the amounts subject to recapture under other subsections of this section.

(5) Any refunds or reduction in tax due, to the extent required to be recaptured, shall be deemed to be an underpayment of the tax and shall be immediately due and payable. When tax benefits were received in more than one year, the tax benefits received in the most recent year shall be recovered first and then the benefits received in earlier years up to the extent of the required recapture.

(6) Any personal property tax that would have been due except for the exemption allowed under the Nebraska Advantage Act, to the extent it becomes due under this section, shall be considered delinquent and shall be immediately due and payable to the county or counties in which the property was located when exempted. All amounts received by a county under this section shall be allocated to each taxing unit levying taxes on tangible personal property in the county in the same proportion that the levy on tangible personal property of such taxing unit bears to the total levy of all of such taxing units.

(7) Notwithstanding any other limitations contained in the laws of this state, collection of any taxes deemed to be underpayments by this section shall be allowed for a period of three years after the end of the entitlement period.

(8) Any amounts due under this section shall be recaptured notwithstanding other allowable credits and shall not be subsequently refunded under any provision of the Nebraska Advantage Act unless the recapture was in error.

(9) The recapture required by this section shall not occur if the failure to maintain the required levels of employment or investment was caused by an act of God or national emergency.

Source: Laws 2005, LB 312, § 49; Laws 2006, LB 1003, § 15; Laws 2008, LB895, § 18.

Effective date April 18, 2008.

77-5728 Incentives; transfer; when; effect.

(1) The incentives allowed under the Nebraska Advantage Act shall not be transferable except in the following situations:

(a) Any credit allowable to a partnership, a limited liability company, a subchapter S corporation, a cooperative, including a cooperative exempt under section 521 of the Internal Revenue Code of 1986, as amended, a limited cooperative association, or an estate or trust may be distributed to the partners, members, shareholders, patrons, or beneficiaries in the same manner as in-

come is distributed for use against their income tax liabilities, and such partners, members, shareholders, or beneficiaries shall be deemed to have made an underpayment of their income taxes for any recapture required by section 77-5727. A credit distributed shall be considered a credit used and the partnership, limited liability company, subchapter S corporation, cooperative, including a cooperative exempt under section 521 of the Internal Revenue Code of 1986, as amended, a limited cooperative association, estate, or trust shall be liable for any repayment required by section 77-5727; and

(b) The incentives previously allowed and the future allowance of incentives may be transferred when a project covered by an agreement is transferred in its entirety by sale or lease to another taxpayer or in an acquisition of assets qualifying under section 381 of the Internal Revenue Code of 1986, as amended.

(2) The acquiring taxpayer, as of the date of notification of the Tax Commissioner of the completed transfer, shall be entitled to any unused credits and to any future incentives allowable under the act.

(3) The acquiring taxpayer shall be liable for any recapture that becomes due after the date of the transfer for the repayment of any benefits received either before or after the transfer.

(4) If a taxpayer operating a project and allowed a credit under the act dies and there is a credit remaining after the filing of the final return for the taxpayer, the personal representative shall determine the distribution of the credit or any remaining carryover with the initial fiduciary return filed for the estate. The determination of the distribution of the credit may be changed only after obtaining the permission of the Tax Commissioner.

Source: Laws 2005, LB 312, § 50; Laws 2006, LB 1003, § 16; Laws 2007, LB368, § 140.

77-5729 Refunds; interest not allowable.

Interest shall not be allowable on any refunds paid because of benefits earned under the Nebraska Advantage Act.

Source: Laws 2005, LB 312, § 51.

77-5730 Application; valid; when.

Any complete application shall be considered a valid application on the date submitted for the purposes of the Nebraska Advantage Act.

Source: Laws 2005, LB 312, § 52.

77-5731 Reports.

(1) The Tax Commissioner shall submit an annual report to the Legislature no later than July 15 of each year.

(2) The report shall list (a) the agreements which have been signed during the previous calendar year, (b) the agreements which are still in effect, (c) the identity of each taxpayer who is party to an agreement, and (d) the location of each project.

(3) The report shall also state, for taxpayers who are parties to agreements, by industry group (a) the specific incentive options applied for under the Nebraska Advantage Act, (b) the refunds allowed on the investment, (c) the

credits earned, (d) the credits used to reduce the corporate income tax and the credits used to reduce the individual income tax, (e) the credits used to obtain sales and use tax refunds, (f) the credits used against withholding liability, (g) the number of jobs created under the act, (h) the total number of employees employed in the state on the last day of the calendar quarter prior to the application date and the total number of employees employed in the state on subsequent reporting dates, (i) the expansion of capital investment, (j) the estimated wage levels of jobs created under the act subsequent to the application date, (k) the total number of qualified applicants, (l) the projected future state revenue gains and losses, (m) the sales tax refunds owed, (n) the credits outstanding under the act, (o) the value of personal property exempted by class in each county under the act, (p) the value of property for which payments equal to property taxes paid were allowed in each county, and (q) the total amount of the payments.

(4) In estimating the projected future state revenue gains and losses, the report shall detail the methodology utilized, state the economic multipliers and industry multipliers used to determine the amount of economic growth and positive tax revenue, describe the analysis used to determine the percentage of new jobs attributable to the Nebraska Advantage Act assumption, and identify limitations that are inherent in the analysis method.

(5) The report shall provide an explanation of the audit and review processes of the Department of Revenue in approving and rejecting applications or the grant of incentives and in enforcing incentive recapture. The report shall also specify the median period of time between the date of application and the date the agreement is executed for all agreements executed by December 31 of the prior year.

(6) The report shall provide information on project-specific total incentives used every two years for each approved project. The report shall disclose (a) the identity of the taxpayer, (b) the location of the project, and (c) the total credits used and refunds approved during the immediately preceding two years expressed as a single, aggregated total. The incentive information required to be reported under this subsection shall not be reported for the first year the taxpayer attains the required employment and investment thresholds. The information on first-year incentives used shall be combined with and reported as part of the second year. Thereafter, the information on incentives used for succeeding years shall be reported for each project every two years containing information on two years of credits used and refunds approved. The incentives used shall include incentives which have been approved by the department, but not necessarily received, during the previous two calendar years.

(7) The report shall include an executive summary which shows aggregate information for all projects for which the information on incentives used in subsection (6) of this section is reported as follows: (a) The total incentives used by all taxpayers for projects detailed in subsection (6) of this section during the previous two years; (b) the number of projects; (c) the total number of employees of these taxpayers employed in the state on the last day of the calendar quarter prior to the application date, the new jobs at the project for which credits have been granted, and the total number of employees employed in the state by these taxpayers on subsequent reporting dates; (d) the average compensation paid employees in the state in the year of application and for the new jobs at the project; and (e) the total investment for which incentives were granted. The executive summary shall summarize the number of states which

grant investment tax credits, job tax credits, sales and use tax refunds for qualified investment, and personal property tax exemptions and the investment and employment requirements under which they may be granted.

(8) No information shall be provided in the report that is protected by state or federal confidentiality laws.

Source: Laws 2005, LB 312, § 53; Laws 2008, LB895, § 19.
Effective date April 18, 2008.

77-5732 Repealed. Laws 2008, LB 914, § 29.

77-5733 Rules and regulations.

The Tax Commissioner may adopt and promulgate all rules and regulations necessary to carry out the purposes of the Nebraska Advantage Act.

Source: Laws 2005, LB 312, § 55.

77-5734 Department of Revenue; estimate of sales tax refunds; duties.

The Department of Revenue shall, on or before the fifteenth day of October and February of every year and the fifteenth day of April in odd-numbered years, make an estimate of the amount of sales and use tax refunds to be paid under the Nebraska Advantage Act during the fiscal years to be forecast under section 77-27,158. The estimate shall be based on the most recent data available, including pending and approved applications and updates thereof as are required by subdivisions (2)(e) and (5)(e) of section 77-5723. The estimate shall be forwarded to the Legislative Fiscal Analyst and the Nebraska Economic Forecasting Advisory Board and made a part of the advisory forecast required by section 77-27,158.

Source: Laws 2005, LB 312, § 56.

77-5735 Changes to sections; when effective; applicability.

The changes made in sections 77-5703, 77-5708, 77-5712, 77-5714, 77-5715, 77-5723, 77-5725, 77-5726, 77-5727, and 77-5731 by Laws 2008, LB 895, and sections 77-5707.01, 77-5719.01, and 77-5719.02 apply to all applications filed on and after April 18, 2008. For all applications filed prior to such date, the provisions of the Nebraska Advantage Act as they existed immediately prior to such date apply.

Source: Laws 2008, LB895, § 20.
Effective date April 18, 2008.

ARTICLE 58

NEBRASKA ADVANTAGE RESEARCH AND DEVELOPMENT ACT

- Section
- 77-5801. Act, how cited.
- 77-5802. Business firm, defined.
- 77-5803. Research tax credit; amount.
- 77-5804. Research tax credit; use.
- 77-5805. Building materials; sales or use tax; presumption.
- 77-5806. Applicability of act.
- 77-5807. Report.

77-5801 Act, how cited.

Sections 77-5801 to 77-5807 shall be known and may be cited as the Nebraska Advantage Research and Development Act.

Source: Laws 2005, LB 312, § 59.

77-5802 Business firm, defined.

For purposes of the Nebraska Advantage Research and Development Act, business firm means any business entity, including a corporation, a fiduciary, a sole proprietorship, a partnership, a joint venture, a limited liability company, or another private entity, that is subject to sales tax under section 77-2703. Business firm does not include a political subdivision or an organization that is exempt from income taxes under section 501(a) of the Internal Revenue Code of 1986, as amended.

Source: Laws 2005, LB 312, § 60.

77-5803 Research tax credit; amount.

(1) Any business firm which makes expenditures in research and experimental activities as defined in section 174 of the Internal Revenue Code of 1986, as amended, in this state shall be allowed a research tax credit as provided in the Nebraska Advantage Research and Development Act. The credit amount shall equal fifteen percent of the federal credit allowed under section 41 of the Internal Revenue Code of 1986, as amended, or as apportioned to this state under subsection (2) of this section. The credit shall be allowed for the first tax year it is claimed and for the four tax years immediately following.

(2) For any business firm doing business both within and without this state, the amount of the federal credit may be determined either by dividing the amount expended in research and experimental activities in this state in any tax year by the total amount expended in research and experimental activities or by apportioning the amount of the credit on the federal income tax return to the state based on the average of the property factor as determined in section 77-2734.12 and the payroll factor as determined in section 77-2734.13.

Source: Laws 2005, LB 312, § 61; Laws 2007, LB223, § 31; Laws 2008, LB915, § 7.

Operative date January 1, 2008.

77-5804 Research tax credit; use.

(1) The credit allowed under section 77-5803 may be used to obtain a refund of state sales and use taxes paid, may be used against the income tax liability of the taxpayer, or may be used as a refundable credit claimed on an income tax return of the taxpayer. The return need not reflect any income tax liability owed by the taxpayer.

(2) A claim for the credit may be filed quarterly for refund of the state sales and use taxes paid, either directly or indirectly, after the filing of the income tax return for the tax year in which the credit was first allowed.

(3) The credit may be used to obtain a refund of state sales and use taxes paid before the end of the tax year for which the credit was allowed, except that the amount refunded under this subsection shall not exceed the amount of the state sales and use taxes paid, either directly or indirectly, by the taxpayer on the qualifying expenditures.

(4) Credits distributed to a partner, limited liability company member, shareholder, or beneficiary may be used against the income tax liability of the partner, member, shareholder, or beneficiary receiving the credits.

Source: Laws 2005, LB 312, § 62.

77-5805 Building materials; sales or use tax; presumption.

For purposes of subsections (2) and (3) of section 77-5804, the taxpayer shall be deemed to have paid indirectly any state sales or use taxes paid by a contractor on building materials annexed to an improvement to real estate built for the taxpayer. The contractor shall certify to the taxpayer the amount of the state sales and use taxes paid on the building materials, or the taxpayer, with the permission of the Tax Commissioner and a certification from the contractor that state sales and use taxes were paid on all building materials, may presume that forty percent of the cost of the improvement was for building materials annexed to real estate on which the tax was paid.

Source: Laws 2005, LB 312, § 63.

77-5806 Applicability of act.

The Nebraska Advantage Research and Development Act shall be operative for all tax years beginning or deemed to begin on or after January 1, 2006, under the Internal Revenue Code of 1986, as amended. No business firm shall be allowed to first claim the credit for any tax year beginning or deemed to begin on or after January 1, 2011, under the Internal Revenue Code of 1986, as amended.

Source: Laws 2005, LB 312, § 64.

77-5807 Report.

Beginning July 15, 2007, and each July 15 thereafter the Tax Commissioner shall prepare a report stating the total amount of credits claimed on income tax returns or as refunds of sales and use tax during the previous calendar year. No information shall be provided in the report that is protected by state or federal confidentiality laws.

Source: Laws 2005, LB 312, § 65.

ARTICLE 59

NEBRASKA ADVANTAGE MICROENTERPRISE TAX CREDIT ACT

Section

- 77-5901. Act, how cited.
- 77-5902. Act; administration; purpose.
- 77-5903. Terms, defined.
- 77-5904. Tax credit; application; contents; advisory committee.
- 77-5905. Applications; approval; limit.
- 77-5906. Tax credit; amount; claim; expiration.
- 77-5907. Report.

77-5901 Act, how cited.

Sections 77-5901 to 77-5907 shall be known and may be cited as the Nebraska Advantage Microenterprise Tax Credit Act.

Source: Laws 2005, LB 312, § 66.

77-5902 Act; administration; purpose.

The Nebraska Advantage Microenterprise Tax Credit Act shall be administered by the Department of Revenue. The purpose of the act is to provide tax credits to applicants for creating or expanding microbusinesses that contribute to the revitalization of economically distressed areas through the creation of new or improved income, self-employment, or other new jobs in the area.

Source: Laws 2005, LB 312, § 67.

77-5903 Terms, defined.

For purposes of the Nebraska Advantage Microenterprise Tax Credit Act:

(1) Actively engaged in the operation of a microbusiness means personal involvement on a continuous basis in the daily management and operation of the business;

(2) Distressed area means a municipality, county, unincorporated area within a county, or census tract in Nebraska that has (a) an unemployment rate which exceeds the statewide average unemployment rate, (b) a per capita income below the statewide average per capita income, or (c) had a population decrease between the two most recent federal decennial censuses;

(3) Equivalent employees means the number of employees computed by dividing the total hours paid in a year by the product of forty times the number of weeks in a year;

(4) Microbusiness means any business employing five or fewer equivalent employees at the time of application. Microbusiness does not include a farm or livestock operation unless (a) the person actively engaged in the operation of the microbusiness has a net worth of not more than two hundred thousand dollars, including any holdings by a spouse or dependent, based on fair market value, or (b) the investment or employment is in the processing or marketing of agricultural products, aquaculture, agricultural tourism, or the production of fruits, herbs, tree products, vegetables, tree nuts, dried fruits, organic crops, or nursery crops;

(5) New employment means the amount by which the total compensation plus the employer cost for health insurance for employees paid during the tax year to or for employees who are Nebraska residents exceeds the total compensation paid plus the employer cost for health insurance for employees to or for employees who are Nebraska residents in the tax year prior to application. New employment does not include compensation to any employee that is in excess of one hundred fifty percent of the Nebraska average weekly wage. Nebraska average weekly wage means the most recent average weekly wage paid by all employers as reported by October 1 by the Department of Labor;

(6) New investment means the increase during the tax year over the year prior to the application in the applicant's (a) purchases of buildings and depreciable personal property located in Nebraska, (b) expenditures on repairs and maintenance on property located in Nebraska, neither subdivision (a) or (b) of this subdivision to include vehicles required to be registered for operation on the roads and highways of this state, and (c) expenditures on advertising, legal, and professional services. If the buildings or depreciable personal property is leased, the amount of new investment shall be the increase in average net annual rents multiplied by the number of years of the lease for which the taxpayer is bound, not to exceed ten years;

(7) Related persons means (a) any corporation, partnership, limited liability corporation, cooperative, including cooperatives exempt under section 521 of the Internal Revenue Code of 1986, as amended, limited cooperative association, or joint venture which is or would otherwise be a member of the same unitary group, if incorporated, or any person who is considered to be a related person under either section 267(b) and (c) or section 707(b) of the Internal Revenue Code of 1986, as amended, and (b) any individual who is a spouse, parent if the taxpayer is a minor, or minor son or daughter of the taxpayer; and

(8) Taxpayer means any person subject to the income tax imposed by the Nebraska Revenue Act of 1967, any corporation, partnership, limited liability company, cooperative, including a cooperative exempt under section 521 of the Internal Revenue Code of 1986, as amended, limited cooperative association, or joint venture that is or would otherwise be a member of the same unitary group, if incorporated, which is, or whose partners, members, or owners representing an ownership interest of at least ninety percent of such entity are, subject to such tax, and any other partnership, limited liability company, Subchapter S corporation, cooperative, including a cooperative exempt under section 521 of the Internal Revenue Code of 1986, as amended, limited cooperative association, or joint venture when the partners, shareholders, or members representing an ownership interest of at least ninety percent of such entity are subject to such tax.

The changes made to this section by Laws 2008, LB 177, shall be operative for all applications for benefits received on or after July 18, 2008.

Source: Laws 2005, LB 312, § 68; Laws 2006, LB 1003, § 17; Laws 2007, LB368, § 141; Laws 2008, LB177, § 1.
Effective date July 18, 2008.

Cross References

Nebraska Revenue Act of 1967, see section 77-2701.

77-5904 Tax credit; application; contents; advisory committee.

(1) The Department of Revenue shall accept applications for tax credits from taxpayers who are actively engaged in the operation of a microbusiness in a distressed area or who will establish a microbusiness that they will actively operate in a distressed area within the current or subsequent tax year. Applications shall be filed by November 1 and shall be complete by December 1 of each calendar year. Any application that is filed after November 1 or that is not complete on December 1 shall be considered to be filed during the following calendar year.

(2) The department may convene an advisory committee of individuals with expertise in small business development, lending, and community development to evaluate applications and advise the department in authorizing tentative tax credits.

(3) The application shall be on a form developed by the department and shall contain:

- (a) A description of the microbusiness;
- (b) The projected income and expenditures;
- (c) The market to be served by the microbusiness and the way the expansion addresses the market;

- (d) The amount of projected investment or employment increase that would generate the credit;
- (e) The projected improvement in income or creation of new self-employment or other jobs in the distressed area;
- (f) The nature of the applicant's engagement in the operation of the micro-business; and
- (g) Other documents, plans, and specifications as required by the department.

Source: Laws 2005, LB 312, § 69; Laws 2007, LB223, § 32.

77-5905 Applications; approval; limit.

(1) If the Department of Revenue determines that an application meets the requirements of section 77-5904 and that the investment or employment is eligible for the credit and (a) the applicant is actively engaged in the operation of the microbusiness or will be actively engaged in the operation upon its establishment, (b) the majority of the assets of the microbusiness are located in a distressed area or will be upon its establishment, (c) the applicant will make new investment or employment in the microbusiness, and (d) the new investment or employment will create new income or jobs in the distressed area, the department shall approve the application and authorize tentative tax credits to the applicant within the limits set forth in this section and certify the amount of tentative tax credits approved for the applicant. Applications for tax credits shall be considered in the order in which they are received.

(2) The department may approve applications up to the adjusted limit for each calendar year beginning January 1, 2006, through December 31, 2010. After applications totaling the adjusted limit have been approved for a calendar year, no further applications shall be approved for that year. The adjusted limit in a given year is two million dollars plus tentative tax credits that were not granted by the end of the preceding year. Tax credits shall not be allowed for a taxpayer receiving benefits under the Employment and Investment Growth Act, the Nebraska Advantage Act, or the Nebraska Advantage Rural Development Act.

Source: Laws 2005, LB 312, § 70.

Cross References

Employment and Investment Growth Act, see section 77-4101.

Nebraska Advantage Act, see section 77-5701.

Nebraska Advantage Rural Development Act, see section 77-27,187.

77-5906 Tax credit; amount; claim; expiration.

Taxpayers shall be entitled to refundable tax credits equal to twenty percent of the taxpayer's new investment or employment in the microbusiness during the tax year not to exceed the amount of tentative tax credits approved by the department under section 77-5905. The taxpayer shall claim the tax credit by filing a form developed by the Tax Commissioner and attaching the tentative tax credit certification granted by the department. Tentative tax credits expire after the end of the tax year following the year the tentative tax credit was certified. The total lifetime tax credits claimed by any one taxpayer and any related person under the Nebraska Advantage Microenterprise Tax Credit Act shall be limited to ten thousand dollars.

Source: Laws 2005, LB 312, § 71.

77-5907 Report.

The Tax Commissioner shall prepare a report identifying the following aggregate amounts for the previous calendar year: (1) The amount of projected employment and investment anticipated by taxpayers receiving tentative tax credits and the tentative tax credits granted; (2) the actual amount of employment and investment made by taxpayers that were granted tentative tax credits in the previous calendar year; (3) the tax credits used; and (4) the tentative tax credits that expired. The report shall be issued on or before July 15, 2007, and each July 15 thereafter. No information shall be provided in the report that is protected by state or federal confidentiality laws.

Source: Laws 2005, LB 312, § 72.

ARTICLE 60**TAX POLICY REFORM COMMISSION**

Section

- 77-6001. Legislative findings.
- 77-6002. Tax Policy Reform Commission; created; members.
- 77-6003. Tax Policy Reform Commission; chairperson; meetings; expenses.
- 77-6004. Tax Policy Reform Commission; duties.
- 77-6005. Hearings.
- 77-6006. Employees to provide assistance; contracts; funding.
- 77-6007. Sections, termination.

77-6001 Legislative findings.

The Legislature finds that there are significant issues relating to tax policy that need to be reviewed periodically. The Legislature also finds that a tax policy reform commission which is responsible for studying Nebraska's tax structure, reviewing implications for the future, ensuring the retention of institutional knowledge about Nebraska's tax policy, and providing recommendations for sound tax policy for the future is essential to the long-term growth of the state's economy and the survival of the state's public institutions.

Source: Laws 2006, LB 542, § 1.

Termination date December 31, 2007.

77-6002 Tax Policy Reform Commission; created; members.

The Tax Policy Reform Commission is created. The commission shall have sixteen members appointed as follows:

- (1) Eight members of the Legislature appointed by the Executive Board of the Legislative Council;
- (2) One economist appointed by the Governor;
- (3) One representative of production agriculture appointed by the Governor;
- (4) One representative of industry and manufacturing appointed by the Governor;
- (5) One representative of the labor sector appointed by the Executive Board of the Legislative Council;
- (6) One representative of the telecommunications sector appointed by the Governor;
- (7) One representative of the low-income sector appointed by the Executive Board of the Legislative Council;

- (8) The Director of Economic Development; and
- (9) The Tax Commissioner.

Source: Laws 2006, LB 542, § 2.
Termination date December 31, 2007.

77-6003 Tax Policy Reform Commission; chairperson; meetings; expenses.

The Tax Policy Reform Commission shall elect a chairperson from among its members. The commission shall meet quarterly or more often if the chairperson determines additional meetings are necessary to accomplish the objectives established in sections 77-6001 to 77-6007 giving consideration to the funds appropriated. Members shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1176.

Source: Laws 2006, LB 542, § 3.
Termination date December 31, 2007.

77-6004 Tax Policy Reform Commission; duties.

The Tax Policy Reform Commission shall:

- (1) Evaluate current Nebraska tax policies and how they relate to generally recognized tax policies of adequacy, equity, economic competitiveness, simplicity, and accountability and recommend improvements;
- (2) Examine household tax burdens and business tax burdens as compared to the United States as a whole and states having demographics similar to those of Nebraska and recommend improvements;
- (3) Examine tax rates as compared to the United States as a whole and states having demographics similar to those of Nebraska and recommend improvements;
- (4) Evaluate current business tax incentive programs and recommend improvements;
- (5) Examine demographic changes taking place in the state, anticipate the effects such changes have on the revenue adequacy and stability for the state in the future, and recommend improvements;
- (6) Examine previous studies, including the Comprehensive Tax Study done by Syracuse University from 1986 to 1988, and ascertain whether any recommendations from such studies can be utilized in the commission's research; and
- (7) Issue a preliminary report to the Executive Board of the Legislative Council, the Revenue Committee of the Legislature, and the Governor by December 15, 2006, containing the commission's preliminary findings and recommendations, and issue a final report to the executive board, the committee, and the Governor by November 15, 2007, containing any recommendations for legislation to reform tax policy and, if appropriate, draft proposed language for legislation.

Source: Laws 2006, LB 542, § 4.
Termination date December 31, 2007.

77-6005 Hearings.

The Tax Policy Reform Commission may hold hearings throughout the state for purposes of receiving input from the public on the issues identified in section 77-6004.

Source: Laws 2006, LB 542, § 5.
Termination date December 31, 2007.

77-6006 Employees to provide assistance; contracts; funding.

(1) Employees of the Department of Revenue and the Legislative Council shall be available to the Tax Policy Reform Commission to assist it in carrying out its work. The commission shall contract with a meeting facilitator and may contract with experts from any institution of postsecondary education in the state to provide assistance, specific research, research or policy reports, or presentations to carry out the purposes of section 77-6004, within the constraints of the appropriation provided.

(2) Funding for the commission shall be appropriated to the Legislative Council and shall not exceed one hundred thousand dollars.

Source: Laws 2006, LB 542, § 6; Laws 2007, LB334, § 99.
Termination date December 31, 2007.

77-6007 Sections, termination.

Sections 77-6001 to 77-6007 terminate on December 31, 2007.

Source: Laws 2006, LB 542, § 7.
Termination date December 31, 2007.

ARTICLE 61

LONG-TERM CARE SAVINGS PLAN ACT

Section

- 77-6101. Act, how cited.
- 77-6102. Terms, defined.
- 77-6103. Nebraska long-term care savings plan; created; State Treasurer; powers and duties; participation agreement.
- 77-6104. Nebraska long-term care savings plan trust; created; State Treasurer; state investment officer; duties.
- 77-6105. Qualified individual; withdrawals authorized.

77-6101 Act, how cited.

Sections 77-6101 to 77-6105 shall be known and may be cited as the Long-Term Care Savings Plan Act.

Source: Laws 2006, LB 965, § 1.

77-6102 Terms, defined.

For purposes of the Long-Term Care Savings Plan Act:

(1) Long-term care expense means the cost of long-term care in a long-term care facility and the cost of care provided in a person's home when the person receiving the care is unable to perform multiple basic life functions independently;

(2) Long-term care insurance premiums means premiums paid for a long-term care insurance policy issued pursuant to the Long-Term Care Insurance

Act that offers coverage to the individual, the individual's spouse, or another person for whom the taxpayer has an insurable interest;

(3) Participant means an individual who has entered into a participation agreement or established an account with a financial institution with which the State Treasurer has an agreement under subsection (1) of section 77-6103; and

(4) Qualified individual means (a) a person who incurred long-term care expenses during the taxable year or (b) a person who turned fifty years of age or older during the taxable year who made payments for long-term care insurance premiums during the taxable year.

Source: Laws 2006, LB 965, § 2; Laws 2007, LB304, § 1.

77-6103 Nebraska long-term care savings plan; created; State Treasurer; powers and duties; participation agreement.

(1) The Nebraska long-term care savings plan is created. The State Treasurer shall select the administrator of the plan. If the State Treasurer receives no acceptable responses to a request for proposals for an administrator for the plan by November 1, 2006, the State Treasurer may enter into agreements with state-chartered or federally chartered banks, savings banks, building and loan associations, savings and loan associations, or credit unions, or a subsidiary of any such entity, to receive contributions in the form of account deposits. The State Treasurer may adopt and promulgate rules and regulations to carry out its duties under this subsection.

(2) If an administrator is selected, participants shall enter into participation agreements with the State Treasurer, and if an administrator is not selected, participants may make contributions to an account with a financial institution with which the State Treasurer has an agreement under subsection (1) of this section. A lifetime maximum of one hundred sixty-five thousand dollars may be contributed by a participant. This dollar limitation shall be adjusted for inflation by the method provided in section 151 of the Internal Revenue Code of 1986, as amended.

(3) Each participation agreement shall provide that the agreement may be canceled or transferred to a spouse upon the terms and conditions set by the State Treasurer. If the participation agreement is canceled or the Nebraska long-term care savings plan is terminated, a participant may receive the principal amount of all contributions made by the participant or on behalf of the participant plus the actual investment earnings on the contributions, less any losses incurred on the contributions. A participant shall not receive more than the fair market value of his or her account under the participation agreement on the applicable liquidation date.

(4) A participant retains ownership of all contributions up to the date of utilization.

(5) State income tax treatment of contributions and investment earnings shall be as provided in section 77-2716.

Source: Laws 2006, LB 965, § 3.

77-6104 Nebraska long-term care savings plan trust; created; State Treasurer; state investment officer; duties.

If an administrator for the Nebraska long-term care savings plan is selected pursuant to section 77-6103, the Nebraska long-term care savings plan trust

shall be created. The State Treasurer shall be the trustee of the trust and as such responsible for the administration, operation, and maintenance of the plan and shall have all powers necessary to carry out and effectuate the purposes, objectives, and provisions of the Long-Term Care Savings Plan Act pertaining to the administration, operation, and maintenance of the trust, except that the state investment officer shall have fiduciary responsibility to make all decisions regarding the investment of the money in the trust, including the selection of all investment options and the approval of all fees and other costs charged to trust assets except costs for administration, operation, and maintenance of the trust, pursuant to the directions, guidelines, and policies established by the Nebraska Investment Council. The State Treasurer may adopt and promulgate rules and regulations to provide for the efficient administration, operation, and maintenance of the trust. The State Treasurer shall not adopt and promulgate rules and regulations that in any way interfere with the fiduciary responsibility of the state investment officer to make all decisions regarding the investment of money in the trust. The Nebraska Investment Council may adopt and promulgate rules and regulations to provide for the prudent investment of the assets of the trust. The council or its designee also has the authority to select and enter into agreements with individuals and entities to provide investment advice and management of the assets held by the trust, establish investment guidelines, objectives, and performance standards with respect to the assets held by the trust, and approve any fees, commissions, and expenses which directly or indirectly affect the return on assets.

Source: Laws 2006, LB 965, § 4.

77-6105 Qualified individual; withdrawals authorized.

A qualified individual as defined in subdivision (4)(a) of section 77-6102 may make withdrawals as a participant in the Nebraska long-term care savings plan to pay or reimburse long-term care expenses. A qualified individual as defined in subdivision (4)(b) of section 77-6102 may make withdrawals to pay or reimburse long-term care insurance premiums. Any participant who is not a qualified individual or who makes a withdrawal for any reason other than transfer of funds to a spouse, long-term care expenses, long-term care insurance premiums, or death of the participant shall be subject to a ten-percent penalty on the amount withdrawn. The State Treasurer shall collect the penalty.

Source: Laws 2006, LB 965, § 5; Laws 2007, LB304, § 2.

UNIFORM COMMERCIAL CODE

UNIFORM COMMERCIAL CODE

Article.

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 - Part 1. Short Title, General Construction, and Subject Matter. 2-103, 2-104.
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ARTICLE 1

GENERAL PROVISIONS

Part 1

GENERAL PROVISIONS

Section

- 1-101. Short titles.
- 1-102. Scope of article.
- 1-103. Construction of Uniform Commercial Code to promote its purposes and policies; applicability of supplemental principles of law.
- 1-104. Construction against implied repeal.
- 1-105. Severability.
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- 1-110. Repealed. Laws 2005, LB 570, § 116.

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Part 1

GENERAL PROVISIONS

1-101 Short titles.

- (a) Sections 1-101 to 10-103 may be cited as the Uniform Commercial Code.
- (b) This article may be cited as Uniform Commercial Code—General Provisions.

Source: Laws 2005, LB 570, § 6.

COMMENT

Source: Former section 1-101.

Changes from former law: Subsection (b) is new. It is added in order to make the structure of article 1 parallel with that of the other articles of the Uniform Commercial Code.

1. Each other article of the Uniform Commercial Code (except articles 10 and 11) may also be cited by its own short title. See sections 2-101, 2A-101, 3-101, 4-101, 4A-101, 5-101, 6-101, 7-101, 8-101, and 9-101.

1-102 Scope of article.

This article applies to a transaction to the extent that it is governed by another article of the Uniform Commercial Code.

Source: Laws 2005, LB 570, § 7.

COMMENT

Source: New.

1. This section is intended to resolve confusion that has occasionally arisen as to the applicability of the substantive rules in this article. This section makes clear what has always

been the case—the rules in article 1 apply to transactions to the extent that those transactions are governed by one of the other articles of the Uniform Commercial Code. See comment 1 to section 1-301.

1-103 Construction of Uniform Commercial Code to promote its purposes and policies; applicability of supplemental principles of law.

(a) The Uniform Commercial Code must be liberally construed and applied to promote its underlying purposes and policies, which are:

- (1) to simplify, clarify, and modernize the law governing commercial transactions;
- (2) to permit the continued expansion of commercial practices through custom, usage, and agreement of the parties; and
- (3) to make uniform the law among the various jurisdictions.

(b) Unless displaced by the particular provisions of the Uniform Commercial Code, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause supplement its provisions.

Source: Laws 2005, LB 570, § 8.

COMMENT

Source: Former section 1-102(1)-(2); former section 1-103.

Changes from former law: This section is derived from subsections (1) and (2) of former section 1-102 and from former section 1-103. Subsection (a) of this section combines subsections (1) and (2) of former section 1-102. Except for changing the form of reference to the Uniform Commercial Code and minor stylistic changes, its language is the same as subsections (1) and (2) of former section 1-102. Except for changing the form of reference to the Uniform Commercial Code and minor stylistic changes, subsection (b) of this section is identical to former section 1-103. The provisions have been combined in this section to reflect the interrelationship between them.

1. The Uniform Commercial Code is drawn to provide flexibility so that, since it is intended to be a semi-permanent and infrequently amended piece of legislation, it will provide its own machinery for expansion of commercial practices. It is intended to make it possible for the law embodied in the Uniform Commercial Code to be applied by the courts in the light of unforeseen and new circumstances and practices. The proper construction of the Uniform Commercial Code requires, of course, that its interpretation and application be limited to its reason.

Even prior to the enactment of the Uniform Commercial Code, courts were careful to keep broad acts from being hampered in their effects by later acts of limited scope. See *Pacific Wool Growers v. Draper & Co.*, 158 Or. 1, 73 P.2d 1391 (1937), and compare section 1-104. The courts have often recognized

that the policies embodied in an act are applicable in reason to subject matter that was not expressly included in the language of the act, *Commercial Nat. Bank of New Orleans v. Canal-Louisiana Bank & Trust Co.*, 239 U.S. 520, 36 S.Ct. 194, 60 L.Ed. 417 (1916) (bona fide purchase policy of Uniform Warehouse Receipts Act extended to case not covered but of equivalent nature), and did the same where reason and policy so required, even where the subject matter had been intentionally excluded from the act in general. *Agar v. Orda*, 264 N.Y. 248, 190 N.E. 479 (1934) (Uniform Sales Act change in seller's remedies applied to contract for sale of choses in action even though the general coverage of that act was intentionally limited to goods "other than things in action".) They implemented a statutory policy with liberal and useful remedies not provided in the statutory text. They disregarded a statutory limitation of remedy where the reason of the limitation did not apply. *Fiterman v. J. N. Johnson & Co.*, 156 Minn. 201, 194 N.W. 399 (1923) (requirement of return of the goods as a condition to rescission for breach of warranty; also, partial rescission allowed). Nothing in the Uniform Commercial Code stands in the way of the continuance of such action by the courts.

The Uniform Commercial Code should be construed in accordance with its underlying purposes and policies. The text of each section should be read in the light of the purpose and policy of the rule or principle in question, as also of the Uniform Commercial Code as a whole, and the application of the lan-

guage should be construed narrowly or broadly, as the case may be, in conformity with the purposes and policies involved.

2. Applicability of supplemental principles of law. Subsection (b) states the basic relationship of the Uniform Commercial Code to supplemental bodies of law. The Uniform Commercial Code was drafted against the backdrop of existing bodies of law, including the common law and equity, and relies on those bodies of law to supplement its provisions in many important ways. At the same time, the Uniform Commercial Code is the primary source of commercial law rules in areas that it governs, and its rules represent choices made by its drafters and the enacting legislatures about the appropriate policies to be furthered in the transactions it covers. Therefor, while principles of common law and equity may supplement provisions of the Uniform Commercial Code, they may not be used to supplant its provisions, or the purposes and policies those provisions reflect, unless a specific provision of the code provides otherwise. In the absence of such a provision, the Uniform Commercial Code preempts principles of common law and equity that are inconsistent with either its provisions or its purposes and policies.

The language of subsection (b) is intended to reflect both the concept of supplementation and the concept of preemption. Some courts, however, had difficulty in applying the identical language of former section 1-103 to determine when other law appropriately may be applied to supplement the Uniform Commercial Code, and when that law has been displaced by the code. Some decisions applied other law in situations in which that application, while not inconsistent with the text of any particular provision of the code, clearly was inconsistent with the underlying purposes and policies reflected in the relevant provisions of the code. See, e.g., *Sheerbonnet, Ltd. v. American Express Bank, Ltd.*, 951 F. Supp. 403 (S.D.N.Y. 1995). In part, this difficulty arose from comment 1 to former section 1-103, which stated that “this section indicates the continued applicability to commercial contracts of all supplemental bodies of law except insofar as they are explicitly displaced by this act”. The “explicitly displaced” language of that comment did not accurately reflect the proper scope of Uniform Commercial Code preemption, which extends to displacement of other law that is inconsistent with the purposes and policies of the Uniform Commercial Code, as well as with its text.

3. Application of subsection (b) to statutes. The primary focus of section 1-103 is on the relationship between the Uniform Commercial Code and principles of common law and equity as developed by the courts. State law, however, increasingly is statutory. Not only are there a growing number of state statutes addressing specific issues that come within the scope of the Uniform Commercial Code, but in some states many general principles of common law and equity have been codified. When the other law relating to a matter within the scope of the Uniform Commercial Code is a statute, the principles of subsection (b) remain relevant to the court’s analysis of the relationship between that statute and the Uniform Commercial Code, but other principles of statutory interpretation that specifically address the interrelationship between statutes will be relevant as well. In some situations, the principles of subsection (b) still will be determinative. For example, the mere fact that an equitable principle is stated in statutory form rather than in judicial decisions should not change the court’s analysis of whether the principle can be used to supplement the Uniform Commercial Code—under subsection (b), equitable principles may supplement provisions of the Uniform Commercial Code only if they are consistent with the purposes and policies of the Uniform Commercial Code as well as its text. In other situations, however, other interpretive principles addressing the interrelationship between statutes may lead the court to conclude that the other statute is controlling, even though it conflicts with the Uniform Commercial Code. This, for example, would be the result in a situation where the other statute was specifically intended to provide additional protection to a class of individuals engaging in transactions covered by the Uniform Commercial Code.

4. Listing not exclusive. The list of sources of supplemental law in subsection (b) is intended to be merely illustrative of the other law that may supplement the Uniform Commercial Code, and is not exclusive. No listing could be exhaustive. Further, the fact that a particular section of the Uniform Commercial Code makes express reference to other law is not intended to suggest the negation of the general application of the principles of subsection (b). Note also that the word “bankruptcy” in subsection (b), continuing the use of that word from former section 1-103, should be understood not as a specific reference to federal bankruptcy law but, rather as a reference to general principles of insolvency, whether under federal or state law.

1-104 Construction against implied repeal.

The Uniform Commercial Code being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

Source: Laws 2005, LB 570, § 9.

COMMENT

Source: Former section 1-104.

Changes from former law: Except for changing the form of reference to the Uniform Commercial Code, this section is identical to former section 1-104.

1. This section embodies the policy that an act that bears evidence of carefully considered permanent regulative intention

should not lightly be regarded as impliedly repealed by subsequent legislation. The Uniform Commercial Code, carefully integrated and intended as a uniform codification of permanent character covering an entire “field” of law, is to be regarded as particularly resistant to implied repeal.

1-105 Severability.

If any provision or clause of the Uniform Commercial Code or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the code which can be given effect without the invalid provision or application, and to this end the provisions of the code are severable.

Source: Laws 2005, LB 570, § 10.

COMMENT

Source: Former section 1-108.

Changes from former law: Except for changing the form of reference to the Uniform Commercial Code, this section is identical to former section 1-108.

1. This is the model severability section recommended by the National Conference of Commissioners on Uniform State Laws for inclusion in all acts of extensive scope.

1-106 Use of singular and plural; gender.

In the Uniform Commercial Code, unless the statutory context otherwise requires:

- (1) words in the singular number include the plural, and those in the plural include the singular; and
- (2) words of any gender also refer to any other gender.

Source: Laws 2005, LB 570, § 11.

COMMENT

Source: Former section 1-102(5). See also 1 U.S.C. section 1.

Changes from former law: Other than minor stylistic changes, this section is identical to former section 1-102(5).

1. This section makes it clear that the use of singular or plural in the text of the Uniform Commercial Code is generally only a

matter of drafting style—singular words may be applied in the plural, and plural words may be applied in the singular. Only when it is clear from the statutory context that the use of the singular or plural does not include the other is this rule inapplicable. See, e.g., section 9-322.

1-107 Section captions.

Section captions are part of the Uniform Commercial Code.

Source: Laws 2005, LB 570, § 12.

COMMENT

Source: Former section 1-109.

Changes from former law: None.

1. Section captions are a part of the text of the Uniform Commercial Code, and not mere surplusage. This is not the

case, however, with respect to subsection headings appearing in article 9. See comment 3 to section 9-101 (“subsection headings are not a part of the official text itself and have not been approved by the sponsors”).

1-108 Relation to Electronic Signatures in Global and National Commerce Act.

This article modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. section 7001 et seq., except that nothing in this article modifies, limits, or supersedes section 7001(c) of that act or authorizes electronic delivery of any of the notices described in section 7003(b) of that act.

Source: Laws 2005, LB 570, § 13.

COMMENT

Source: New.

1. The federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. section 7001 et seq. became effective in 2000. Section 102(a) of that act provides that a state statute may modify, limit, or supersede the provisions of section 101 of that act with respect to state law if such statute, inter alia, specifies the alternative procedures or requirements for the use or acceptance (or both) of electronic records or electronic signatures to establish the legal effect, validity, or enforceability of contracts or other records, and (i) such alternative procedures or requirements are consistent with Titles I and II of that act, (ii) such alternative procedures or requirements do not require, or accord greater legal status or effect to, the implementation or application of a specific technology or technical

specification for performing the functions of creating, storing, generating, receiving, communicating, or authenticating electronic records or electronic signatures, and (iii) if enacted or adopted after the date of the enactment of that act, makes specific reference to that act. Article 1 fulfills the first two of those three criteria; this section fulfills the third criterion listed above.

2. As stated in this section, however, article 1 does not modify, limit, or supersede section 101(c) of the Electronic Signatures in Global and National Commerce Act (requiring affirmative consent from a consumer to electronic delivery of transactional disclosures that are required by state law to be in writing); nor does it authorize electronic delivery of any of the notices described in section 103(b) of that act.

1-109 Repealed. Laws 2005, LB 570, § 116.

1-110 Repealed. Laws 2005, LB 570, § 116.

Part 2

GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION

1-201 General definitions.

(a) Unless the context otherwise requires, words or phrases defined in this section, or in the additional definitions contained in other articles of the Uniform Commercial Code that apply to particular articles or parts thereof, have the meanings stated.

(b) Subject to definitions contained in other articles of the code that apply to particular articles or parts thereof:

(1) "Action", in the sense of a judicial proceeding, includes recoupment, counterclaim, setoff, suit in equity, and any other proceeding in which rights are determined.

(2) "Aggrieved party" means a party entitled to pursue a remedy.

(3) "Agreement", as distinguished from "contract", means the bargain of the parties in fact, as found in their language or inferred from other circumstances, including course of performance, course of dealing, or usage of trade as provided in section 1-303.

(4) "Bank" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company.

(5) "Bearer" means a person in control of a negotiable electronic document of title or a person in possession of a negotiable instrument, negotiable tangible document of title, or certificated security that is payable to bearer or indorsed in blank.

(6) "Bill of lading" means a document of title evidencing the receipt of goods for shipment issued by a person engaged in the business of directly or indirectly transporting or forwarding goods. The term does not include a warehouse receipt.

(7) "Branch" includes a separately incorporated foreign branch of a bank.

(8) "Burden of establishing" a fact means the burden of persuading the trier of fact that the existence of the fact is more probable than its nonexistence.

(9) "Buyer in ordinary course of business" means a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under article 2 may be a buyer in ordinary course of business. "Buyer in ordinary course of business" does not include a person that acquires

goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(10) “Conspicuous”, with reference to a term, means so written, displayed, or presented that a reasonable person against which it is to operate ought to have noticed it. Whether a term is “conspicuous” or not is a decision for the court. Conspicuous terms include the following:

(A) a heading in capitals equal to or greater in size than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same or lesser size; and

(B) language in the body of a record or display in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from surrounding text of the same size by symbols or other marks that call attention to the language.

(11) “Consumer” means an individual who enters into a transaction primarily for personal, family, or household purposes.

(12) “Contract”, as distinguished from “agreement”, means the total legal obligation that results from the parties’ agreement as determined by the Uniform Commercial Code as supplemented by any other applicable laws.

(13) “Creditor” includes a general creditor, a secured creditor, a lien creditor, and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity, and a personal representative, an executor, or an administrator of an insolvent debtor’s or assignor’s estate.

(14) “Defendant” includes a person in the position of defendant in a counterclaim, cross-claim, or third-party claim.

(15) “Delivery” with respect to an electronic document of title means voluntary transfer of control and with respect to an instrument, a tangible document of title, or chattel paper means voluntary transfer of possession.

(16) “Document of title” means a record (i) that in the regular course of business or financing is treated as adequately evidencing that the person in possession or control of the record is entitled to receive, control, hold, and dispose of the record and the goods the record covers and (ii) that purports to be issued by or addressed to a bailee and to cover goods in the bailee’s possession which are either identified or are fungible portions of an identified mass. The term includes a bill of lading, transport document, dock warrant, dock receipt, warehouse receipt, and order for delivery of goods. An electronic document of title means a document of title evidenced by a record consisting of information stored in an electronic medium. A tangible document of title means a document of title evidenced by a record consisting of information that is inscribed on a tangible medium.

(17) “Fault” means a default, breach, or wrongful act or omission.

(18) “Fungible goods” means:

(A) goods of which any unit, by nature or usage of trade, is the equivalent of any other like unit; or

(B) goods that by agreement are treated as equivalent.

(19) “Genuine” means free of forgery or counterfeiting.

(20) “Good faith” means honesty in fact in the conduct or transaction concerned.

(21) "Holder" means:

(A) the person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession;

(B) the person in possession of a negotiable tangible document of title if the goods are deliverable either to bearer or to the order of the person in possession; or

(C) the person in control of a negotiable electronic document of title.

(22) "Insolvency proceeding" includes an assignment for the benefit of creditors or other proceeding intended to liquidate or rehabilitate the estate of the person involved.

(23) "Insolvent" means:

(A) having generally ceased to pay debts in the ordinary course of business other than as a result of bona fide dispute;

(B) being unable to pay debts as they become due; or

(C) being insolvent within the meaning of federal bankruptcy law.

(24) "Money" means a medium of exchange currently authorized or adopted by a domestic or foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more countries.

(25) "Organization" means a person other than an individual.

(26) "Party", as distinguished from "third party", means a person that has engaged in a transaction or made an agreement subject to the Uniform Commercial Code.

(27) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

(28) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain by use of either an interest rate specified by the parties if that rate is not manifestly unreasonable at the time the transaction is entered into or, if an interest rate is not so specified, a commercially reasonable rate that takes into account the facts and circumstances at the time the transaction is entered into.

(29) "Purchase" means taking by sale, lease, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property.

(30) "Purchaser" means a person that takes by purchase.

(31) "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.

(32) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(33) "Representative" means a person empowered to act for another, including an agent, an officer of a corporation or association, and a trustee, a personal representative, an executor, or an administrator of an estate.

(34) "Right" includes remedy.

(35) “Security interest” means an interest in personal property or fixtures which secures payment or performance of an obligation. “Security interest” includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to article 9. “Security interest” does not include the special property interest of a buyer of goods on identification of those goods to a contract for sale under section 2-401, but a buyer may also acquire a “security interest” by complying with article 9. Except as otherwise provided in section 2-505, the right of a seller or lessor of goods under article 2 or 2A to retain or acquire possession of the goods is not a “security interest”, but a seller or lessor may also acquire a “security interest” by complying with article 9. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer under section 2-401 is limited in effect to a reservation of a “security interest”. Whether a transaction in the form of a lease creates a “security interest” is determined pursuant to section 1-203. “Security interest” does not include a consumer rental purchase agreement as defined in the Consumer Rental Purchase Agreement Act.

(36) “Send” in connection with a writing, record, or notice means:

(A) to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and, in the case of an instrument, to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances; or

(B) in any other way to cause to be received any record or notice within the time it would have arrived if properly sent.

(37) “Signed” includes using any symbol executed or adopted with present intention to adopt or accept a writing.

(38) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(39) “Surety” includes a guarantor or other secondary obligor.

(40) “Term” means a portion of an agreement that relates to a particular matter.

(41) “Unauthorized signature” means a signature made without actual, implied, or apparent authority. The term includes a forgery.

(42) “Warehouse receipt” means a receipt issued by a person engaged in the business of storing goods for hire.

(43) “Writing” includes printing, typewriting, or any other intentional reduction to tangible form. “Written” has a corresponding meaning.

Source: Laws 2005, LB 570, § 14.

COMMENT

Source: Former section 1-201.

Changes from former law: In order to make it clear that all definitions in the Uniform Commercial Code (not just those appearing in article 1, as stated in former section 1-201, but also those appearing in other articles) do not apply if the context otherwise requires, a new subsection (a) to that effect has been added, and the definitions now appear in subsection (b). The reference in subsection (a) to the “context” is intended to refer to the context in which the defined term is used in the Uniform Commercial Code. In other words, the definition applies when-

ever the defined term is used unless the context in which the defined term is used in the statute indicates that the term was not used in its defined sense. Consider, for example, sections 3-103(a)(9) (defining “promise”, in relevant part, as “a written undertaking to pay money signed by the person undertaking to pay”) and section 3-303(a)(1) (indicating that an instrument is issued or transferred for value if “the instrument is issued or transferred for a promise of performance, to the extent that the promise has been performed”). It is clear from the statutory context of the use of the word “promise” in section 3-303(a)(1)

that the term was not used in the sense of its definition in section 3-103(a)(9). Thus, the section 3-103(a)(9) definition should not be used to give meaning to the word “promise” in section 3-303(a).

Some definitions in former section 1-201 have been reformulated as substantive provisions and have been moved to other sections. See sections 1-202 (explicating concepts of notice and knowledge formerly addressed in sections 1-201(25)-(27)), 1-204 (determining when a person gives value for rights, replacing the definition of “value” in former section 1-201(44)), and 1-206 (addressing the meaning of presumptions, replacing the definitions of “presumption” and “presumed” in former section 1-201(31)). Similarly, the portion of the definition of “security interest” in former section 1-201(37) which explained the difference between a security interest and a lease has been relocated to section 1-203.

Two definitions in former section 1-201 have been deleted. The definition of “honor” in former section 1-201(21) has been moved to section 2-103(1)(b), inasmuch as the definition only applies to the use of the word in article 2. The definition of “telegram” in former section 1-201(41) has been deleted because that word no longer appears in the definition of “conspicuous”.

Other than minor stylistic changes and renumbering, the remaining definitions in this section are as in former article 1 except as noted below.

1. **“Action”**. Unchanged from former section 1-201, which was derived from similar definitions in section 191, Uniform Negotiable Instruments Law; section 76, Uniform Sales Act; section 58, Uniform Warehouse Receipts Act; section 53, Uniform Bills of Lading Act.

2. **“Aggrieved party”**. Unchanged from former section 1-201.

3. **“Agreement”**. Derived from former section 1-201. As used in the Uniform Commercial Code the word is intended to include full recognition of usage of trade, course of dealing, course of performance and the surrounding circumstances as effective parts thereof, and of any agreement permitted under the provisions of the Uniform Commercial Code to displace a stated rule of law. Whether an agreement has legal consequences is determined by applicable provisions of the Uniform Commercial Code and, to the extent provided in section 1-103, by the law of contracts.

4. **“Bank”**. Derived from section 4A-104.

5. **“Bearer”**. Unchanged from former section 1-201, which was derived from section 191, Uniform Negotiable Instruments Law.

6. **“Bill of Lading”**. Derived from former section 1-201. The reference to, and definition of, an “airbill” has been deleted as no longer necessary.

7. **“Branch”**. Unchanged from former section 1-201.

8. **“Burden of establishing a fact”**. Unchanged from former section 1-201.

9. **“Buyer in ordinary course of business”**. Except for minor stylistic changes, identical to former section 1-201 (as amended in conjunction with the 1999 revisions to article 9). The major significance of the phrase lies in section 2-403 and in the Article on Secured Transactions (article 9).

The first sentence of paragraph (9) makes clear that a buyer from a pawnbroker cannot be a buyer in ordinary course of business. The second sentence explains what it means to buy “in the ordinary course”. The penultimate sentence prevents a buyer that does not have the right to possess as against the seller from being a buyer in ordinary course of business. Concerning when a buyer obtains possessory rights, see sections 2-502 and 2-716. However, the penultimate sentence is not intended to affect a buyer’s status as a buyer in ordinary course of business in cases (such as a “drop shipment”) involving delivery by the seller to a person buying from the buyer or a donee from the buyer. The requirement relates to whether as against the seller the buyer or one taking through the buyer has possessory rights.

10. **“Conspicuous”**. Derived from former section 1-201(10). This definition states the general standard that to be conspicu-

ous a term ought to be noticed by a reasonable person. Whether a term is conspicuous is an issue for the court. Subparagraphs (A) and (B) set out several methods for making a term conspicuous. Requiring that a term be conspicuous blends a notice function (the term ought to be noticed) and a planning function (giving guidance to the party relying on the term regarding how that result can be achieved). Although these paragraphs indicate some of the methods for making a term attention-calling, the test is whether attention can reasonably be expected to be called to it. The statutory language should not be construed to permit a result that is inconsistent with that test.

11. **“Consumer”**. Derived from section 9-102(a)(25).

12. **“Contract”**. Except for minor stylistic changes, identical to former section 1-201.

13. **“Creditor”**. Unchanged from former section 1-201.

14. **“Defendant”**. Except for minor stylistic changes, identical to former section 1-201, which was derived from section 76, Uniform Sales Act.

15. **“Delivery”**. Derived from former section 1-201. The reference to certificated securities has been deleted in light of the more specific treatment of the matter in section 8-301.

16. **“Document of title”**. Unchanged from former section 1-201, which was derived from section 76, Uniform Sales Act. By making it explicit that the obligation or designation of a third party as “bailee” is essential to a document of title, this definition clearly rejects any such result as obtained in *Hixson v. Ward*, 254 Ill.App. 505 (1929), which treated a conditional sales contract as a document of title. Also the definition is left open so that new types of documents may be included. It is unforeseeable what documents may one day serve the essential purpose now filled by warehouse receipts and bills of lading. Truck transport has already opened up problems which do not fit the patterns of practice resting upon the assumption that a draft can move through banking channels faster than the goods themselves can reach their destination. There lie ahead air transport and such probabilities as teletype transmission of what may some day be regarded commercially as “Documents of Title”. The definition is stated in terms of the function of the documents with the intention that any document which gains commercial recognition as accomplishing the desired result shall be included within its scope. Fungible goods are adequately identified within the language of the definition by identification of the mass of which they are a part.

Dock warrants were within the Sales Act definition of document of title apparently for the purpose of recognizing a valid tender by means of such paper. In current commercial practice a dock warrant or receipt is a kind of interim certificate issued by steamship companies upon delivery of the goods at the dock, entitling a designated person to have issued to him or her at the company’s office a bill of lading. The receipt itself is invariably nonnegotiable in form although it may indicate that a negotiable bill is to be forthcoming. Such a document is not within the general compass of the definition, although trade usage may in some cases entitle such paper to be treated as a document of title. If the dock receipt actually represents a storage obligation undertaken by the shipping company, then it is a warehouse receipt within this section regardless of the name given to the instrument.

The goods must be “described”, but the description may be by marks or labels and may be qualified in such a way as to disclaim personal knowledge of the issuer regarding contents or condition. However, baggage and parcel checks and similar “tokens” of storage which identify stored goods only as those received in exchange for the token are not covered by this article.

The definition is broad enough to include an airway bill.

17. **“Fault”**. Derived from former section 1-201. “Default” has been added to the list of events constituting fault.

18. **“Fungible goods”**. Derived from former section 1-201. References to securities have been deleted because article 8 no longer uses the term “fungible” to describe securities. Accordingly, this provision now defines the concept only in the context of goods.

19. **"Genuine"**. Unchanged from former section 1-201.
20. **"Good faith"**. Former section 1-201(19) defined 'good faith' simply as honesty in fact; the definition contained no element of commercial reasonableness. Initially, that definition applied throughout the code with only one exception. Former section 2-103(1)(b) provided that, in that article, "'good faith' in the case of a merchant means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade". This alternative definition was limited in applicability, though, because it applied only to transactions within the scope of article 2 and it applied only to merchants.
- Over time, however, amendments to the Uniform Commercial Code brought the article 2 merchant concept of good faith (subjective honesty and objective commercial reasonableness) into other articles. First, article 2A explicitly incorporated the article 2 standard. See section 2A-103(7). Then, other articles broadened the applicability of that standard by adopting it for all parties rather than just for merchants. See, e.g., sections 3-103(a)(4), 4A-105(a)(6), 7-102(a)(6), 8-102(a)(10), and 9-102(a)(43). Finally, articles 2 and 2A were amended so as to apply the standard to nonmerchants as well as merchants. See sections 2-103(1)(j) and 2A-103(1)(m). All of these definitions are comprised of two elements—honesty in fact and the observance of reasonable commercial standards of fair dealing. Only revised article 5 defines "good faith" solely in terms of subjective honesty, and only article 6 (in the few states that have not chosen to delete the article) is without a definition of good faith. (It should be noted that, while revised article 6 did not define good faith, comment 2 to revised section 6-102 states that "this article adopts the definition of 'good faith' in article 1 in all cases, even when the buyer is a merchant".)
- Thus, the definition of "good faith" in this section merely confirms what has been the case for a number of years as articles of the Uniform Commercial Code have been amended or revised—the obligation of "good faith", applicable in each article, is to be interpreted in the context of all articles except for article 5 as including both the subjective element of honesty in fact and the objective element of the observance of reasonable commercial standards of fair dealing. As a result, both the subjective and objective elements are part of the standard of "good faith", whether that obligation is specifically referenced in another article of the code (other than article 5) or is provided by this article.
- Of course, as noted in the statutory text, the definition of "good faith" in this section does not apply when the narrower definition of "good faith" in revised article 5 is applicable.
- As noted above, the definition of "good faith" in this section requires not only honesty in fact but also "observance of reasonable commercial standards of fair dealing". Although "fair dealing" is a broad term that must be defined in context, it is clear that it is concerned with the fairness of conduct rather than the care with which an act is performed. This is an entirely different concept than whether a party exercised ordinary care in conducting a transaction. Both concepts are to be determined in the light of reasonable commercial standards, but those standards in each case are directed to different aspects of commercial conduct. See e.g., sections 3-103(a)(9) and 4-104(c) and comment 4 to section 3-103.
21. **"Holder"**. Derived from former section 1-201. The definition has been reorganized for clarity.
22. **"Insolvency proceedings"**. Unchanged from former section 1-201.
23. **"Insolvent"**. Derived from former section 1-201. The three tests of insolvency—"generally ceased to pay debts in the ordinary course of business other than as a result of a bona fide dispute as to them", "unable to pay debts as they become due", and "insolvent within the meaning of the federal bankruptcy law"—are expressly set up as alternative tests and must be approached from a commercial standpoint.
24. **"Money"**. Substantively identical to former section 1-201. The test is that of sanction of government, whether by authorization before issue or adoption afterward, which recognizes the circulating medium as a part of the official currency of that government. The narrow view that money is limited to legal tender is rejected.
25. **"Organization"**. The former definition of this word has been replaced with the standard definition used in acts prepared by the National Conference of Commissioners on Uniform State Laws.
26. **"Party"**. Substantively identical to former section 1-201. Mention of a party includes, of course, a person acting through an agent. However, where an agent comes into opposition or contrast to the principal, particular account is taken of that situation.
27. **"Person"**. The former definition of this word has been replaced with the standard definition used in acts prepared by the National Conference of Commissioners on Uniform State Laws.
28. **"Present value"**. This definition was formerly contained within the definition of "security interest" in former section 1-201(37).
29. **"Purchase"**. Derived from former section 1-201. The form of definition has been changed from "includes" to "means".
30. **"Purchaser"**. Unchanged from former section 1-201.
31. **"Record"**. Derived from section 9-102(a)(69).
32. **"Remedy"**. Unchanged from former section 1-201. The purpose is to make it clear that both remedy and right (as defined) include those remedial rights of "self help" which are among the most important bodies of rights under the Uniform Commercial Code, remedial rights being those to which an aggrieved party may resort on its own.
33. **"Representative"**. Derived from former section 1-201. Reorganized, and form changed from "includes" to "means".
34. **"Right"**. Except for minor stylistic changes, identical to former section 1-201.
35. **"Security interest"**. The definition is the first paragraph of the definition of "security interest" in former section 1-201, with minor stylistic changes. The remaining portion of that definition has been moved to section 1-203. Note that, because of the scope of article 9, the term includes the interest of certain outright buyers of certain kinds of property.
36. **"Send"**. Derived from former section 1-201. Compare "notifies".
37. **"Signed"**. Derived from former section 1-201. Former section 1-201 referred to "intention to authenticate"; because other articles now use the term "authenticate", the language has been changed to "intention to adopt or accept". The latter formulation is derived from the definition of "authenticate" in section 9-102(a)(7). This provision refers only to writings, because the term "signed", as used in some articles, refers only to writings. This provision also makes it clear that, as the term "signed" is used in the Uniform Commercial Code, a complete signature is not necessary. The symbol may be printed, stamped, or written; it may be by initials or by thumbprint. It may be on any part of the document and in appropriate cases may be found in a billhead or letterhead. No catalog of possible situations can be complete and the court must use common sense and commercial experience in passing upon these matters. The question always is whether the symbol was executed or adopted by the party with present intention to adopt or accept the writing.
38. **"State"**. This is the standard definition of the term used in acts prepared by the National Conference of Commissioners on Uniform State Laws.
39. **"Surety"**. This definition makes it clear that "surety" includes all secondary obligors, not just those whose obligation refers to the person obligated as a surety. As to the nature of secondary obligations generally, see Restatement (Third), Suretyship and Guaranty, section 1 (1996).
40. **"Term"**. Unchanged from former section 1-201.
41. **"Unauthorized signature"**. Unchanged from former section 1-201.

42. “Warehouse receipt”. Unchanged from former section 1-201, which was derived from section 76(1), Uniform Sales Act; section 1, Uniform Warehouse Receipts Act. Receipts issued by a field warehouse are included, provided the warehouseman and the depositor of the goods are different persons.

43. “Written” or “writing”. Unchanged from former section 1-201.

1-202 Notice; knowledge.

(a) Subject to subsection (f), a person has “notice” 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 that it exists.

(b) “Knowledge” means actual knowledge. “Knows” has a corresponding meaning.

(c) “Discover”, “learn”, or words of similar import refer to knowledge rather than to reason to know.

(d) A person “notifies” or “gives” a notice or notification to another person by taking such steps as may be reasonably required to inform the other person in ordinary course, whether or not the other person actually comes to know of it.

(e) Subject to subsection (f), a person “receives” a notice or notification when:

- (1) it comes to that person’s attention; or
- (2) it is duly delivered in a form reasonable under the circumstances at the place of business through which the contract was made or at another location held out by that person as the place for receipt of such communications.

(f) Notice, knowledge, or a notice or notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction and, in any event, from the time it would have been brought to the individual’s attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless the communication is part of the individual’s regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

Source: Laws 2005, LB 570, § 15.

COMMENT

Source: Derived from former section 1-201(25)-(27).

Changes from former law: These provisions are substantive rather than purely definitional. Accordingly, they have been relocated from section 1-201 to this section. The reference to the “forgotten notice” doctrine has been deleted.

1. Under subsection (a), a person has notice of a fact when, inter alia, the person has received a notification of the fact in question.

2. As provided in subsection (d), the word “notifies” is used when the essential fact is the proper dispatch of the notice, not

its receipt. Compare “Send”. When the essential fact is the other party’s receipt of the notice, that is stated. Subsection (e) states when a notification is received.

3. Subsection (f) makes clear that notice, knowledge, or a notification, although “received”, for instance, by a clerk in Department A of an organization, is effective for a transaction conducted in Department B only from the time when it was or should have been communicated to the individual conducting that transaction.

1-203 Lease distinguished from security interest.

(a) Whether a transaction in the form of a lease creates a lease or security interest is determined by the facts of each case.

(b) A transaction in the form of a lease creates a security interest if the consideration that the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease and is not subject to termination by the lessee, and:

(1) the original term of the lease is equal to or greater than the remaining economic life of the goods;

(2) the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;

(3) the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement; or

(4) the lessee has an option to become the owner of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement.

(c) A transaction in the form of a lease does not create a security interest merely because:

(1) the present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into;

(2) the lessee assumes risk of loss of the goods;

(3) the lessee agrees to pay, with respect to the goods, taxes, insurance, filing, recording, or registration fees, or service or maintenance costs;

(4) the lessee has an option to renew the lease or to become the owner of the goods;

(5) the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed; or

(6) the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

(d) Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised. Additional consideration is not nominal if:

(1) when the option to renew the lease is granted to the lessee, the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed; or

(2) when the option to become the owner of the goods is granted to the lessee, the price is stated to be the fair market value of the goods determined at the time the option is to be performed.

(e) The "remaining economic life of the goods" and "reasonably predictable" fair market rent, fair market value, or cost of performing under the lease agreement must be determined with reference to the facts and circumstances at the time the transaction is entered into.

Source: Laws 2005, LB 570, § 16.

COMMENT

Source: Former section 1-201(37).

Changes from former law: This section is substantively identical to those portions of former section 1-201(37) that distinguished “true” leases from security interests, except that the definition of “present value” formerly embedded in section 1-201(37) has been placed in section 1-201(28).

1. An interest in personal property or fixtures which secures payment or performance of an obligation is a “security interest”. See section 1-201(37). Security interests are sometimes created by transactions in the form of leases. Because it can be difficult to distinguish leases that create security interests from those that do not, this section provides rules that govern the determination of whether a transaction in the form of a lease creates a security interest.

2. One of the reasons it was decided to codify the law with respect to leases was to resolve an issue that created considerable confusion in the courts: What is a lease? The confusion existed, in part, due to the last two sentences of the definition of security interest in the 1978 official text of the act, section 1-201(37). The confusion was compounded by the rather considerable change in the federal, state, and local tax laws and accounting rules as they relate to leases of goods. The answer is important because the definition of lease determines not only the rights and remedies of the parties to the lease but also those of third parties. If a transaction creates a lease and not a security interest, the lessee’s interest in the goods is limited to its leasehold estate; the residual interest in the goods belongs to the lessor. This has significant implications to the lessee’s creditors. “On common-law theory, the lessor, since he or she has not parted with title, is entitled to full protection against the lessee’s creditors and trustee in bankruptcy” 1 G. Gilmore, *Security Interests in Personal Property*, section 3.6, at 76 (1965).

Under pre-Uniform Commercial Code chattel security law there was generally no requirement that the lessor file the lease, a financing statement, or the like, to enforce the lease agreement against the lessee or any third party; the Article on Secured Transactions (Article 9) did not change the common law in that respect. Coogan, *Leasing and the Uniform Commercial Code*, in *Equipment Leasing—Leveraged Leasing* 681, 700 n.25, 729 n.80 (2d ed.1980). The Article on Leases (Article 2A) did not change the law in that respect, except for leases of fixtures. Section 2A-309. An examination of the common law will not provide an adequate answer to the question of what is a lease. The definition of security interest in section 1-201(37) of the 1978 official text of the act provided that the Article on Secured Transactions (Article 9) governs security interests disguised as leases, i.e., leases intended as security; however, the definition became vague and outmoded.

Lease is defined in article 2A as a transfer of the right to possession and use of goods for a term, in return for consideration. Section 2A-103(1)(j). The definition continues by stating that the retention or creation of a security interest is not a lease. Thus, the task of sharpening the line between true leases and security interests disguised as leases continues to be a function of this article.

This section begins where section 1-201(35) leaves off. It draws a sharper line between leases and security interests disguised as leases to create greater certainty in commercial transactions.

Prior to enactment of the rules now codified in this section, the 1978 official text of section 1-201(37) provided that whether a lease was intended as security (i.e., a security interest disguised as a lease) was to be determined from the facts of each case; however, (a) the inclusion of an option to purchase did not itself make the lease one intended for security, and (b) an agreement that upon compliance with the terms of the lease the lessee would become, or had the option to become, the owner of the property for no additional consideration, or for a nominal consideration, did make the lease one intended for security.

Reference to the intent of the parties to create a lease or security interest led to unfortunate results. In discovering intent,

courts relied upon factors that were thought to be more consistent with sales or loans than leases. Most of these criteria, however, were as applicable to true leases as to security interests. Examples include the typical net lease provisions, a purported lessor’s lack of storage facilities or its character as a financing party rather than a dealer in goods. Accordingly, this section contains no reference to the parties’ intent.

Subsections (a) and (b) were originally taken from section 1(2) of the Uniform Conditional Sales Act (act withdrawn 1943), modified to reflect current leasing practice. Thus, reference to the case law prior to the incorporation of those concepts in this article will provide a useful source of precedent. Gilmore, *Security Law, Formalism and Article 9*, 47 *Neb.L.Rev.* 659, 671 (1968). Whether a transaction creates a lease or a security interest continues to be determined by the facts of each case. Subsection (b) further provides that a transaction creates a security interest if the lessee has an obligation to continue paying consideration for the term of the lease, if the obligation is not terminable by the lessee (thus correcting early statutory gloss, e.g., *In re Royer’s Bakery, Inc.*, 1 *U.C.C. Rep.Serv. (Callaghan)* 342 (Bankr.E.D.Pa.1963)) and if one of four additional tests is met. The first of these four tests, subparagraph (1), is that the original lease term is equal to or greater than the remaining economic life of the goods. The second of these tests, subparagraph (2), is that the lessee is either bound to renew the lease for the remaining economic life of the goods or to become the owner of the goods. *In re Gehrke Enters.*, 1 *Bankr.* 647, 651-52 (Bankr.W.D.Wis.1979). The third of these tests, subparagraph (3), is whether the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or for nominal additional consideration, which is defined later in this section. *In re Celeryvale Transp.*, 44 *Bankr.* 1007, 1014-15 (Bankr.E.D.Tenn.1984). The fourth of these tests, subparagraph (4), is whether the lessee has an option to become the owner of the goods for no additional consideration or for nominal additional consideration. All of these tests focus on economics, not the intent of the parties. *In re Berge*, 32 *Bankr.* 370, 371-73 (Bankr.W.D.Wis.1983).

The focus on economics is reinforced by subsection (c). It states that a transaction does not create a security interest merely because the transaction has certain characteristics listed therein. Subparagraph (1) has no statutory derivative; it states that a full payout lease does not per se create a security interest. *Rushton v. Shea*, 419 *F.Supp.* 1349, 1365 (D.Del.1976). Subparagraphs (2) and (3) provides the same regarding the provisions of the typical net lease. Compare *All-States Leasing Co. v. Ochs*, 42 *Or.App.* 319, 600 *P.2d* 899 (Ct.App.1979), with *In re Tillery*, 571 *F.2d* 1361 (5th Cir.1978). Subparagraph (4) restates and expands the provisions of the 1978 official text of section 1-201(37) to make clear that the option can be to buy or renew. Subparagraphs (5) and (6) treat fixed price options and provide that fair market value must be determined at the time the transaction is entered into. Compare *Arnold Mach. Co. v. Balls*, 624 *P.2d* 678 (Utah 1981), with *Aoki v. Shepherd Mach. Co.*, 665 *F.2d* 941 (9th Cir.1982).

The relationship of subsection (b) to subsection (c) deserves to be explored. The fixed price purchase option provides a useful example. A fixed price purchase option in a lease does not of itself create a security interest. This is particularly true if the fixed price is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed. A security interest is created only if the option price is nominal and the conditions stated in the introduction to the second paragraph of this subsection are met. There is a set of purchase options whose fixed price is less than fair market value but greater than nominal that must be determined on the facts of each case to ascertain whether the transaction in which the option is included creates a lease or a security interest.

It was possible to provide for various other permutations and combinations with respect to options to purchase and renew. For example, this section could have stated a rule to govern the facts of *In re Marhoefer Packing Co.*, 674 *F.2d* 1139 (7th Cir.1982). This was not done because it would unnecessarily

complicate the definition. Further development of this rule is left to the courts.

Subsections (d) and (e) provide definitions and rules of construction.

1-204 Value.

Except as otherwise provided in articles 3, 4, and 5, a person gives value for rights if the person acquires them:

- (1) in return for a binding commitment to extend credit or for the extension of immediately available credit, whether or not drawn upon and whether or not a charge back is provided for in the event of difficulties in collection;
- (2) as security for, or in total or partial satisfaction of, a preexisting claim;
- (3) by accepting delivery under a preexisting contract for purchase; or
- (4) in return for any consideration sufficient to support a simple contract.

Source: Laws 2005, LB 570, § 17.

COMMENT

Source: Former section 1-201(44).

Changes from former law: Unchanged from former section 1-201, which was derived from sections 25, 26, 27, and 191, Uniform Negotiable Instruments Law; section 76, Uniform Sales Act; section 53, Uniform Bills of Lading Act; section 58, Uniform Warehouse Receipts Act; section 22(1), Uniform Stock Transfer Act; and section 1, Uniform Trust Receipts Act. These provisions are substantive rather than purely definitional. Accordingly, they have been relocated from former section 1-201 to this section.

1. All the uniform acts in the commercial law field (except the Uniform Conditional Sales Act) have carried definitions of “value”. All those definitions provided that value was any consideration sufficient to support a simple contract, including the taking of property in satisfaction of or as security for a preexisting claim. Subsections (1), (2), and (4) in substance continue the definitions of “value” in the earlier acts. Subsection (3) makes

explicit that “value” is also given in a third situation: Where a buyer by taking delivery under a preexisting contract converts a contingent into a fixed obligation.

This definition is not applicable to articles 3 and 4, but the express inclusion of immediately available credit as value follows the separate definitions in those articles. See sections 3-303, 4-208, and 4-209. A bank or other financing agency which in good faith makes advances against property held as collateral becomes a bona fide purchaser of that property even though provision may be made for charge back in case of trouble. Checking credit is “immediately available” within the meaning of this section if the bank would be subject to an action for slander of credit in case checks drawn against the credit were dishonored, and when a chargeback is not discretionary with the bank, but may only be made when difficulties in collection arise in connection with the specific transaction involved.

1-205 Reasonable time; seasonableness.

(a) Whether a time for taking an action required by the Uniform Commercial Code is reasonable depends on the nature, purpose, and circumstances of the action.

(b) An action is taken seasonably if it is taken at or within the time agreed or, if no time is agreed, at or within a reasonable time.

Source: Laws 2005, LB 570, § 18.

COMMENT

Source: Former section 1-204(2)-(3).

Changes from former law: This section is derived from subsections (2) and (3) of former section 1-204. Subsection (1) of that section is now incorporated in section 1-302(b).

1. Subsection (a) makes it clear that requirements that actions be taken within a “reasonable” time are to be applied in the transactional context of the particular action.

2. Under subsection (b), the agreement that fixes the time need not be part of the main agreement, but may occur separately. Notice also that under the definition of “agreement” (section 1-201) the circumstances of the transaction, including course of dealing or usages of trade or course of performance may be material. On the question what is a reasonable time these matters will often be important.

1-206 Presumptions.

Whenever the Uniform Commercial Code creates a “presumption” with respect to a fact, or provides that a fact is “presumed”, the trier of fact must find the existence of the fact unless and until evidence is introduced that supports a finding of its nonexistence.

Source: Laws 2005, LB 570, § 19.

COMMENT

Source: Former section 1-201(31).

Changes from former law: None, other than stylistic changes.

1. Several sections of the Uniform Commercial Code state that there is a “presumption” as to a certain fact, or that the fact is

“presumed”. This section, derived from the definition appearing in former section 1-201(31), indicates the effect of those provisions on the proof process.

Part 3

TERRITORIAL APPLICABILITY AND GENERAL RULES

1-301 Territorial applicability; parties’ power to choose applicable law.

(a) Except as otherwise provided in this section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties.

(b) In the absence of an agreement effective under subsection (a), and except as provided in subsection (c), the Uniform Commercial Code applies to transactions bearing an appropriate relation to this state.

(c) If one of the following provisions of the Uniform Commercial Code specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law so specified:

- (1) Section 2-402;
- (2) Sections 2A-105 and 2A-106;
- (3) Section 4-102;
- (4) Section 4A-507;
- (5) Section 5-116;
- (6) Section 8-110;
- (7) Sections 9-301 through 9-307.

Source: Laws 2005, LB 570, § 20.

COMMENT

Source: Former section 1-105.

Changes from former law: This section is substantively identical to former section 1-105. Changes in language are stylistic only.

This section is subject to section 1-102, which states the scope of article 1. As that section indicates, the rules of article 1, including this section, apply to a transaction to the extent that transaction is governed by one of the other articles of the Uniform Commercial Code.

1-302 Variation by agreement.

(a) Except as otherwise provided in subsection (b) or elsewhere in the Uniform Commercial Code, the effect of provisions of the code may be varied by agreement.

(b) The obligations of good faith, diligence, reasonableness, and care prescribed by the code may not be disclaimed by agreement. The parties, by agreement, may determine the standards by which the performance of those obligations is to be measured if those standards are not manifestly unreasonable. Whenever the code requires an action to be taken within a reasonable time, a time that is not manifestly unreasonable may be fixed by agreement.

(c) The presence in certain provisions of the code of the phrase “unless otherwise agreed”, or words of similar import, does not imply that the effect of other provisions may not be varied by agreement under this section.

Source: Laws 2005, LB 570, § 21.

COMMENT

Source: Former sections 1-102(3)-(4) and 1-204(1).

Changes: This section combines the rules from subsections (3) and (4) of former section 1-102 and subsection (1) of former section 1-204. No substantive changes are made.

1. Subsection (a) states affirmatively at the outset that freedom of contract is a principle of the Uniform Commercial Code: "The effect" of its provisions may be varied by "agreement". The meaning of the statute itself must be found in its text, including its definitions, and in appropriate extrinsic aids; it cannot be varied by agreement. But the Uniform Commercial Code seeks to avoid the type of interference with evolutionary growth found in precode cases such as *Manhattan Co. v. Morgan*, 242 N.Y. 38, 150 N.E. 594 (1926). Thus, private parties cannot make an instrument negotiable within the meaning of article 3 except as provided in section 3-104; nor can they change the meaning of such terms as "bona fide purchaser", "holder in due course", or "due negotiation", as used in the Uniform Commercial Code. But an agreement can change the legal consequences that would otherwise flow from the provisions of the Uniform Commercial Code. "Agreement" here includes the effect given to course of dealing, usage of trade, and course of performance by sections 1-201 and 1-303; the effect of an agreement on the rights of third parties is left to specific provisions of the Uniform Commercial Code and to supplementary principles applicable under section 1-103. The rights of third parties under section 9-317 when a security interest is unperfected, for example, cannot be destroyed by a clause in the security agreement.

This principle of freedom of contract is subject to specific exceptions found elsewhere in the Uniform Commercial Code and to the general exception stated here. The specific exceptions vary in explicitness: The statute of frauds found in section 2-201, for example, does not explicitly preclude oral waiver of the requirement of a writing, but a fair reading denies enforcement to such a waiver as part of the "contract" made unenforceable; section 9-602, on the other hand, is a quite explicit limitation on freedom of contract. Under the exception for "the obligations of good faith, diligence, reasonableness, and care prescribed by the

Uniform Commercial Code", provisions of the Uniform Commercial Code prescribing such obligations are not to be disclaimed. However, the section also recognizes the prevailing practice of having agreements set forth standards by which due diligence is measured and explicitly provides that, in the absence of a showing that the standards manifestly are unreasonable, the agreement controls. In this connection, section 1-303 incorporating into the agreement prior course of dealing and usages of trade is of particular importance.

Subsection (b) also recognizes that nothing is stronger evidence of a reasonable time than the fixing of such time by a fair agreement between the parties. However, provision is made for disregarding a clause which whether by inadvertence or overreaching fixes a time so unreasonable that it amounts to eliminating all remedy under the contract. The parties are not required to fix the most reasonable time but may fix any time which is not obviously unfair as judged by the time of contracting.

2. An agreement that varies the effect of provisions of the Uniform Commercial Code may do so by stating the rules that will govern in lieu of the provisions varied. Alternatively, the parties may vary the effect of such provisions by stating that their relationship will be governed by recognized bodies of rules or principles applicable to commercial transactions. Such bodies of rules or principles may include, for example, those that are promulgated by intergovernmental authorities such as UN-CITRAL or UNIDROIT (see, e.g., UNIDROIT Principles of International Commercial Contracts), or nonlegal codes such as trade codes.

3. Subsection (c) is intended to make it clear that, as a matter of drafting, phrases such as "unless otherwise agreed" have been used to avoid controversy as to whether the subject matter of a particular section does or does not fall within the exceptions to subsection (b), but absence of such words contains no negative implication since under subsection (b) the general and residual rule is that the effect of all provisions of the Uniform Commercial Code may be varied by agreement.

1-303 Course of performance, course of dealing, and usage of trade.

(a) A "course of performance" is a sequence of conduct between the parties to a particular transaction that exists if:

- (1) the agreement of the parties with respect to the transaction involves repeated occasions for performance by a party; and
- (2) the other party, with knowledge of the nature of the performance and opportunity for objection to it, accepts the performance or acquiesces in it without objection.

(b) A "course of dealing" is a sequence of conduct concerning previous transactions between the parties to a particular transaction that is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

(c) A "usage of trade" is any practice or method of dealing having such regularity of observance in a place, vocation, or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage must be proved as facts. If it is established that such a usage is embodied in a trade code or similar record, the interpretation of the record is a question of law.

(d) A course of performance or course of dealing between the parties or usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware is relevant in ascertaining the meaning of the parties' agreement, may give particular meaning to specific terms of the agreement,

and may supplement or qualify the terms of the agreement. A usage of trade applicable in the place in which part of the performance under the agreement is to occur may be so utilized as to that part of the performance.

(e) Except as otherwise provided in subsection (f), the express terms of an agreement and any applicable course of performance, course of dealing, or usage of trade must be construed whenever reasonable as consistent with each other. If such a construction is unreasonable:

(1) express terms prevail over course of performance, course of dealing, and usage of trade;

(2) course of performance prevails over course of dealing and usage of trade; and

(3) course of dealing prevails over usage of trade.

(f) Subject to section 2-209, a course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance.

(g) Evidence of a relevant usage of trade offered by one party is not admissible unless that party has given the other party notice that the court finds sufficient to prevent unfair surprise to the other party.

Source: Laws 2005, LB 570, § 22.

COMMENT

Source: Former sections 1-205, 2-208, and 2A-207.

Changes from former law: This section integrates the “course of performance” concept from articles 2 and 2A into the principles of former section 1-205, which deals with course of dealing and usage of trade. In so doing, the section slightly modifies the articulation of the course of performance rules to fit more comfortably with the approach and structure of former section 1-205. There are also slight modifications to be more consistent with the definition of “agreement” in former section 1-201(3). It should be noted that a course of performance that might otherwise establish a defense to the obligation of a party to a negotiable instrument is not available as a defense against a holder in due course who took the instrument without notice of that course of performance.

1. The Uniform Commercial Code rejects both the “lay-dictionary” and the “conveyancer’s” reading of a commercial agreement. Instead the meaning of the agreement of the parties is to be determined by the language used by them and by their action, read and interpreted in the light of commercial practices and other surrounding circumstances. The measure and background for interpretation are set by the commercial context, which may explain and supplement even the language of a formal or final writing.

2. “Course of dealing”, as defined in subsection (b), is restricted, literally, to a sequence of conduct between the parties previous to the agreement. A sequence of conduct after or under the agreement, however, is a “course of performance”. “Course of dealing” may enter the agreement either by explicit provisions of the agreement or by tacit recognition.

3. The Uniform Commercial Code deals with “usage of trade” as a factor in reaching the commercial meaning of the agreement that the parties have made. The language used is to be interpreted as meaning what it may fairly be expected to mean to parties involved in the particular commercial transaction in a given locality or in a given vocation or trade. By adopting in this context the term “usage of trade”, the Uniform Commercial Code expresses its intent to reject those cases which see evidence of “custom” as representing an effort to displace or negate “established rules of law”. A distinction is to be drawn between mandatory rules of law such as the Statute of Frauds provisions of Article 2 on Sales whose very office is to control and restrict the actions of the parties, and which cannot be

abrogated by agreement, or by a usage of trade, and those rules of law (such as those in part 3 of Article 2 on Sales) which fill in points which the parties have not considered and in fact agreed upon. The latter rules hold “unless otherwise agreed” but yield to the contrary agreement of the parties. Part of the agreement of the parties to which such rules yield is to be sought for in the usages of trade which furnish the background and give particular meaning to the language used, and are the framework of common understanding controlling any general rules of law which hold only when there is no such understanding.

4. A usage of trade under subsection (c) must have the “regularity of observance” specified. The ancient English tests for “custom” are abandoned in this connection. Therefore, it is not required that a usage of trade be “ancient or immemorial”, “universal”, or the like. Under the requirement of subsection (c) full recognition is thus available for new usages and for usages currently observed by the great majority of decent dealers, even though dissidents ready to cut corners do not agree. There is room also for proper recognition of usage agreed upon by merchants in trade codes.

5. The policies of the Uniform Commercial Code controlling explicit unconscionable contracts and clauses (sections 1-304 and 2-302) apply to implicit clauses that rest on usage of trade and carry forward the policy underlying the ancient requirement that a custom or usage must be “reasonable”. However, the emphasis is shifted. The very fact of commercial acceptance makes out a prima facie case that the usage is reasonable, and the burden is no longer on the usage to establish itself as being reasonable. But the anciently established policing of usage by the courts is continued to the extent necessary to cope with the situation arising if an unconscionable or dishonest practice should become standard.

6. Subsection (d), giving the prescribed effect to usages of which the parties “are or should be aware”, reinforces the provision of subsection (c) requiring not universality but only the described “regularity of observance” of the practice or method. This subsection also reinforces the point of subsection (c) that such usages may be either general to trade or particular to a special branch of trade.

7. Although the definition of “agreement” in section 1-201 includes the elements of course of performance, course of dealing, and usage of trade, the fact that express reference is made

in some sections to those elements is not to be construed as carrying a contrary intent or implication elsewhere. Compare section 1-302(c).

8. In cases of a well established line of usage varying from the general rules of the Uniform Commercial Code where the precise amount of the variation has not been worked out into a single standard, the party relying on the usage is entitled, in any event, to the minimum variation demonstrated. The whole is not

to be disregarded because no particular line of detail has been established. In case a dominant pattern has been fairly evidenced, the party relying on the usage is entitled under this section to go to the trier of fact on the question of whether such dominant pattern has been incorporated into the agreement.

9. Subsection (g) is intended to insure that this code's liberal recognition of the needs of commerce in regard to usage of trade shall not be made into an instrument of abuse.

1-304 Obligation of good faith.

Every contract or duty within the Uniform Commercial Code imposes an obligation of good faith in its performance and enforcement.

Source: Laws 2005, LB 570, § 23.

COMMENT

Source: Former section 1-203.

Changes from former law: Except for changing the form of reference to the Uniform Commercial Code, this section is identical to former section 1-203.

1. This section sets forth a basic principle running throughout the Uniform Commercial Code. The principle is that in commercial transactions good faith is required in the performance and enforcement of all agreements or duties. While this duty is explicitly stated in some provisions of the Uniform Commercial Code, the applicability of the duty is broader than merely these situations and applies generally, as stated in this section, to the performance or enforcement of every contract or duty within this code. It is further implemented by section 1-303 on course of dealing, course of performance, and usage of trade. This

section does not support an independent cause of action for failure to perform or enforce in good faith. Rather, this section means that a failure to perform or enforce, in good faith, a specific duty or obligation under the contract, constitutes a breach of that contract or makes unavailable, under the particular circumstances, a remedial right or power. This distinction makes it clear that the doctrine of good faith merely directs a court towards interpreting contracts within the commercial context in which they are created, performed, and enforced, and does not create a separate duty of fairness and reasonableness which can be independently breached.

2. "Performance and enforcement" of contracts and duties within the Uniform Commercial Code include the exercise of rights created by the Uniform Commercial Code.

1-305 Remedies to be liberally administered.

(a) The remedies provided by the Uniform Commercial Code must be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed but neither consequential or special damages nor penal damages may be had except as specifically provided in the code or by other rule of law.

(b) Any right or obligation declared by the code is enforceable by action unless the provision declaring it specifies a different and limited effect.

Source: Laws 2005, LB 570, § 24.

COMMENT

Source: Former section 1-106.

Changes from former law: Other than changes in the form of reference to the Uniform Commercial Code, this section is identical to former section 1-106.

1. Subsection (a) is intended to effect three propositions. The first is to negate the possibility of unduly narrow or technical interpretation of remedial provisions by providing that the remedies in the Uniform Commercial Code are to be liberally administered to the end stated in this section. The second is to make it clear that compensatory damages are limited to compensation. They do not include consequential or special damages, or penal damages; and the Uniform Commercial Code elsewhere makes it clear that damages must be minimized. Cf. sections 1-304, 2-706(1), and 2-712(2). The third purpose of subsection (a) is to reject any doctrine that damages must be

calculable with mathematical accuracy. Compensatory damages are often at best approximate: They have to be proved with whatever definiteness and accuracy the facts permit, but no more. Cf. section 2-204(3).

2. Under subsection (b), any right or obligation described in the Uniform Commercial Code is enforceable by action, even though no remedy may be expressly provided, unless a particular provision specifies a different and limited effect. Whether specific performance or other equitable relief is available is determined not by this section but by specific provisions and by supplementary principles. Cf. sections 1-103 and 2-716.

3. "Consequential" or "special" damages and "penal" damages are not defined in the Uniform Commercial Code; rather, these terms are used in the sense in which they are used outside the Uniform Commercial Code.

1-306 Waiver or renunciation of claim or right after breach.

A claim or right arising out of an alleged breach may be discharged in whole or in part without consideration by agreement of the aggrieved party in an authenticated record.

Source: Laws 2005, LB 570, § 25.

COMMENT

Source: Former section 1-107.

Changes from former law: This section changes former law in two respects. First, former section 1-107, requiring the “delivery” of a “written waiver or renunciation” merges the separate concepts of the aggrieved party’s agreement to forego rights and the manifestation of that agreement. This section separates those concepts, and explicitly requires agreement of the aggrieved party. Second, the revised section reflects developments in electronic commerce by providing for memorialization in an authenticated record. In this context, a party may “authenticate” a record by (i) signing a record that is a writing or (ii)

attaching to or logically associating with a record that is not a writing an electronic sound, symbol, or process with the present intent to adopt or accept the record. See sections 1-201(b)(37) and 9-102(a)(7).

1. This section makes consideration unnecessary to the effective renunciation or waiver of rights or claims arising out of an alleged breach of a commercial contract where the agreement effecting such renunciation is memorialized in a record authenticated by the aggrieved party. Its provisions, however, must be read in conjunction with the section imposing an obligation of good faith (section 1-304).

1-307 Prima facie evidence by third-party documents.

A document in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher’s or inspector’s certificate, consular invoice, or any other document authorized or required by the contract to be issued by a third party is prima facie evidence of its own authenticity and genuineness and of the facts stated in the document by the third party.

Source: Laws 2005, LB 570, § 26.

COMMENT

Source: Former section 1-202.

Changes from former law: Except for minor stylistic changes, this section is identical to former section 1-202.

1. This section supplies judicial recognition for documents that are relied upon as trustworthy by commercial parties.

2. This section is concerned only with documents that have been given a preferred status by the parties themselves who have required their procurement in the agreement, and for this reason the applicability of the section is limited to actions arising out of the contract that authorized or required the

document. The list of documents is intended to be illustrative and not exclusive.

3. The provisions of this section go no further than establishing the documents in question as prima facie evidence and leave to the court the ultimate determination of the facts where the accuracy or authenticity of the documents is questioned. In this connection the section calls for a commercially reasonable interpretation.

4. Documents governed by this section need not be writings if records in another medium are generally relied upon in the context.

1-308 Performance or acceptance under reservation of rights.

(a) A party that with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as “without prejudice”, “under protest”, or the like are sufficient.

(b) Subsection (a) does not apply to an accord and satisfaction.

Source: Laws 2005, LB 570, § 27.

COMMENT

Source: Former section 1-207.

Changes from former law: This section is identical to former section 1-207.

1. This section provides machinery for the continuation of performance along the lines contemplated by the contract despite a pending dispute, by adopting the mercantile device of going ahead with delivery, acceptance, or payment “without prejudice”, “under protest”, “under reserve”, “with reservation of all our rights”, and the like. All of these phrases completely reserve all rights within the meaning of this section. The section therefor contemplates that limited as well as general reservations and acceptance by a party may be made “subject to satisfaction of our purchaser”, “subject to acceptance by our customers”, or the like.

2. This section does not add any new requirement of language of reservation where not already required by law, but merely provides a specific measure on which a party can rely as that party makes or concurs in any interim adjustment in the course of performance. It does not affect or impair the provisions of

this code such as those under which the buyer’s remedies for defect survive acceptance without being expressly claimed if notice of the defects is given within a reasonable time. Nor does it disturb the policy of those cases which restrict the effect of a waiver of a defect to reasonable limits under the circumstances, even though no such reservation is expressed.

The section is not addressed to the creation or loss of remedies in the ordinary course of performance but rather to a method of procedure where one party is claiming as of right something which the other believes to be unwarranted.

3. Subsection (b) states that this section does not apply to an accord and satisfaction. Section 3-311 governs if an accord and satisfaction is attempted by tender of a negotiable instrument as stated in that section. If section 3-311 does not apply, the issue of whether an accord and satisfaction has been effected is determined by the law of contract. Whether or not section 3-311 applies, this section has no application to an accord and satisfaction.

1-309 Option to accelerate at will.

A term providing that one party or that party's successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or when the party "deems itself insecure", or words of similar import, means that the party has power to do so only if that party in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against which the power has been exercised.

Source: Laws 2005, LB 570, § 28.

COMMENT

Source: Former section 1-208.

Changes from former law: Except for minor stylistic changes, this section is identical to former section 1-208.

1. The common use of acceleration clauses in many transactions governed by the Uniform Commercial Code, including sales of goods on credit, notes payable at a definite time, and secured transactions, raises an issue as to the effect to be given to a clause that seemingly grants the power to accelerate at the whim and caprice of one party. This section is intended to make clear that despite language that might be so construed and

which further might be held to make the agreement void as against public policy or to make the contract illusory or too indefinite for enforcement, the option is to be exercised only in the good faith belief that the prospect of payment or performance is impaired.

Obviously this section has no application to demand instruments or obligations whose very nature permits call at any time with or without reason. This section applies only to an obligation of payment or performance which in the first instance is due at a future date.

1-310 Subordinated obligations.

An obligation may be issued as subordinated to performance of another obligation of the person obligated, or a creditor may subordinate its right to performance of an obligation by agreement with either the person obligated or another creditor of the person obligated. Subordination does not create a security interest as against either the common debtor or a subordinated creditor.

Source: Laws 2005, LB 570, § 29.

COMMENT

Source: Former section 1-209.

Changes from former law: This section is substantively identical to former section 1-209. The language in that section stating that it "shall be construed as declaring the law as it existed prior to the enactment of this section and not as modifying it" has been deleted.

1. Billions of dollars of subordinated debt are held by the public and by institutional investors. Commonly, the subordinated debt is subordinated on issue or acquisition and is evidenced by an investment security or by a negotiable or nonnegotiable note. Debt is also sometimes subordinated after it arises, either by agreement between the subordinating creditor and the debtor, by agreement between two creditors of the same debtor, or by agreement of all three parties. The subordinated creditor may be a stockholder or other "insider" interested in the common debtor; the subordinated debt may consist of accounts or other rights to payment not evidenced by any instrument. All such cases are included in the terms "subordinated obligation", "subordination", and "subordinated creditor".

2. Subordination agreements are enforceable between the parties as contracts; and in the bankruptcy of the common debtor dividends otherwise payable to the subordinated creditor are turned over to the superior creditor. This "turn-over" prac-

tice has on occasion been explained in terms of "equitable lien", "equitable assignment", or "constructive trust", but whatever the label the practice is essentially an equitable remedy and does not mean that there is a transaction "that creates a security interest in personal property ... by contract" or a "sale of accounts, chattel paper, payment intangibles, or promissory notes" within the meaning of section 9-109. On the other hand, nothing in this section prevents one creditor from assigning his or her rights to another creditor of the same debtor in such a way as to create a security interest within article 9, where the parties so intend.

3. The enforcement of subordination agreements is largely left to supplementary principles under section 1-103. If the subordinated debt is evidenced by a certificated security, section 8-202(a) authorizes enforcement against purchasers on terms stated or referred to on the security certificate. If the fact of subordination is noted on a negotiable instrument, a holder under sections 3-302 and 3-306 is subject to the term because notice precludes him or her from taking free of the subordination. Sections 3-302(3)(a), 3-306, and 8-317 severely limit the rights of levying creditors of a subordinated creditor in such cases.

ARTICLE 2

SALES

Part 1

SHORT TITLE, GENERAL CONSTRUCTION, AND SUBJECT MATTER

Section

- 2-103. Definitions and index of definitions.
- 2-104. Definitions; merchant; between merchants; financing agency.

Part 2

FORM, FORMATION, AND READJUSTMENT OF CONTRACT

- 2-202. Final written expression; parol or extrinsic evidence.
- 2-208. Repealed. Laws 2005, LB 570, § 116.

Part 3

GENERAL OBLIGATION AND CONSTRUCTION OF CONTRACT

- 2-310. Open time for payment or running of credit; authority to ship under reservation.
- 2-323. Form of bill of lading required in overseas shipment; overseas.

Part 4

TITLE, CREDITORS, AND GOOD FAITH PURCHASERS

- 2-401. Passing of title; reservation for security; limited application of this section.

Part 5

PERFORMANCE

- 2-503. Manner of seller's tender of delivery.
- 2-505. Seller's shipment under reservation.
- 2-506. Rights of financing agency.
- 2-509. Risk of loss in the absence of breach.

Part 6

BREACH, REPUDIATION, AND EXCUSE

- 2-605. Waiver of buyer's objections by failure to particularize.

Part 7

REMEDIES

- 2-705. Seller's stoppage of delivery in transit or otherwise.

Part 1

SHORT TITLE, GENERAL CONSTRUCTION, AND SUBJECT MATTER

2-103 Definitions and index of definitions.

- (1) In this article unless the context otherwise requires
 - (a) "Buyer" means a person who buys or contracts to buy goods.
 - (b) "Good faith" in the case of a merchant means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.
 - (c) "Receipt" of goods means taking physical possession of them.
 - (d) "Seller" means a person who sells or contracts to sell goods.
- (2) Other definitions applying to this article or to specified parts thereof, and the sections in which they appear are:

"Acceptance".	Section 2-606.
"Banker's credit".	Section 2-325.
"Between merchants".	Section 2-104.
"Cancellation".	Section 2-106(4).
"Commercial unit".	Section 2-105.

“Confirmed credit”.	Section 2-325.
“Conforming to contract”.	Section 2-106.
“Contract for sale”.	Section 2-106.
“Cover”.	Section 2-712.
“Entrusting”.	Section 2-403.
“Financing agency”.	Section 2-104.
“Future goods”.	Section 2-105.
“Goods”.	Section 2-105.
“Identification”.	Section 2-501.
“Installment contract”.	Section 2-612.
“Letter of credit”.	Section 2-325.
“Lot”.	Section 2-105.
“Merchant”.	Section 2-104.
“Overseas”.	Section 2-323.
“Person in position of seller”.	Section 2-707.
“Present sale”.	Section 2-106.
“Sale”.	Section 2-106.
“Sale on approval”.	Section 2-326.
“Sale or return”.	Section 2-326.
“Termination”.	Section 2-106.

(3) “Control” as provided in section 7-106 and the following definitions in other articles apply to this article:

“Check”.	Section 3-104.
“Consignee”.	Section 7-102.
“Consignor”.	Section 7-102.
“Consumer goods”.	Section 9-102.
“Dishonor”.	Section 3-502.
“Draft”.	Section 3-104.

(4) In addition article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

Source: Laws 1963, c. 544, Art. II, § 2-103, p. 1706; Laws 1991, LB 161, § 3; Laws 1999, LB 550, § 54; Laws 2005, LB 570, § 30.

Purchase money priority is exception to basic rule of priority to first filed financing statement and should be applied only in strict compliance with all limitations in Uniform Commercial

Code. North Platte State Bank v. Production Credit Assn., 189 Neb. 45, 200 N.W.2d 1 (1972).

COMMENT

Prior Uniform Statutory Provision: Subsection (1): Section 76, Uniform Sales Act.

Changes: The definitions of “buyer” and “seller” have been slightly rephrased, the reference in section 76 of the prior act to “any legal successor in interest of such person” being omitted. The definition of “receipt” is new.

Purposes of Changes and New Matter:

1. The phrase “any legal successor in interest of such person” has been eliminated since section 2-210 of this article, which limits some types of delegation of performance on assignment of a sales contract, makes it clear that not every such successor can be safely included in the definition. In every ordinary case, however, such successors are as of course included.

2. “Receipt” must be distinguished from delivery particularly in regard to the problems arising out of shipment of goods,

whether or not the contract calls for making delivery by way of documents of title, since the seller may frequently fulfill his or her obligations to “deliver” even though the buyer may never “receive” the goods. Delivery with respect to documents of title is defined in article 1 and requires transfer of physical delivery of a tangible document of title and transfer of control of an electronic document of title. Otherwise the many divergent incidents of delivery are handled incident by incident.

Cross References:

Point 1: See section 2-210 and comment thereon.

Point 2: Section 1-201.

Definitional Cross References:

“Person”. Section 1-201.

2-104 Definitions; merchant; between merchants; financing agency.

(1) “Merchant” means a person who deals in goods of the kind or otherwise by his or her occupation holds himself or herself out as having knowledge or

skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his or her employment of an agent or broker or other intermediary who by his or her occupation holds himself or herself out as having such knowledge or skill.

(2) “Financing agency” means a bank, finance company, or other person who in the ordinary course of business makes advances against goods or documents of title or who by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the seller’s draft or making advances against it or by merely taking it for collection whether or not documents of title accompany or are associated with the draft. “Financing agency” includes also a bank or other person who similarly intervenes between persons who are in the position of seller and buyer in respect to the goods (section 2-707).

(3) “Between merchants” means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants.

Source: Laws 1963, c. 544, Art. II, § 2-104, p. 1708; Laws 2005, LB 570, § 31.

Part 2

FORM, FORMATION, AND READJUSTMENT OF CONTRACT

2-202 Final written expression; parol or extrinsic evidence.

Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented

(a) by course of performance, course of dealing, or usage of trade (section 1-303); and

(b) by evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

Source: Laws 1963, c. 544, Art. II, § 2-202, p. 1712; Laws 2005, LB 570, § 32.

COMMENT

Prior Uniform Statutory Provision: None.

Purposes:

1. This section definitely rejects:

(a) Any assumption that because a writing has been worked out which is final on some matters, it is to be taken as including all the matters agreed upon;

(b) The premise that the language used has the meaning attributable to such language by rules of construction existing in the law rather than the meaning which arises out of the commercial context in which it was used; and

(c) The requirement that a condition precedent to the admissibility of the type of evidence specified in paragraph (a) is an original determination by the court that the language used is ambiguous.

2. Paragraph (a) makes admissible evidence of course of dealing, usage of trade, and course of performance to explain or supplement the terms of any writing stating the agreement of the parties in order that the true understanding of the parties as

to the agreement may be reached. Such writings are to be read on the assumption that the course of prior dealings between the parties and the usages of trade were taken for granted when the document was phrased. Unless carefully negated they have become an element of the meaning of the words used. Similarly, the course of actual performance by the parties is considered the best indication of what they intended the writing to mean.

3. Under paragraph (b) consistent additional terms, not reduced to writing, may be proved unless the court finds that the writing was intended by both parties as a complete and exclusive statement of all the terms. If the additional terms are such that, if agreed upon, they would certainly have been included in the document in the view of the court, then evidence of their alleged making must be kept from the trier of fact.

Cross References:

Point 3: Sections 1-303, 2-207, 2-302, and 2-316.

Definitional Cross References:

“Agreed” and “agreement”. Section 1-201.

"Course of dealing". Section 1-303.

"Term". Section 1-201.

"Course of performance". Section 1-303.

"Usage of trade". Section 1-303.

"Party". Section 1-201.

"Written" and "writing". Section 1-201.

2-208 Repealed. Laws 2005, LB 570, § 116.

Part 3

GENERAL OBLIGATION AND CONSTRUCTION OF CONTRACT

2-310 Open time for payment or running of credit; authority to ship under reservation.

Unless otherwise agreed

(a) payment is due at the time and place at which the buyer is to receive the goods even though the place of shipment is the place of delivery; and

(b) if the seller is authorized to send the goods he or she may ship them under reservation, and may tender the documents of title, but the buyer may inspect the goods after their arrival before payment is due unless such inspection is inconsistent with the terms of the contract (section 2-513); and

(c) if delivery is authorized and made by way of documents of title otherwise than by subsection (b) then payment is due regardless of where the goods are to be received (i) at the time and place at which the buyer is to receive delivery of the tangible documents or (ii) at the time the buyer is to receive delivery of the electronic documents and at the seller's place of business or if none, the seller's residence; and

(d) where the seller is required or authorized to ship the goods on credit the credit period runs from the time of shipment but postdating the invoice or delaying its dispatch will correspondingly delay the starting of the credit period.

Source: Laws 1963, c. 544, Art. II, § 2-310, p. 1720; Laws 2005, LB 570, § 33.

COMMENT

Prior Uniform Statutory Provision: Sections 42 and 47(2), Uniform Sales Act.

Changes: Completely rewritten in this and other sections.

Purposes of Changes:

This section is drawn to reflect modern business methods of dealing at a distance rather than face to face. Thus:

1. Paragraph (a) provides that payment is due at the time and place "the buyer is to receive the goods" rather than at the point of delivery except in documentary shipment cases (paragraph (c)). This grants an opportunity for the exercise by the buyer of his or her preliminary right to inspection before paying even though under the delivery term the risk of loss may have previously passed to him or her or the running of the credit period has already started.

2. Paragraph (b) while providing for inspection by the buyer before he or she pays, protects the seller. He or she is not required to give up possession of the goods until he or she has received payment, where no credit has been contemplated by the parties. The seller may collect through a bank by a sight draft against an order bill of lading "hold until arrival; inspection allowed". The obligations of the bank under such a provision are set forth in part 5 of article 4. Under subsection (c), in the absence of a credit term, the seller is permitted to ship under reservation and if he or she does payment is then due where and when the buyer is to receive delivery of the tangible

documents of title. In the case of an electronic document of title, payment is due when the buyer is to receive delivery of the electronic document and at the seller's place of business, or if none, the seller's residence. Delivery as to documents of title is stated in article 1, section 1-201.

3. Unless otherwise agreed, the place for the delivery of the documents and payment is the buyer's city but the time for payment is only after arrival of the goods, since under paragraph (b) and sections 2-512 and 2-513 the buyer is under no duty to pay prior to inspection. Tender of a document of title requires that the seller be ready, willing, and able to transfer possession of a tangible document of title or control of an electronic document of title to the buyer.

4. Where the mode of shipment is such that goods must be unloaded immediately upon arrival, too rapidly to permit adequate inspection before receipt, the seller must be guided by the provisions of this article on inspection which provide that if the seller wishes to demand payment before inspection, he or she must put an appropriate term into the contract. Even requiring payment against documents will not of itself have this desired result if the documents are to be held until the arrival of the goods. But under (b) and (c) if the terms are C.I.F., C.O.D., or cash against documents payment may be due before inspection.

5. Paragraph (d) states the common commercial understanding that an agreed credit period runs from the time of shipment or from that dating of the invoice which is commonly recog-

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nized as a representation of the time of shipment. The provision concerning any delay in sending forth the invoice is included because such conduct results in depriving the buyer of his or her full notice and warning as to when he or she must be prepared to pay.

Cross References:

Generally: Part 5.

Point 1: Section 2-509.

Point 2: Sections 2-505, 2-511, 2-512, and 2-513 and article 4.

Point 3: Sections 2-308(b), 2-512, and 2-513.

Point 4: Section 2-513(3)(b).

Definitional Cross References:

"Buyer". Section 2-103.

"Delivery". Section 1-201.

"Document of title". Section 1-201.

"Goods". Section 2-105.

"Receipt of goods". Section 2-103.

"Seller". Section 2-103.

"Send". Section 1-201.

"Term". Section 1-201.

2-323 Form of bill of lading required in overseas shipment; overseas.

(1) Where the contract contemplates overseas shipment and contains a term C.I.F. or C. & F. or F.O.B. vessel, the seller unless otherwise agreed must obtain a negotiable bill of lading stating that the goods have been loaded on board or, in the case of a term C.I.F. or C. & F., received for shipment.

(2) Where in a case within subsection (1) a tangible bill of lading has been issued in a set of parts, unless otherwise agreed if the documents are not to be sent from abroad the buyer may demand tender of the full set; otherwise only one part of the bill of lading need be tendered. Even if the agreement expressly requires a full set

(a) due tender of a single part is acceptable within the provisions of this article on cure of improper delivery (subsection (1) of section 2-508); and

(b) even though the full set is demanded, if the documents are sent from abroad the person tendering an incomplete set may nevertheless require payment upon furnishing an indemnity which the buyer in good faith deems adequate.

(3) A shipment by water or by air or a contract contemplating such shipment is "overseas" insofar as by usage of trade or agreement it is subject to the commercial, financing, or shipping practices characteristic of international deep water commerce.

Source: Laws 1963, c. 544, Art. II, § 2-323, p. 1729; Laws 2005, LB 570, § 34.

COMMENT

Prior Uniform Statutory Provision: None.

Purposes:

1. Subsection (1) follows the "American" rule that a regular bill of lading indicating delivery of the goods at the dock for shipment is sufficient, except under a term "F.O.B. vessel". See section 2-319 and comment thereto.

2. Subsection (2) deals with the problem of bills of lading covering deep-water shipments, issued not as a single bill of lading but in a set of parts, each part referring to the other parts and the entire set constituting in commercial practice and at law a single bill of lading. Commercial practice in international commerce is to accept and pay against presentation of the first part of a set if the part is sent from overseas even though the contract of the buyer requires presentation of a full set of bills of lading provided adequate indemnity for the missing parts is forthcoming. In accord with the amendment to section 7-304, bills of lading in a set are limited to tangible bills.

This subsection codifies that practice as between buyer and seller. Article 5 (section 5-113) authorizes banks presenting drafts under letters of credit to give indemnities against the missing parts, and this subsection means that the buyer must

accept and act on such indemnities if he or she in good faith deems them adequate. But neither this subsection nor article 5 decides whether a bank which has issued a letter of credit is similarly bound. The issuing bank's obligation under a letter of credit is independent and depends on its own terms. See article 5.

Cross References:

Sections 2-508(2) and 5-113.

Definitional Cross References:

"Bill of lading". Section 1-201.

"Buyer". Section 2-103.

"Contract". Section 1-201.

"Delivery". Section 1-201.

"Financing agency". Section 2-104.

"Person". Section 1-201.

"Seller". Section 2-103.

"Send". Section 1-201.

"Term". Section 1-201.

Part 4

TITLE, CREDITORS, AND GOOD FAITH PURCHASERS

2-401 Passing of title; reservation for security; limited application of this section.

Each provision of this article with regard to the rights, obligations, and remedies of the seller, the buyer, purchasers, or other third parties applies irrespective of title to the goods except where the provision refers to such title. Insofar as situations are not covered by the other provisions of this article and matters concerning title become material the following rules apply:

(1) Title to goods cannot pass under a contract for sale prior to their identification to the contract (section 2-501), and unless otherwise explicitly agreed the buyer acquires by their identification a special property as limited by the Uniform Commercial Code. Any retention or reservation by the seller of the title (property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest. Subject to these provisions and to the provisions of the Article on Secured Transactions (Article 9), title to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.

(2) Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place; and in particular and despite any reservation of a security interest by the bill of lading

(a) if the contract requires or authorizes the seller to send the goods to the buyer but does not require him or her to deliver them at destination, title passes to the buyer at the time and place of shipment; but

(b) if the contract requires delivery at destination, title passes on tender there.

(3) Unless otherwise explicitly agreed where delivery is to be made without moving the goods,

(a) if the seller is to deliver a tangible document of title, title passes at the time when and the place where he or she delivers such documents and if the seller is to deliver an electronic document of title, title passes when the seller delivers the document; or

(b) if the goods are at the time of contracting already identified and no documents of title are to be delivered, title passes at the time and place of contracting.

(4) A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, or a justified revocation of acceptance reverts title to the goods in the seller. Such reversion occurs by operation of law and is not a "sale".

Source: Laws 1963, c. 544, Art. II, § 2-401, p. 1733; Laws 1992, LB 861, § 11; Laws 2005, LB 570, § 35.

This section does not provide for a reversion of title for nonpayment of purchase price alone, unless the contract of sale so provides. The effect of a reservation of title under this section is the retention of a security interest. *Maryott v. Oconto Cattle Co.*, 259 Neb. 41, 607 N.W.2d 820 (2000).

A security interest which attaches upon delivery has fully attached and is valid even though the goods are thereafter, even

immediately, installed in such a way as to become fixtures of realty, and even though such goods were contemplated throughout the transaction to become fixtures. *First National Bank v. Rose*, 213 Neb. 611, 330 N.W.2d 894 (1983).

If a contract does not contemplate the delivery of any document of title, title passes under the provisions of this section at

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the time of contracting. *Southwest Bank of Omaha v. Moritz*, 203 Neb. 45, 277 N.W.2d 430 (1979).

Where contract for sale of goods did not specifically refer to passage of title, held, title passed upon delivery. *Huskinson v. Vanderheiden*, 197 Neb. 739, 251 N.W.2d 144 (1977).

This section does not apply where situation involved is covered elsewhere in article. *Goosic Constr. Co. v. City Nat. Bank of Crete*, 196 Neb. 86, 241 N.W.2d 521 (1976).

If there was an explicit agreement for title to pass upon completion of the necessary paperwork which had not occurred, seller still had insurable interest. *Bowman v. American Home Assur. Co.*, 190 Neb. 810, 213 N.W.2d 446 (1973).

Purchase money priority is exception to basic rule of priority to first filed financing statement and should be applied only in

strict compliance with all limitations in Uniform Commercial Code. *North Platte State Bank v. Production Credit Assn.*, 189 Neb. 45, 200 N.W.2d 1 (1972).

For title to revest in seller, evidence must show rejection or other refusal by the buyer to receive or retain the goods, or a justified revocation of acceptance. *Jordan v. Butler*, 182 Neb. 626, 156 N.W.2d 778 (1968).

Title to the one hundred forty-five head of cattle passed to H & O Farms at the time the plaintiff delivered them and, therefore, any interest the plaintiff retained was no more than a security interest provided there was no agreement between the parties, either expressly or in course of conduct, that altered the result. *Myers v. Columbus Sales Pavilion, Inc.*, 575 F.Supp. 805 (D. Neb. 1983).

COMMENT

Prior Uniform Statutory Provision: See generally, sections 17, 18, 19, and 20, Uniform Sales Act.

Purposes:

To make it clear that:

1. This article deals with the issues between seller and buyer in terms of step-by-step performance or nonperformance under the contract for sale and not in terms of whether or not "title" to the goods has passed. That the rules of this section in no way alter the rights of either the buyer, seller, or third parties declared elsewhere in the article is made clear by the preamble of this section. This section, however, in no way intends to indicate which line of interpretation should be followed in cases where the applicability of "public" regulation depends upon a "sale" or upon location of "title" without further definition. The basic policy of this article that known purpose and reason should govern interpretation cannot extend beyond the scope of its own provisions. It is therefore necessary to state what a "sale" is and when title passes under this article in case the courts deem any public regulation to incorporate the defined term of the "private" law.

2. "Future" goods cannot be the subject of a present sale. Before title can pass the goods must be identified in the manner set forth in section 2-501. The parties, however, have full liberty to arrange by specific terms for the passing of title to goods which are existing.

3. The "special property" of the buyer in goods identified to the contract is excluded from the definition of "security interest"; its incidents are defined in provisions of this article such as those on the rights of the seller's creditors, on good faith purchase, on the buyer's right to goods on the seller's insolvency, and on the buyer's right to specific performance or replevin.

4. The factual situations in subsections (2) and (3) upon which passage of title turn actually base the test upon the time when the seller has finally committed himself or herself in regard to specific goods. Thus in a "shipment" contract he or she com-

mits himself or herself by the act of making the shipment. If shipment is not contemplated subsection (3) turns on the seller's final commitment, i.e., the delivery of documents or the making of the contract. As to delivery of an electronic document of title, see definition of delivery in article 1, section 1-201. This article does not state a rule as to the place of title passage as to goods covered by an electronic document of title.

Cross References:

Point 2: Sections 2-102, 2-501, and 2-502.

Point 3: Sections 1-201, 2-402, 2-403, 2-502, and 2-716.

Definitional Cross References:

"Agreement". Section 1-201.

"Bill of lading". Section 1-201.

"Buyer". Section 2-103.

"Contract". Section 1-201.

"Contract for sale". Section 2-106.

"Delivery". Section 1-201.

"Document of title". Section 1-201.

"Good faith". Section 2-103.

"Goods". Section 2-105.

"Party". Section 1-201.

"Purchaser". Section 1-201.

"Receipt" of goods. Section 2-103.

"Remedy". Section 1-201.

"Rights". Section 1-201.

"Sale". Section 2-106.

"Security interest". Section 1-201.

"Seller". Section 2-103.

"Send". Section 1-201.

Part 5

PERFORMANCE

2-503 Manner of seller's tender of delivery.

(1) Tender of delivery requires that the seller put and hold conforming goods at the buyer's disposition and give the buyer any notification reasonably necessary to enable him or her to take delivery. The manner, time, and place for tender are determined by the agreement and this article, and in particular

(a) tender must be at a reasonable hour, and if it is of goods they must be kept available for the period reasonably necessary to enable the buyer to take possession; but

(b) unless otherwise agreed the buyer must furnish facilities reasonably suited to the receipt of the goods.

(2) Where the case is within the next section respecting shipment tender requires that the seller comply with its provisions.

(3) Where the seller is required to deliver at a particular destination tender requires that he or she comply with subsection (1) and also in any appropriate case tender documents as described in subsections (4) and (5) of this section.

(4) Where goods are in the possession of a bailee and are to be delivered without being moved

(a) tender requires that the seller either tender a negotiable document of title covering such goods or procure acknowledgment by the bailee of the buyer's right to possession of the goods; but

(b) tender to the buyer of a nonnegotiable document of title or of a record directing the bailee to deliver is sufficient tender unless the buyer seasonably objects, and except as otherwise provided in article 9 receipt by the bailee of notification of the buyer's rights fixes those rights as against the bailee and all third persons; but risk of loss of the goods and of any failure by the bailee to honor the nonnegotiable document of title or to obey the direction remains on the seller until the buyer has had a reasonable time to present the document or direction, and a refusal by the bailee to honor the document or to obey the direction defeats the tender.

(5) Where the contract requires the seller to deliver documents

(a) he or she must tender all such documents in correct form, except as provided in this article with respect to bills of lading in a set (subsection (2) of section 2-323); and

(b) tender through customary banking channels is sufficient and dishonor of a draft accompanying or associated with the documents constitutes nonacceptance or rejection.

Source: Laws 1963, c. 544, Art. II, § 2-503, p. 1738; Laws 2005, LB 570, § 36.

Actual delivery, not mere present ability to fulfill all the conditions imposed on a tendering party, is necessary to constitute "tender" under this section. *Crowder v. Aurora Co-op Elev. Co.*, 223 Neb. 704, 393 N.W.2d 250 (1986).

"Tender of delivery" requires the seller to put and hold conforming goods at buyer's disposition. *Goosic Constr. Co. v. City Nat. Bank of Crete*, 196 Neb. 86, 241 N.W.2d 521 (1976).

Purchase money priority is exception to basic rule of priority to first filed financing statement and should be applied only in strict compliance with all limitations in Uniform Commercial Code. *North Platte State Bank v. Production Credit Assn.*, 189 Neb. 45, 200 N.W.2d 1 (1972).

COMMENT

Prior Uniform Statutory Provision: See sections 11, 19, 20, 43(3) and (4), 46, and 51, Uniform Sales Act.

Changes: The general policy of the above sections is continued and supplemented but subsection (3) changes the rule of prior section 19(5) as to what constitutes a "destination" contract and subsection (4) incorporates a minor correction as to tender of delivery of goods in the possession of a bailee.

Purposes of Changes:

1. The major general rules governing the manner of proper or due tender of delivery are gathered in this section. The term "tender" is used in this article in two different senses. In one sense it refers to "due tender" which contemplates an offer coupled with a present ability to fulfill all the conditions resting on the tendering party and must be followed by actual performance if the other party shows himself or herself ready to proceed. Unless the context unmistakably indicates otherwise this is

the meaning of "tender" in this article and the occasional addition of the word "due" is only for clarity and emphasis. At other times it is used to refer to an offer of goods or documents under a contract as if in fulfillment of its conditions even though there is a defect when measured against the contract obligation. Used in either sense, however, "tender" connotes such performance by the tendering party as puts the other party in default if he or she fails to proceed in some manner. These concepts of tender would apply to tender of either tangible or electronic documents of title.

2. The seller's general duty to tender and deliver is laid down in section 2-301 and more particularly in section 2-507. The seller's right to a receipt if he or she demands one and receipts are customary is governed by section 1-205. Subsection (1) of the present section proceeds to set forth two primary requirements of tender: First, that the seller "put and hold conforming goods at the buyer's disposition" and, second, that he or she

“give the buyer any notice reasonably necessary to enable him or her to take delivery”.

In cases in which payment is due and demanded upon delivery the “buyer’s disposition” is qualified by the seller’s right to retain control of the goods until payment by the provision of this article on delivery on condition. However, where the seller is demanding payment on delivery he or she must first allow the buyer to inspect the goods in order to avoid impairing his or her tender unless the contract for sale is on C.I.F., C.O.D., cash against documents, or similar terms negating the privilege of inspection before payment.

In the case of contracts involving documents the seller can “put and hold conforming goods at the buyer’s disposition” under subsection (1) by tendering documents which give the buyer complete control of the goods under the provisions of article 7 on due negotiation.

3. Under paragraph (a) of subsection (1) usage of the trade and the circumstances of the particular case determine what is a reasonable hour for tender and what constitutes a reasonable period of holding the goods available.

4. The buyer must furnish reasonable facilities for the receipt of the goods tendered by the seller under subsection (1), paragraph (b). This obligation of the buyer is no part of the seller’s tender.

5. For the purposes of subsections (2) and (3) there is omitted from this article the rule under prior uniform legislation that a term requiring the seller to pay the freight or cost of transportation to the buyer is equivalent to an agreement by the seller to deliver to the buyer or at an agreed destination. This omission is with the specific intention of negating the rule, for under this article the “shipment” contract is regarded as the normal one and the “destination” contract as the variant type. The seller is not obligated to deliver at a named destination and bear the concurrent risk of loss until arrival, unless he or she has specifically agreed so to deliver or the commercial understanding of the terms used by the parties contemplates such delivery.

6. Paragraph (a) of subsection (4) continues the rule of the prior uniform legislation as to acknowledgement by the bailee. Paragraph (b) of subsection (4) adopts the rule that between the buyer and the seller the risk of loss remains on the seller during a period reasonable for securing acknowledgement of the transfer from the bailee, while as against all other parties the buyer’s rights are fixed as of the time the bailee receives notice of the transfer.

7. Under subsection (5) documents are never “required” except where there is an express contract term or it is plainly implicit in the peculiar circumstances of the case or in a usage of trade. Documents may, of course, be “authorized” although not required, but such cases are not within the scope of this subsection. When documents are required, there are three main

requirements of this subsection: (1) “All”: Each required document is essential to a proper tender; (2) “Such”: The documents must be the ones actually required by the contract in terms of source and substance; (3) “Correct form”: All documents must be in correct form. These requirements apply to both tangible and electronic documents of title. When tender is made through customary banking channels, a draft may accompany or be associated with a document of title. The language has been broadened to allow for drafts to be associated with an electronic document of title. Compare section 2-104(2) definition of financing agency.

When a prescribed document cannot be procured, a question of fact arises under the provision of this article on substituted performance as to whether the agreed manner of delivery is actually commercially impracticable and whether the substitute is commercially reasonable.

Cross References:

Point 2: Sections 1-205, 2-301, 2-310, 2-507, and 2-513 and article 7.

Point 5: Sections 2-308, 2-310, and 2-509.

Point 7: Section 2-614(1).

Specific matters involving tender are covered in many additional sections of this article. See sections 1-205, 2-301, 2-306 to 2-319, 2-321(3), 2-504, 2-507(1), 2-511(1), 2-513, 2-612, and 2-614.

Definitional Cross References:

“Agreement”. Section 1-201.

“Bill of lading”. Section 1-201.

“Buyer”. Section 2-103.

“Conforming”. Section 2-106.

“Contract”. Section 1-201.

“Delivery”. Section 1-201.

“Dishonor”. Section 3-502.

“Document of title”. Section 1-201.

“Draft”. Section 3-104.

“Goods”. Section 2-105.

“Notification”. Section 1-201.

“Reasonable time”. Section 1-204.

“Receipt” of goods. Section 2-103.

“Rights”. Section 1-201.

“Seasonably”. Section 1-204.

“Seller”. Section 2-103.

“Written”. Section 1-201.

2-505 Seller’s shipment under reservation.

(1) Where the seller has identified goods to the contract by or before shipment:

(a) his or her procurement of a negotiable bill of lading to his or her own order or otherwise reserves in him or her a security interest in the goods. His or her procurement of the bill to the order of a financing agency or of the buyer indicates in addition only the seller’s expectation of transferring that interest to the person named.

(b) a nonnegotiable bill of lading to himself or herself or his or her nominee reserves possession of the goods as security but except in a case of conditional delivery (subsection (2) of section 2-507) a nonnegotiable bill of lading naming the buyer as consignee reserves no security interest even though the seller retains possession or control of the bill of lading.

(2) When shipment by the seller with reservation of a security interest is in violation of the contract for sale it constitutes an improper contract for transportation within the preceding section but impairs neither the rights given to the buyer by shipment and identification of the goods to the contract nor the seller's powers as a holder of a negotiable document of title.

Source: Laws 1963, c. 544, Art. II, § 2-505, p. 1740; Laws 2005, LB 570, § 37.

COMMENT

Prior Uniform Statutory Provision: Section 20(2), (3), and (4), Uniform Sales Act.

Changes: Completely rephrased, the "powers" of the parties in cases of reservation being emphasized primarily rather than the "rightfulness" of reservation.

Purposes of Changes:

To continue in general the policy of the prior uniform statutory provision with certain modifications of emphasis and language, so that:

1. The security interest reserved to the seller under subsection (1) is restricted to securing payment or performance by the buyer and the seller is strictly limited in his or her disposition and control of the goods as against the buyer and third parties. Under this article, the provision as to the passing of interest expressly applies "despite any reservation of security title" and also provides that the "rights, obligations and remedies" of the parties are not altered by the incidence of title generally. The security interest, therefore, must be regarded as a means given to the seller to enforce his or her rights against the buyer which is unaffected by and in turn does not affect the location of title generally. The rules set forth in subsection (1) are not to be altered by any apparent "contrary intent" of the parties as to passing of title, since the rights and remedies of the parties to the contract of sale, as defined in this article, rest on the contract and its performance or breach and not on stereotyped presumptions as to the location of title.

This article does not attempt to regulate local procedure in regard to the effective maintenance of the seller's security interest when the action is in replevin by the buyer against the carrier.

2. Every shipment of identified goods under a negotiable bill of lading reserves a security interest in the seller under subsection (1) paragraph (a).

It is frequently convenient for the seller to make the bill of lading to the order of a nominee such as his or her agent at destination, the financing agency to which he or she expects to negotiate the document, or the bank issuing a credit to him or her. In many instances, also, the buyer is made the order party. This article does not deal directly with the question as to whether a bill of lading made out by the seller to the order of a nominee gives the carrier notice of any rights which the nominee may have so as to limit its freedom or obligation to honor the bill of lading in the hands of the seller as the original shipper if the expected negotiation fails. This is dealt with in the Article on Documents of Title (Article 7).

3. A nonnegotiable bill of lading taken to a party other than the buyer under subsection (1) paragraph (b) reserves posses-

sion of the goods as security in the seller but if he or she seeks to withhold the goods improperly the buyer can tender payment and recover them.

4. In the case of a shipment by nonnegotiable bill of lading taken to a buyer, the seller, under subsection (1) retains no security interest or possession as against the buyer and by the shipment he or she de facto loses control as against the carrier except where he or she rightfully and effectively stops delivery in transit. In cases in which the contract gives the seller the right to payment against delivery, the seller, by making an immediate demand for payment, can show that his or her delivery is conditional, but this does not prevent the buyer's power to transfer full title to a sub-buyer in ordinary course or other purchaser under section 2-403.

5. Under subsection (2) an improper reservation by the seller which would constitute a breach in no way impairs such of the buyer's rights as result from identification of the goods. The security title reserved by the seller under subsection (1) does not protect his or her retaining possession or control of the document or the goods for the purpose of exacting more than is due him or her under the contract.

Cross References:

Point 1: Section 1-201.

Point 2: Article 7.

Point 3: Sections 2-501(2) and 2-504.

Point 4: Sections 2-403, 2-507(2), and 2-705.

Point 5: Sections 2-310, 2-319(4), 2-320(4), 2-501, and 2-502 and article 7.

Definitional Cross References:

"Bill of lading". Section 1-201.

"Buyer". Section 2-103.

"Consignee". Section 7-102.

"Contract". Section 1-201.

"Contract for sale". Section 2-106.

"Delivery". Section 1-201.

"Financing agency". Section 2-104.

"Goods". Section 2-105.

"Holder". Section 1-201.

"Person". Section 1-201.

"Security interest". Section 1-201.

"Seller". Section 2-103.

2-506 Rights of financing agency.

(1) A financing agency by paying or purchasing for value a draft which relates to a shipment of goods acquires to the extent of the payment or purchase and in addition to its own rights under the draft and any document of title securing it any rights of the shipper in the goods including the right to stop delivery and the shipper's right to have the draft honored by the buyer.

(2) The right to reimbursement of a financing agency which has in good faith honored or purchased the draft under commitment to or authority from the

buyer is not impaired by subsequent discovery of defects with reference to any relevant document which was apparently regular.

Source: Laws 1963, c. 544, Art. II, § 2-506, p. 1740; Laws 2005, LB 570, § 38.

COMMENT

Prior Uniform Statutory Provision: None.

Purposes:

1. "Financing agency" is broadly defined in this article to cover every normal instance in which a party aids or intervenes in the financing of a sales transaction. The term as used in subsection (1) is not in any sense intended as a limitation and covers any other appropriate situation which may arise outside the scope of the definition.

2. "Paying" as used in subsection (1) is typified by the letter of credit, or "authority to pay" situation in which a banker, by arrangement with the buyer or other consignee, pays on his or her behalf a draft for the price of the goods. It is immaterial whether the draft is formally drawn on the party paying or his or her principal, whether it is a sight draft paid in cash or a time draft "paid" in the first instance by acceptance, or whether the payment is viewed as absolute or conditional. All of these cases constitute "payment" under this subsection. Similarly, "purchasing for value" is used to indicate the whole area of financing by the seller's banker, and the principle of subsection (1) is applicable without any niceties of distinction between "purchase", "discount", "advance against collection", or the like. But it is important to notice that the only right to have the draft honored that is acquired is that against the buyer; if any right against anyone else is claimed it will have to be under some separate obligation of that other person. A letter of credit does not necessarily protect purchasers of drafts. See article 5. And for the relations of the parties to documentary drafts see part 5 of article 4.

3. Subsection (1) is made applicable to payments or advances against a draft which "relates to" a shipment of goods and this has been chosen as a term of maximum breadth. In particular the term is intended to cover the case of a draft against an invoice or against a delivery order. Further, it is unnecessary that there be an explicit assignment of the invoice attached to the draft to bring the transaction within the reason of this subsection.

4. After shipment, "the rights of the shipper in the goods" are merely security rights and are subject to the buyer's right to force delivery upon tender of the price. The rights acquired by the financing agency are similarly limited and, moreover, if the agency fails to procure any outstanding negotiable document of title, it may find its exercise of these rights hampered or even defeated by the seller's disposition of the document to a third party. This section does not attempt to create any new rights in the financing agency against the carrier which would force the latter to honor a stop order from the agency, a stranger to the shipment, or any new rights against a holder to whom a document of title has been duly negotiated under article 7.

5. The deletion of the language "on its face" from subsection (2) is designed to accommodate electronic documents of title without changing the requirement of regularity of the document.

Cross References:

Point 1: Section 2-104(2) and article 4.

Point 2: Part 5 of article 4 and article 5.

Point 4: Sections 2-501 and 2-502(1) and article 7.

Definitional Cross References:

"Buyer". Section 2-103.

"Document of title". Section 1-201.

"Draft". Section 3-104.

"Financing agency". Section 2-104.

"Good faith". Section 2-103.

"Goods". Section 2-105.

"Honor". Section 1-201.

"Purchase". Section 1-201.

"Rights". Section 1-201.

"Value". Section 1-201.

2-509 Risk of loss in the absence of breach.

(1) Where the contract requires or authorizes the seller to ship the goods by carrier

(a) if it does not require him or her to deliver them at a particular destination, the risk of loss passes to the buyer when the goods are duly delivered to the carrier even though the shipment is under reservation (section 2-505); but

(b) if it does require him or her to deliver them at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the buyer when the goods are there duly so tendered as to enable the buyer to take delivery.

(2) Where the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer

(a) on his or her receipt of possession or control of a negotiable document of title covering the goods; or

(b) on acknowledgment by the bailee of the buyer's right to possession of the goods; or

(c) after his or her receipt of possession or control of a nonnegotiable document of title or other direction to deliver in a record, as provided in subsection (4)(b) of section 2-503.

(3) In any case not within subsection (1) or (2), the risk of loss passes to the buyer on his or her receipt of the goods if the seller is a merchant; otherwise the risk passes to the buyer on tender of delivery.

(4) The provisions of this section are subject to contrary agreement of the parties and to the provisions of this article on sale on approval (section 2-327) and on effect of breach on risk of loss (section 2-510).

Source: Laws 1963, c. 544, Art. II, § 2-509, p. 1741; Laws 2005, LB 570, § 39.

This section applies to those cases only where there has been no breach by the seller. *Goosic Constr. Co. v. City Nat. Bank of Crete*, 196 Neb. 86, 241 N.W.2d 521 (1976).

COMMENT

Prior Uniform Statutory Provision: Section 22, Uniform Sales Act.

Changes: Rewritten, subsection (3) of this section modifying prior law.

Purposes of Changes:

To make it clear that:

1. The underlying theory of these sections on risk of loss is the adoption of the contractual approach rather than an arbitrary shifting of the risk with the "property" in the goods. The scope of the present section, therefore, is limited strictly to those cases where there has been no breach by the seller. Where for any reason his or her delivery or tender fails to conform to the contract, the present section does not apply and the situation is governed by the provisions on effect of breach on risk of loss.

2. The provisions of subsection (1) apply where the contract "requires or authorizes" shipment of the goods. This language is intended to be construed parallel to comparable language in the section on shipment by seller. In order that the goods be "duly delivered to the carrier" under paragraph (a) a contract must be entered into with the carrier which will satisfy the requirements of the section on shipment by the seller and the delivery must be made under circumstances which will enable the seller to take any further steps necessary to a due tender. The underlying reason of this subsection does not require that the shipment be made after contracting, but where, for example, the seller buys the goods afloat and later diverts the shipment to the buyer, he or she must identify the goods to the contract before the risk of loss can pass. To transfer the risk it is enough that a proper shipment and a proper identification come to apply to the same goods although, aside from special agreement, the risk will not pass retroactively to the time of shipment in such a case.

3. Whether the contract involves delivery at the seller's place of business or at the situs of the goods, a merchant seller cannot transfer risk of loss and it remains upon him or her until actual receipt by the buyer, even though full payment has been made and the buyer has been notified that the goods are at his or her disposal. Protection is afforded him or her, in the event of breach by the buyer, under the next section.

The underlying theory of this rule is that a merchant who is to make physical delivery at his or her own place continues meanwhile to control the goods and can be expected to insure his or her interest in them. The buyer, on the other hand, has no

control of the goods and it is extremely unlikely that he or she will carry insurance on goods not yet in his or her possession.

4. Where the agreement provides for delivery of the goods as between the buyer and seller without removal from the physical possession of a bailee, the provisions on manner of tender of delivery apply on the point of transfer of risk. Due delivery of a negotiable document of title covering the goods or acknowledgment by the bailee that he or she holds for the buyer completes the "delivery" and passes the risk. See definition of delivery in article 1, section 1-201, and the definition of control in article 7, section 7-106.

5. The provisions of this section are made subject by subsection (4) to the "contrary agreement" of the parties. This language is intended as the equivalent of the phrase "unless otherwise agreed" used more frequently throughout the code. "Contrary" is in no way used as a word of limitation and the buyer and seller are left free to readjust their rights and risks as declared by this section in any manner agreeable to them. Contrary agreement can also be found in the circumstances of the case, a trade usage or practice, or a course of dealing or performance.

Cross References:

Point 1: Section 2-510(1).

Point 2: Sections 2-503 and 2-504.

Point 3: Sections 2-104, 2-503, and 2-510.

Point 4: Section 2-503(4).

Point 5: Section 1-201.

Definitional Cross References:

"Agreement". Section 1-201.

"Buyer". Section 2-103.

"Contract". Section 1-201.

"Delivery". Section 1-201.

"Document of title". Section 1-201.

"Goods". Section 2-105.

"Merchant". Section 2-104.

"Party". Section 1-201.

"Receipt" of goods. Section 2-103.

"Sale on approval". Section 2-326.

"Seller". Section 2-103.

Part 6

BREACH, REPUDIATION, AND EXCUSE

2-605 Waiver of buyer's objections by failure to particularize.

(1) The buyer's failure to state in connection with rejection a particular defect which is ascertainable by reasonable inspection precludes him or her from relying on the unstated defect to justify rejection or to establish breach

(a) where the seller could have cured it if stated seasonably; or

(b) between merchants when the seller has after rejection made a request in writing for a full and final written statement of all defects on which the buyer proposes to rely.

(2) Payment against documents made without reservation of rights precludes recovery of the payment for defects apparent in the documents.

Source: Laws 1963, c. 544, Art. II, § 2-605, p. 1747; Laws 2005, LB 570, § 40.

COMMENT

Prior Uniform Statutory Provision: None.

Purposes:

1. The present section rests upon a policy of permitting the buyer to give a quick and informal notice of defects in a tender without penalizing him or her for omissions in his or her statement, while at the same time protecting a seller who is reasonably misled by the buyer's failure to state curable defects.

2. Where the defect in a tender is one which could have been cured by the seller, a buyer who merely rejects the delivery without stating his or her objections to it is probably acting in commercial bad faith and seeking to get out of a deal which has become unprofitable. Subsection (1)(a), following the general policy of this article which looks to preserving the deal wherever possible, therefor insists that the seller's right to correct his or her tender in such circumstances be protected.

3. When the time for cure is past, subsection (1)(b) makes it plain that a seller is entitled upon request to a final statement of objections upon which he or she can rely. What is needed is that he or she make clear to the buyer exactly what is being sought. A formal demand under paragraph (b) will be sufficient in the case of a merchant buyer.

4. Subsection (2) applies to the particular case of documents the same principle which the section on effects of acceptance applies to the case of goods. The matter is dealt with in this section in terms of "waiver" of objections rather than of right to revoke acceptance, partly to avoid any confusion with the problems of acceptance of goods and partly because defects in

documents which are not taken as grounds for rejection are generally minor ones. The only defects concerned in the present subsection are defects in the documents which are apparent. This rule applies to both tangible and electronic documents of title. Where payment is required against the documents they must be inspected before payment, and the payment then constitutes acceptance of the documents. Under the section dealing with this problem, such acceptance of the documents does not constitute an acceptance of the goods or impair any options or remedies of the buyer for their improper delivery. Where the documents are delivered without requiring such contemporary action as payment from the buyer, the reason of the next section on what constitutes acceptance of goods, applies. Their acceptance by nonobjection is therefor postponed until after a reasonable time for their inspection. In either situation, however, the buyer "waives" only the defects apparent in the documents.

Cross References:

Point 2: Section 2-508.

Point 4: Sections 2-512(2), 2-606(1)(b), and 2-607(2).

Definitional Cross References:

"Between merchants". Section 2-104.

"Buyer". Section 2-103.

"Seasonably". Section 1-204.

"Seller". Section 2-103.

"Writing" and "written". Section 1-201.

Part 7

REMEDIES

2-705 Seller's stoppage of delivery in transit or otherwise.

(1) The seller may stop delivery of goods in the possession of a carrier or other bailee when he or she discovers the buyer to be insolvent (section 2-702) and may stop delivery of carload, truckload, planeload, or larger shipments of express or freight when the buyer repudiates or fails to make a payment due before delivery or if for any other reason the seller has a right to withhold or reclaim the goods.

(2) As against such buyer the seller may stop delivery until

- (a) receipt of the goods by the buyer; or
- (b) acknowledgment to the buyer by any bailee of the goods except a carrier that the bailee holds the goods for the buyer; or
- (c) such acknowledgment to the buyer by a carrier by reshipment or as a warehouse; or
- (d) negotiation to the buyer of any negotiable document of title covering the goods.

(3)(a) To stop delivery the seller must so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(b) After such notification the bailee must hold and deliver the goods according to the directions of the seller but the seller is liable to the bailee for any ensuing charges or damages.

(c) If a negotiable document of title has been issued for goods the bailee is not obliged to obey a notification to stop until surrender of possession or control of the document.

(d) A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

Source: Laws 1963, c. 544, Art. II, § 2-705, p. 1756; Laws 2005, LB 570, § 41.

COMMENT

Prior Uniform Statutory Provision: Sections 57-59, Uniform Sales Act; see also sections 12, 14, and 42, Uniform Bills of Lading Act and sections 9, 11, and 49, Uniform Warehouse Receipts Act.

Changes: This section continues and develops the above sections of the Uniform Sales Act in the light of the other uniform statutory provisions noted.

Purposes:

To make it clear that:

1. Subsection (1) applies the stoppage principle to other bailees as well as carriers.

It also expands the remedy to cover the situations, in addition to buyer's insolvency, specified in the subsection. But since stoppage is a burden in any case to carriers, and might be a very heavy burden to them if it covered all small shipments in all these situations, the right to stop for reasons other than insolvency is limited to carload, truckload, planeload, or larger shipments. The seller shipping to a buyer of doubtful credit can protect himself or herself by shipping C.O.D.

Where stoppage occurs for insecurity it is merely a suspension of performance, and if assurances are duly forthcoming from the buyer the seller is not entitled to resell or divert.

Improper stoppage is a breach by the seller if it effectively interferes with the buyer's right to due tender under the section on manner of tender of delivery. However, if the bailee obeys an unjustified order to stop he or she may also be liable to the buyer. The measure of his or her obligation is dependent on the provisions of the Documents of Title Article (section 7-303). Subsection (3)(b) therefor gives him or her a right of indemnity as against the seller in such a case.

2. "Receipt by the buyer" includes receipt by the buyer's designated representative, the subpurchaser, when shipment is made direct to him or her and the buyer himself or herself never receives the goods. It is entirely proper under this article that the seller, by making such direct shipment to the subpurchaser, be regarded as acquiescing in the latter's purchase and as thus barred from stoppage of the goods as against him or her.

As between the buyer and the seller, the latter's right to stop the goods at any time until they reach the place of final delivery is recognized by this section.

Under subsections (3)(c) and (d), the carrier is under no duty to recognize the stop order of a person who is a stranger to the carrier's contract. But the seller's right as against the buyer to stop delivery remains, whether or not the carrier is obligated to recognize the stop order. If the carrier does obey it, the buyer cannot complain merely because of that circumstance; and the seller becomes obligated under subsection (3)(b) to pay the carrier any ensuing damages or charges.

3. A diversion of a shipment is not a "reshipment" under subsection (2)(c) when it is merely an incident to the original contract of transportation. Nor is the procurement of "exchange bills" of lading which change only the name of the consignee to that of the buyer's local agent but do not alter the destination of a reshipment.

Acknowledgment by the carrier as a "warehouse" within the meaning of this article requires a contract of a truly different character from the original shipment, a contract not in extension of transit but as a warehouse.

4. Subsection (3)(c) makes the bailee's obedience of a notification to stop conditional upon the surrender of possession or control of any outstanding negotiable document.

5. Any charges or losses incurred by the carrier in following the seller's orders, whether or not he or she was obligated to do so, fall to the seller's charge.

6. After an effective stoppage under this section the seller's rights in the goods are the same as if he or she had never made a delivery.

Cross References:

Sections 2-702 and 2-703.

Point 1: Sections 2-503 and 2-609 and article 7.

Point 2: Section 2-103 and article 7.

Definitional Cross References:

"Buyer". Section 2-103.

"Contract for sale". Section 2-106.

"Document of title". Section 1-201.

"Goods". Section 2-105.

"Insolvent". Section 1-201.

"Notification". Section 1-201.

"Rights". Section 1-201.

"Receipt" of goods. Section 2-103.

"Seller". Section 2-103.

ARTICLE 2A

LEASES

Part 1
GENERAL PROVISIONS

Section

2A-103. Definitions and index of definitions.

2A-104. Leases subject to other law.

Part 2
FORMATION AND CONSTRUCTION OF LEASE CONTRACT

2A-207. Repealed. Laws 2005, LB 570, § 116.

Part 5
DEFAULT

A. In General

2A-501. Default: procedure.

B. Default by Lessor

2A-514. Waiver of lessee's objections.

2A-518. Cover; substitute goods.

2A-519. Lessee's damages for nondelivery, repudiation, default, and breach of warranty in regard to accepted goods.

C. Default by Lessee

2A-526. Lessor's stoppage of delivery in transit or otherwise.

2A-527. Lessor's rights to dispose of goods.

2A-528. Lessor's damages for nonacceptance, failure to pay, repudiation, or other default.

Part 1

GENERAL PROVISIONS

2A-103 Definitions and index of definitions.

(1) In this article unless the context otherwise requires:

(a) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him or her is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes acquiring goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(b) "Cancellation" occurs when either party puts an end to the lease contract for default by the other party.

(c) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of lease and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article, as a machine, or a set of articles, as a suite of furniture or a line of

machinery, or a quantity, as a gross or carload, or any other unit treated in use or in the relevant market as a single whole.

(d) “Conforming” goods or performance under a lease contract means goods or performance that are in accordance with the obligations under the lease contract.

(e) “Consumer lease” means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is an individual and who takes under the lease primarily for a personal, family, or household purpose, if the total payments to be made under the lease contract, excluding payments for options to renew or buy, do not exceed twenty-five thousand dollars.

(f) “Fault” means wrongful act, omission, breach, or default.

(g) “Finance lease” means a lease with respect to which:

(i) the lessor does not select, manufacture, or supply the goods;

(ii) the lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and

(iii) one of the following occurs:

(A) the lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use of the goods before signing the lease contract;

(B) the lessee’s approval of the contract by which the lessor acquired the goods or the right to possession and use of the goods is a condition to effectiveness of the lease contract;

(C) the lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimers of warranties, limitations or modifications of remedies, or liquidated damages, including those of a third party, such as the manufacturer of the goods, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; or

(D) if the lease is not a consumer lease, the lessor, before the lessee signs the lease contract, informs the lessee in writing (a) of the identity of the person supplying the goods to the lessor, unless the lessee has selected that person and directed the lessor to acquire the goods or the right to possession and use of the goods from that person, (b) that the lessee is entitled under this article to the promises and warranties, including those of any third party, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods, and (c) that the lessee may communicate with the person supplying the goods to the lessor and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies.

(h) “Goods” means all things that are movable at the time of identification to the lease contract, or are fixtures (section 2A-309), but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals.

(i) “Installment lease contract” means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even

though the lease contract contains a clause “each delivery is a separate lease” or its equivalent.

(j) “Lease” means a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease.

(k) “Lease agreement” means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this article. Unless the context clearly indicates otherwise, the term includes a sublease agreement.

(l) “Lease contract” means the total legal obligation that results from the lease agreement as affected by this article and any other applicable rules of law. Unless the context clearly indicates otherwise, the term includes a sublease contract.

(m) “Leasehold interest” means the interest of the lessor or the lessee under a lease contract.

(n) “Lessee” means a person who acquires the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessee.

(o) “Lessee in ordinary course of business” means a person who in good faith and without knowledge that the lease to him or her is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods leases in ordinary course from a person in the business of selling or leasing goods of that kind but does not include a pawnbroker. “Leasing” may be for cash or by exchange of other property or on secured or unsecured credit and includes acquiring goods or documents of title under a preexisting lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(p) “Lessor” means a person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.

(q) “Lessor’s residual interest” means the lessor’s interest in the goods after expiration, termination, or cancellation of the lease contract.

(r) “Lien” means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest.

(s) “Lot” means a parcel or a single article that is the subject matter of a separate lease or delivery, whether or not it is sufficient to perform the lease contract.

(t) “Merchant lessee” means a lessee that is a merchant with respect to goods of the kind subject to the lease.

(u) “Present value” means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate was not manifestly unreasonable at the time the transaction was entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(v) "Purchase" includes taking by sale, lease, mortgage, security interest, pledge, gift, or any other voluntary transaction creating an interest in goods.

(w) "Sublease" means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.

(x) "Supplier" means a person from whom a lessor buys or leases goods to be leased under a finance lease.

(y) "Supply contract" means a contract under which a lessor buys or leases goods to be leased.

(z) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the lease contract otherwise than for default.

(2) Other definitions applying to this article and the sections in which they appear are:

"Accessions".	Section 2A-310(1).
"Construction mortgage".	Section 2A-309(1)(d).
"Encumbrance".	Section 2A-309(1)(e).
"Fixtures".	Section 2A-309(1)(a).
"Fixture filing".	Section 2A-309(1)(b).
"Purchase money lease".	Section 2A-309(1)(c).

(3) The following definitions in other articles apply to this article:

"Account".	Section 9-102(a)(2).
"Between merchants".	Section 2-104(3).
"Buyer".	Section 2-103(1)(a).
"Chattel paper".	Section 9-102(a)(11).
"Consumer goods".	Section 9-102(a)(23).
"Document".	Section 9-102(a)(30).
"Entrusting".	Section 2-403(3).
"General intangible".	Section 9-102(a)(42).
"Good faith".	Section 2-103(1)(b).
"Instrument".	Section 9-102(a)(47).
"Merchant".	Section 2-104(1).
"Mortgage".	Section 9-102(a)(55).
"Pursuant to commitment".	Section 9-102(a)(68).
"Receipt".	Section 2-103(1)(c).
"Sale".	Section 2-106(1).
"Sale on approval".	Section 2-326.
"Sale or return".	Section 2-326.
"Seller".	Section 2-103(1)(d).

(4) In addition, article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

Source: Laws 1991, LB 159, § 5; Laws 1999, LB 550, § 59; Laws 2005, LB 570, § 42.

COMMENT

(a) "Buyer in ordinary course of business".
Section 1-201(9).

(b) "Cancellation". Section 2-106(4).

The effect of a cancellation is provided in section 2A-505(1).

(c) "Commercial unit". Section 2-105(6).

(d) "Conforming". Section 2-106(2).

(e) "Consumer lease". New. This article includes a subset of rules that applies only to consumer leases. Sections 2A-106, 2A-108(2), 2A-108(4), 2A-109(2), 2A-221, 2A-309, 2A-406, 2A-407, 2A-504(3)(b), and 2A-516(3)(b).

For a transaction to qualify as a consumer lease it must first qualify as a lease. Section 2A-103(1)(j). Note that this article regulates the transactional elements of a lease, including a

consumer lease; consumer protection statutes, present and future, and existing consumer protection decisions are unaffected by this article. Section 2A-104(1)(c) and (2). Of course, article 2A as state law also is subject to federal consumer protection law.

This definition is modeled after the definition of consumer lease in the Consumer Leasing Act, 15 U.S.C. section 1667 (1982), and in the Unif. Consumer Credit Code section 1.301(14), 7A U.L.A. 43 (1974). However, this definition of consumer lease differs from its models in several respects: The lessor can be a person regularly engaged either in the business of leasing or of selling goods, the lease need not be for a term exceeding four months, a lease primarily for an agricultural purpose is not covered, and whether there should be a limitation by dollar amount and its amount is left up to the individual states.

This definition focuses on the parties as well as the transaction. If a lease is within this definition, the lessor must be regularly engaged in the business of leasing or selling, and the lessee must be an individual not an organization; note that a lease to two or more individuals having a common interest through marriage or the like is not excluded as a lease to an organization under section 1-201(28). The lessee must take the interest primarily for a personal, family, or household purpose. If required by the enacting state, total payments under the lease contract, excluding payments for options to renew or buy, cannot exceed the figure designated.

(f) "Fault". Section 1-201(16).

(g) "Finance lease". New. This article includes a subset of rules that applies only to finance leases. Sections 2A-209, 2A-211(2), 2A-212(1), 2A-213, 2A-219(1), 2A-220(1)(a), 2A-221, 2A-405(c), 2A-407, 2A-516(2), and 2A-517(1)(a) and (2).

For a transaction to qualify as a finance lease it must first qualify as a lease. Section 2A-103(1)(j). Unless the lessor is comfortable that the transaction will qualify as a finance lease, the lease agreement should include provisions giving the lessor the benefits created by the subset of rules applicable to the transaction that qualifies as a finance lease under this article.

A finance lease is the product of a three-party transaction. The supplier manufactures or supplies the goods pursuant to the lessee's specification, perhaps even pursuant to a purchase order, sales agreement, or lease agreement between the supplier and the lessee. After the prospective finance lease is negotiated, a purchase order, sales agreement, or lease agreement is entered into by the lessor (as buyer or prime lessee) or an existing order, agreement, or lease is assigned by the lessee to the lessor, and the lessor and the lessee then enter into a lease or sublease of the goods. Due to the limited function usually performed by the lessor, the lessee looks almost entirely to the supplier for representations, covenants, and warranties. If a manufacturer's warranty carries through, the lessee may also look to that. Yet, this definition does not restrict the lessor's function solely to the supply of funds; if the lessor undertakes or performs other functions, express warranties, covenants, and the common law will protect the lessee.

This definition focuses on the transaction, not the status of the parties; to avoid confusion it is important to note that in other contexts, e.g., tax and accounting, the term finance lease has been used to connote different types of lease transactions, including leases that are disguised secured transactions. M. Rice, *Equipment Financing*, 62-71 (1981). A lessor who is a merchant with respect to goods of the kind subject to the lease may be a lessor under a finance lease. Many leases that are leases back to the seller of goods (section 2A-308(3)) will be finance leases. This conclusion is easily demonstrated by a hypothetical. Assume that B has bought goods from C pursuant to a sales contract. After delivery to and acceptance of the goods by B, B negotiates to sell the goods to A and simultaneously to lease the goods back from A, on terms and conditions that, we assume, will qualify the transaction as a lease. Section 2A-103(1)(j). In documenting the sale and lease back, B assigns the original sales contract between B, as buyer, and C, as seller, to A. A review of these facts leads to the conclusion that the lease from A to B qualifies as a finance lease, as all three conditions of the

definition are satisfied. Subparagraph (i) is satisfied as A, the lessor, had nothing to do with the selection, manufacture, or supply of the equipment. Subparagraph (ii) is satisfied as A, the lessor, bought the equipment at the same time that A leased the equipment to B, which certainly is in connection with the lease. Finally, subparagraph (iii)(A) is satisfied as A entered into the sales contract with B at the same time that A leased the equipment back to B. B, the lessee, will have received a copy of the sales contract in a timely fashion.

Subsection (i) requires the lessor to remain outside the selection, manufacture, and supply of the goods; that is the rationale for releasing the lessor from most of its traditional liability. The lessor is not prohibited from possession, maintenance, or operation of the goods, as policy does not require such prohibition. To insure the lessee's reliance on the supplier, and not on the lessor, subsection (ii) requires that the goods (where the lessor is the buyer of the goods) or that the right to possession and use of the goods (where the lessor is the prime lessee and the sublessor of the goods) be acquired in connection with the lease (or sublease) to qualify as a finance lease. The scope of the phrase "in connection with" is to be developed by the courts, case by case. Finally, as the lessee generally relies almost entirely upon the supplier for representations and covenants and upon the supplier or a manufacturer, or both, for warranties with respect to the goods, subsection (iii) requires that one of the following occur: (A) The lessee receive a copy of the supply contract before signing the lease contract; (B) the lessee's approval of the supply contract is a condition to the effectiveness of the lease contract; (C) the lessee receive a statement describing the promises and warranties and any limitations relevant to the lessee before signing the lease contract; or (D) before signing the lease contract and except in a consumer lease, the lessee receive a writing identifying the supplier (unless the supplier was selected and required by the lessee) and the rights of the lessee under section 2A-209, and advising the lessee a statement of promises and warranties is available from the supplier. Thus, even where oral supply orders or computer-placed supply orders are compelled by custom and usage the transaction may still qualify as a finance lease if the lessee approves the supply contract before the lease contract is effective and such approval was a condition to the effectiveness of the lease contract. Moreover, where the lessor does not want the lessee to see the entire supply contract, including price information, the lessee may be provided with a separate statement of the terms of the supply contract relevant to the lessee; promises between the supplier and the lessor that do not affect the lessee need not be included. The statement can be a restatement of those terms or a copy of portions of the supply contract with the relevant terms clearly designated. Any implied warranties need not be designated, but a disclaimer or modification of remedy must be designated. A copy of any manufacturer's warranty is sufficient if that is the warranty provided. However, a copy of any Regulation M disclosure given pursuant to 12 C.F.R. section 213.4(g) concerning warranties in itself is not sufficient since those disclosures need only briefly identify express warranties and need not include any disclaimer of warranty.

If a transaction does not qualify as a finance lease, the parties may achieve the same result by agreement; no negative implications are to be drawn if the transaction does not qualify. Further, absent the application of special rules (fraud, duress, and the like), a lease that qualifies as a finance lease and is assigned by the lessor or the lessee to a third party does not lose its status as a finance lease under this article. Finally, this article creates no special rule where the lessor is an affiliate of the supplier; whether the transaction qualifies as a finance lease will be determined by the facts of each case.

(h) "Goods". Section 9-102(a)(44). See section 2A-103(3) for reference to the definition of "account", "chattel paper", "document", "general intangible", and "instrument". See section 2A-217 for determination of the time and manner of identification.

(i) "Installment lease contract". Section 2-612(1).

(j) "Lease". New. There are several reasons to codify the law with respect to leases of goods. An analysis of the case law as it applies to leases of goods suggests at least several significant

issues to be resolved by codification. First and foremost is the definition of a lease. It is necessary to define lease to determine whether a transaction creates a lease or a security interest disguised as a lease. If the transaction creates a security interest disguised as a lease, the transaction will be governed by the Article on Secured Transactions (Article 9) and the lessor will be required to file a financing statement or take other action to perfect its interest in the goods against third parties. There is no such requirement with respect to leases under the common law and, except with respect to leases of fixtures (section 2A-309), this article imposes no such requirement. Yet the distinction between a lease and a security interest disguised as a lease is not clear from the case law at the time of the promulgation of this article. *DeKoven, Leases of Equipment: Puritan Leasing Company v. August*, A Dangerous Decision, 12 U.S.F. L. Rev. 257 (1978).

At common law a lease of personal property is a bailment for hire. While there are several definitions of bailment for hire, all require a thing to be let and a price for the letting. Thus, in modern terms and as provided in this definition, a lease is created when the lessee agrees to furnish consideration for the right to the possession and use of goods over a specified period of time. *Mooney, Personal Property Leasing: A Challenge*, 36 Bus. Law. 1605, 1607 (1981). Further, a lease is neither a sale (section 2-106(1)) nor a retention or creation of a security interest (sections 1-201(b)(35) and 1-203). Due to extensive litigation to distinguish true leases from security interests, an amendment to former section 1-201(37) (now codified as section 1-203) was promulgated with this article to create a sharper distinction.

This section as well as section 1-203 must be examined to determine whether the transaction in question creates a lease or a security interest. The following hypotheticals indicate the perimeters of the issue. Assume that A has purchased a number of copying machines, new, for \$1,000 each; the machines have an estimated useful economic life of three years. A advertises that the machines are available to rent for a minimum of one month and that the monthly rental is \$100.00. A intends to enter into leases where A provides all maintenance, without charge to the lessee. Further, the lessee will rent the machine, month to month, with no obligation to renew. At the end of the lease term the lessee will be obligated to return the machine to A's place of business. This transaction qualifies as a lease under the first half of the definition, for the transaction includes a transfer by A to a prospective lessee of possession and use of the machine for a stated term, month to month. The machines are goods (section 2A-103(1)(h)). The lessee is obligated to pay consideration in return, \$100.00 for each month of the term.

However, the second half of the definition provides that a sale or a security interest is not a lease. Since there is no passing of title, there is no sale. Sections 2A-103(3) and 2-106(1). Under pre-code security law this transaction would have created a bailment for hire or a true lease and not a conditional sale. *Da Rocha v. Macomber*, 330 Mass. 611, 614-15, 116 N.E.2d 139, 142 (1953). Under section 1-203, the same result would follow. While the lessee is obligated to pay rent for the one-month term of the lease, one of the other four conditions of section 1-203(b) must be met and none is. The term of the lease is one month and the economic life of the machine is 36 months; thus, section 1-203(b)(1) is not now satisfied. Considering the amount of the monthly rent, absent economic duress or coercion, the lessee is not bound either to renew the lease for the remaining economic life of the goods or to become the owner. If the lessee did lease the machine for 36 months, the lessee would have paid the lessor \$3,600 for a machine that could have been purchased for \$1,000; thus, section 1-203(b)(2) is not satisfied. Finally, there are no options; thus, subparagraphs (3) and (4) of section 1-203(b) are not satisfied. This transaction creates a lease, not a security interest. However, with each renewal of the lease the facts and circumstances at the time of each renewal must be examined to determine if that conclusion remains accurate, as it

is possible that a transaction that first creates a lease, later creates a security interest.

Assume that the facts are changed and that A requires each lessee to lease the goods for 36 months, with no right to terminate. Under pre-code security law this transaction would have created a conditional sale, and not a bailment for hire or true lease. *Hervey v. Rhode Island Locomotive Works*, 93 U.S. 664, 672-73 (1876). Under this subsection, and section 1-203, the same result would follow. The lessee's obligation for the term is not subject to termination by the lessee and the term is equal to the economic life of the machine.

Between these extremes there are many transactions that can be created. Some of the transactions were not properly categorized by the courts in applying the 1978 and earlier official texts of former section 1-201(37). This subsection, together with section 1-203, draws a brighter line, which should create a clearer signal to the professional lessor and lessee.

(k) "Lease agreement". This definition is derived from section 1-201(b)(3). Because the definition of lease is broad enough to cover future transfers, lease agreement includes an agreement contemplating a current or subsequent transfer. Thus it was not necessary to make an express reference to an agreement for the future lease of goods (section 2-106(1)). This concept is also incorporated in the definition of lease contract. Note that the definition of lease does not include transactions in ordinary building materials that are incorporated into an improvement on land. Section 2A-309(2).

The provisions of this article, if applicable, determine whether a lease agreement has legal consequences; otherwise the law of bailments and other applicable law determine the same. Sections 1-103 and 2A-103(4).

(l) "Lease contract". This definition is derived from the definition of contract in section 1-201(b)(12). Note that a lease contract may be for the future lease of goods, since this notion is included in the definition of lease.

(m) "Leasehold interest". New.

(n) "Lessee". New.

(o) "Lessee in ordinary course of business". Section 1-201(b)(9).

(p) "Lessor". New.

(q) "Lessor's residual interest". New.

(r) "Lien". New. This term is used in section 2A-307 (priority of liens arising by attachment or levy on, security interests in, and other claims to goods).

(s) "Lot". Section 2-105(5).

(t) "Merchant lessee". New. This term is used in section 2A-511 (merchant lessee's duties as to rightfully rejected goods). A person may satisfy the requirement of dealing in goods of the kind subject to the lease as lessor, lessee, seller, or buyer.

(u) "Purchase". Section 1-201(b)(29). This definition omits the reference to lien contained in the definition of purchase in article 1 (section 1-201(b)(29)). This should not be construed to exclude consensual liens from the definition of purchase in this article; the exclusion was mandated by the scope of the definition of lien in section 2A-103(1)(r). Further, the definition of purchaser in this article adds a reference to lease; as purchase is defined in section 1-201(b)(29) to include any other voluntary transaction creating an interest in property, this addition is not substantive.

(v) "Sublease". New.

(w) "Supplier". New.

(x) "Supply contract". New.

(y) "Termination". Section 2-106(3).

The effect of a termination is provided in section 2A-505(2).

2A-104 Leases subject to other law.

(1) A lease, although subject to this article, is also subject to any applicable:

(a) certificate of title statute of this state (the Motor Vehicle Certificate of Title Act);

(b) certificate of title statute of another jurisdiction (section 2A-105); or

(c) consumer protection statute of this state, or final consumer protection decision of a court of this state existing on September 6, 1991.

(2) In case of conflict between this article, other than sections 2A-105, 2A-304(3), and 2A-305(3), and a statute or decision referred to in subsection (1), the statute or decision controls.

(3) Failure to comply with an applicable law has only the effect specified therein.

Source: Laws 1991, LB 159, § 6; Laws 1995, LB 589, § 11; Laws 2005, LB 276, § 113.

Cross References

Motor Vehicle Certificate of Title Act, see section 60-101.

Part 2

FORMATION AND CONSTRUCTION OF LEASE CONTRACT

2A-207 Repealed. Laws 2005, LB 570, § 116.

Part 5

DEFAULT

A. In General

2A-501 Default: procedure.

(1) Whether the lessor or the lessee is in default under a lease contract is determined by the lease agreement and this article.

(2) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement has rights and remedies as provided in this article and, except as limited by this article, as provided in the lease agreement.

(3) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement may reduce the party's claim to judgment, or otherwise enforce the lease contract by self-help or any available judicial procedure or nonjudicial procedure, including administrative proceeding, arbitration, or the like, in accordance with this article.

(4) Except as otherwise provided in section 1-305(a) or this article or the lease agreement, the rights and remedies referred to in subsections (2) and (3) are cumulative.

(5) If the lease agreement covers both real property and goods, the party seeking enforcement may proceed under this part as to the goods, or under other applicable law as to both the real property and the goods in accordance with that party's rights and remedies in respect of the real property, in which case this part does not apply.

Source: Laws 1991, LB 159, § 51; Laws 2005, LB 570, § 43.

COMMENT

Uniform Statutory Source: Former section 9-501 (now codified as sections 9-601 through 9-604).

Changes: Substantially revised.

Purposes:

1. Subsection (1) is new and represents a departure from the Article on Secured Transactions (Article 9) as the subsection makes clear that whether a party to the lease agreement is in default is determined by this article as well as the agreement. Sections 2A-508 and 2A-523. It further departs from article 9 in recognizing the potential default of either party, a function of the bilateral nature of the obligations between the parties to the lease contract.

2. Subsection (2) is a version of the first sentence of section 9-601(a), revised to reflect leasing terminology.

3. Subsection (3), an expansive version of the second sentence of section 9-601(a), lists the procedures that may be followed by the party seeking enforcement; in effect, the scope of the procedures listed in subsection (3) is consistent with the scope of the procedures available to the foreclosing secured party.

4. Subsection (4) establishes that the parties' rights and remedies are cumulative. *DeKoven, Leases of Equipment: Puritan Leasing Company v. August, A Dangerous Decision*, 12 U.S.F.L.Rev. 257, 276-80 (1978). Cumulation, and largely unrestricted selection, of remedies is allowed in furtherance of the general policy of the code, stated in section 1-305, that remedies be liberally administered to put the aggrieved party in as good a position as if the other party had fully performed. Therefore, cumulation of, or selection among, remedies is available to the

extent necessary to put the aggrieved party in as good a position as it would have been in had there been full performance. However, cumulation of, or selection among, remedies is not available to the extent that the cumulation or selection would put the aggrieved party in a better position than it would have been in had there been full performance by the other party.

5. Section 9-602, which, among other things, states that certain rules, to the extent they give rights to the debtor and impose duties on the secured party, may not be waived or varied, is not incorporated in this article. Given the significance of freedom of contract in the development of the common law as it applies to bailments for hire and the lessee's lack of an equity of redemption, there is no reason to impose that restraint.

Cross References:

Sections 1-305, 2A-508, and 2A-523, and article 9, especially sections 9-601 and 9-602.

Definitional Cross References:

"Goods". Section 2A-103(1)(h).

"Lease agreement". Section 2A-103(1)(k).

"Lease contract". Section 2A-103(1)(l).

"Lessee". Section 2A-103(1)(n).

"Lessor". Section 2A-103(1)(p).

"Party". Section 1-201(b)(26).

"Remedy". Section 1-201(b)(32).

"Rights". Section 1-201(b)(34).

B. Default by Lessor

2A-514 Waiver of lessee's objections.

(1) In rejecting goods, a lessee's failure to state a particular defect that is ascertainable by reasonable inspection precludes the lessee from relying on the defect to justify rejection or to establish default:

(a) if, stated seasonably, the lessor or the supplier could have cured it (section 2A-513); or

(b) between merchants if the lessor or the supplier after rejection has made a request in writing for a full and final written statement of all defects on which the lessee proposes to rely.

(2) A lessee's failure to reserve rights when paying rent or other consideration against documents precludes recovery of the payment for defects apparent in the documents.

Source: Laws 1991, LB 159, § 64; Laws 2005, LB 570, § 44.

2A-518 Cover; substitute goods.

(1) After a default by a lessor under the lease contract of a type described in section 2A-508(1), or, if agreed, after other default by the lessor, the lessee may cover by making any purchase or lease of or contract to purchase or lease goods in substitution for those due from the lessor.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (section 2A-504) or otherwise determined pursuant to agreement of the parties (sections 1-302 and 2A-503), if a lessee's cover is by a lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessee may recover from the lessor as damages (i) the present

value, as of the date of the commencement of the term of the new lease agreement, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement minus the present value as of the same date of the total rent for the then remaining lease term of the original lease agreement, and (ii) any incidental or consequential damages, less expenses saved in consequence of the lessor's default.

(3) If a lessee's cover is by lease agreement that for any reason does not qualify for treatment under subsection (2), or is by purchase or otherwise, the lessee may recover from the lessor as if the lessee had elected not to cover and section 2A-519 governs.

Source: Laws 1991, LB 159, § 68; Laws 2005, LB 570, § 45.

COMMENT

Uniform Statutory Source: Section 2-712.

Changes: Substantially revised.

Purposes:

1. Subsection (1) allows the lessee to take action to fix its damages after default by the lessor. Such action may consist of the lease of goods. The decision to cover is a function of commercial judgment, not a statutory mandate replete with sanctions for failure to comply. Cf. section 9-625.

2. Subsection (2) states a rule for determining the amount of lessee's damages provided that there is no agreement to the contrary. The lessee's damages will be established using the new lease agreement as a measure if the following three criteria are met: (i) The lessee's cover is by lease agreement, (ii) the lease agreement is substantially similar to the original lease agreement, and (iii) such cover was effected in good faith, and in a commercially reasonable manner. Thus, the lessee will be entitled to recover from the lessor the present value, as of the date of the commencement of the term of the new lease agreement, of the rent under the new lease agreement applicable to that period which is comparable to the then remaining term of the original lease agreement less the present value of the rent reserved for the remaining term under the original lease, together with incidental or consequential damages less expenses saved in consequence of the lessor's default. Consequential damages may include loss suffered by the lessee because of deprivation of the use of the goods during the period between the default and the acquisition of the goods under the new lease agreement. If the lessee's cover does not satisfy the criteria of subsection (2), section 2A-519 governs.

3. Two of the three criteria to be met by the lessee are familiar, but the concept of the new lease agreement being substantially similar to the original lease agreement is not. Given the many variables facing a party who intends to lease goods and the rapidity of change in the market place, the policy decision was made not to draft with specificity. It was thought unwise to seek to establish certainty at the cost of fairness. Thus, the decision of whether the new lease agreement is substantially similar to the original will be determined case by case.

4. While the section does not draw a bright line, it is possible to describe some of the factors that should be considered in finding that a new lease agreement is substantially similar to the original. First, the goods subject to the new lease agreement should be examined. For example, in a lease of computer equipment the new lease might be for more modern equipment. However, it may be that at the time of the lessor's breach it was not possible to obtain the same type of goods in the market place. Because the lessee's remedy under section 2A-519 is intended to place the lessee in essentially the same position as if he or she had covered, if goods similar to those to have been delivered under the original lease are not available, then the computer equipment in this hypothetical should qualify as a commercially reasonable substitute. See section 2-712(1).

5. Second, the various elements of the new lease agreement should also be examined. Those elements include the presence or absence of options to purchase or release; the lessor's representations, warranties, and covenants to the lessee, as well as those to be provided by the lessee to the lessor; and the services, if any, to be provided by the lessor or by the lessee. All of these factors allocate cost and risk between the lessor and the lessee and thus affect the amount of rent to be paid. If the differences between the original lease and the new lease can be easily valued, it would be appropriate for a court to adjust the difference in rental to take account of the difference between the two leases, find that the new lease is substantially similar to the old lease, and award cover damages under this section. If, for example, the new lease requires the lessor to insure the goods in the hands of the lessee, while the original lease required the lessee to insure, the usual cost of such insurance could be deducted from the rent due under the new lease before determining the difference in rental between the two leases.

6. Having examined the goods and the agreement, the test to be applied is whether, in light of these comparisons, the new lease agreement is substantially similar to the original lease agreement. These findings should not be made with scientific precision, as they are a function of economics, nor should they be made independently with respect to the goods and each element of the agreement, as it is important that a sense of commercial judgment pervade the finding. To establish the new lease as a proper measure of damage under subsection (2), these factors, taken as a whole, must result in a finding that the new lease agreement is substantially similar to the original.

7. A new lease can be substantially similar to the original lease even though its term extends beyond the remaining term of the original lease, so long as both (a) the lease terms are commercially comparable (e.g., it is highly unlikely that a one-month rental and a five-year lease would reflect similar commercial realities), and (b) the court can fairly apportion a part of the rental payments under the new lease to that part of the term of the new lease which is comparable to the remaining lease term under the original lease. Also, the lease term of the new lease may be comparable to the term of the original lease even though the beginning and ending dates of the two leases are not the same. For example, a two-month lease of agricultural equipment for the months of August and September may be comparable to a two-month lease running from the 15th of August to the 15th of October if in the particular location two-month leases beginning on August 15th are basically interchangeable with two-month leases beginning August 1st. Similarly, the term of a one-year truck lease beginning on the 15th of January may be comparable to the term of a one-year truck lease beginning January 2d. If the lease terms are found to be comparable, the court may base cover damages on the entire difference between the costs under the two leases.

Cross References:

Sections 2-712(1), 2A-519, and 9-625.

Definitional Cross References:

“Agreement”. Section 1-201(b)(3).	“Lease contract”. Section 2A-103(1)(l).
“Contract”. Section 1-201(b)(12).	“Lessee”. Section 2A-103(1)(n).
“Good faith”. Section 1-201(b)(20).	“Lessor”. Section 2A-103(1)(p).
“Goods”. Section 2A-103(1)(h).	“Party”. Section 1-201(b)(26).
“Lease”. Section 2A-103(1)(j).	“Present value”. Section 1-102(b)(28).
“Lease agreement”. Section 2A-103(1)(k).	“Purchase”. Section 2A-103(1)(v).

2A-519 Lessee’s damages for nondelivery, repudiation, default, and breach of warranty in regard to accepted goods.

(1) Except as otherwise provided with respect to damages liquidated in the lease agreement (section 2A-504) or otherwise determined pursuant to agreement of the parties (sections 1-302 and 2A-503), if a lessee elects not to cover or a lessee elects to cover and the cover is by lease agreement that for any reason does not qualify for treatment under section 2A-518(2), or is by purchase or otherwise, the measure of damages for nondelivery or repudiation by the lessor or for rejection or revocation of acceptance by the lessee is the present value, as of the date of the default, of the then market rent minus the present value as of the same date of the original rent, computed for the remaining lease term of the original lease agreement, together with incidental and consequential damages, less expenses saved in consequence of the lessor’s default.

(2) Market rent is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

(3) Except as otherwise agreed, if the lessee has accepted goods and given notification (section 2A-516(3)), the measure of damages for nonconforming tender or delivery or other default by a lessor is the loss resulting in the ordinary course of events from the lessor’s default as determined in any manner that is reasonable together with incidental and consequential damages, less expenses saved in consequence of the lessor’s default.

(4) Except as otherwise agreed, the measure of damages for breach of warranty is the present value at the time and place of acceptance of the difference between the value of the use of the goods accepted and the value if they had been as warranted for the lease term, unless special circumstances show proximate damages of a different amount, together with incidental and consequential damages, less expenses saved in consequence of the lessor’s default or breach of warranty.

Source: Laws 1991, LB 159, § 69; Laws 2005, LB 570, § 46.

COMMENT

Uniform Statutory Source: Sections 2-713 and 2-714.

Changes: Substantially revised.

Purposes:

1. Subsection (1), a revised version of the provisions of section 2-713(1), states the basic rule governing the measure of lessee’s damages for nondelivery or repudiation by the lessor or for rightful rejection or revocation of acceptance by the lessee. This measure will apply, absent agreement to the contrary, if the lessee does not cover or if the cover does not qualify under section 2A-518. There is no sanction for cover that does not qualify.

2. The measure of damage is the present value, as of the date of default, of the market rent for the remaining term of the lease less the present value of the original rent for the remaining term of the lease, plus incidental and consequential damages less expenses saved in consequence of the default. Note that the reference in section 2A-519(1) is to the date of default not to the date of an event of default. An event of default under a lease

agreement becomes a default under a lease agreement only after the expiration of any relevant period of grace and compliance with any notice requirements under this article and the lease agreement. American Bar Foundation, Commentaries on Indentures, section 5-1, at 216-217 (1971). Section 2A-501(1). This conclusion is also a function of whether, as a matter of fact or law, the event of default has been waived, suspended, or cured. Sections 1-103 and 2A-103(4).

3. Subsection (2), a revised version of the provisions of section 2-713(2), states the rule with respect to determining market rent.

4. Subsection (3), a revised version of the provisions of section 2-714(1) and (3), states the measure of damages where goods have been accepted and acceptance is not revoked. The subsection applies both to defaults which occur at the inception of the lease and to defaults which occur subsequently, such as failure to comply with an obligation to maintain the leased goods. The measure in essence is the loss, in the ordinary course of events, flowing from the default.

5. Subsection (4), a revised version of the provisions of section 2-714(2), states the measure of damages for breach of warranty. The measure in essence is the present value of the difference between the value of the goods accepted and of the goods if they had been as warranted.

6. Subsections (1), (3), and (4) specifically state that the parties may by contract vary the damages rules stated in those subsections.

Cross References:

Sections 2-713(1), 2-713(2), 2-714, and 2A-518.

Definitional Cross References:

“Conforming”. Section 2A-103(1)(d).

“Delivery”. Section 1-201(b)(15).

“Goods”. Section 2A-103(1)(h).

“Lease”. Section 2A-103(1)(j).

“Lease agreement”. Section 2A-103(1)(k).

“Lessee”. Section 2A-103(1)(n).

“Lessor”. Section 2A-103(1)(p).

“Notification”. Section 1-202.

“Present value”. Section 1-201(b)(28).

“Value”. Section 1-204.

C. Default by Lessee

2A-526 Lessor’s stoppage of delivery in transit or otherwise.

(1) A lessor may stop delivery of goods in the possession of a carrier or other bailee if the lessor discovers the lessee to be insolvent and may stop delivery of carload, truckload, planeload, or larger shipments of express or freight if the lessee repudiates or fails to make a payment due before delivery, whether for rent, security, or otherwise under the lease contract, or for any other reason the lessor has a right to withhold or take possession of the goods.

(2) In pursuing its remedies under subsection (1), the lessor may stop delivery until

- (a) receipt of the goods by the lessee;
- (b) acknowledgment to the lessee by any bailee of the goods, except a carrier, that the bailee holds the goods for the lessee; or
- (c) such an acknowledgment to the lessee by a carrier via reshipment or as a warehouse.

(3)(a) To stop delivery, a lessor shall so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(b) After notification, the bailee shall hold and deliver the goods according to the directions of the lessor, but the lessor is liable to the bailee for any ensuing charges or damages.

(c) A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

Source: Laws 1991, LB 159, § 76; Laws 2005, LB 570, § 47.

2A-527 Lessor’s rights to dispose of goods.

(1) After a default by a lessee under the lease contract of the type described in section 2A-523(1) or 2A-523(3)(a) or after the lessor refuses to deliver or takes possession of goods (section 2A-525 or 2A-526), or, if agreed, after other default by a lessee, the lessor may dispose of the goods concerned or the undelivered balance thereof by lease, sale, or otherwise.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (section 2A-504) or otherwise determined pursuant to agreement of the parties (sections 1-302 and 2A-503), if the disposition is by lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessor may recover from the lessee as damages (i) accrued and unpaid rent as of the date of the commencement of the term of the new lease agreement, (ii) the present value, as of the same date, of the total rent for the

then remaining lease term of the original lease agreement minus the present value, as of the same date, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement, and (iii) any incidental damages allowed under section 2A-530, less expenses saved in consequence of the lessee's default.

(3) If the lessor's disposition is by lease agreement that for any reason does not qualify for treatment under subsection (2), or is by sale or otherwise, the lessor may recover from the lessee as if the lessor had elected not to dispose of the goods and section 2A-528 governs.

(4) A subsequent buyer or lessee who buys or leases from the lessor in good faith for value as a result of a disposition under this section takes the goods free of the original lease contract and any rights of the original lessee even though the lessor fails to comply with one or more of the requirements of this article.

(5) The lessor is not accountable to the lessee for any profit made on any disposition. A lessee who has rightfully rejected or justifiably revoked acceptance shall account to the lessor for any excess over the amount of the lessee's security interest (section 2A-508(5)).

Source: Laws 1991, LB 159, § 77; Laws 2005, LB 570, § 48.

COMMENT

Uniform Statutory Source: Section 2-706(1), (5), and (6).

Changes: Substantially revised.

Purposes:

1. Subsection (1), a revised version of the first sentence of subsection 2-706(1), allows the lessor the right to dispose of goods after a statutory or other material default by the lessee (even if the goods remain in the lessee's possession—section 2A-525(2)), after the lessor refuses to deliver or takes possession of the goods, or, if agreed, after other contractual default. The lessor's decision to exercise this right is a function of a commercial judgment, not a statutory mandate replete with sanctions for failure to comply. Cf. section 9-625. As the owner of the goods, in the case of a lessor, or as the prime lessee of the goods, in the case of a sublessor, compulsory disposition of the goods is inconsistent with the nature of the interest held by the lessor or the sublessor and is not necessary because the interest held by the lessee or the sublessee is not protected by a right of redemption under the common law or this article. Subsection 2A-527(5).

2. The rule for determining the measure of damages recoverable by the lessor against the lessee is a function of several variables. If the lessor has elected to effect disposition under subsection (1) and such disposition is by lease that qualifies under subsection (2), the measure of damages set forth in subsection (2) will apply, absent agreement to the contrary. Sections 1-302, 2A-103(4), and 2A-504.

3. The lessor's damages will be established using the new lease agreement as a measure if the following three criteria are satisfied: (i) The lessor disposed of the goods by lease, (ii) the lease agreement is substantially similar to the original lease agreement, and (iii) such disposition was in good faith, and in a commercially reasonable manner. Thus, the lessor will be entitled to recover from the lessee the accrued and unpaid rent as of the date of commencement of the term of the new lease, and the present value, as of the same date, of the rent under the original lease for the then remaining term less the present value as of the same date of the rent under the new lease agreement applicable to the period of the new lease comparable to the remaining term under the original lease, together with incidental damages less expenses saved in consequence of the lessee's default. If the lessor's disposition does not satisfy the criteria of subsection (2), the lessor may calculate its claim against the lessee pursuant to section 2A-528. Section 2A-523(1)(e).

4. Two of the three criteria to be met by the lessor are familiar, but the concept of the new lease agreement that is substantially similar to the original lease agreement is not. Given the many variables facing a party who intends to lease goods and the rapidity of change in the market place, the policy decision was made not to draft with specificity. It was thought unwise to seek to establish certainty at the cost of fairness. The decision of whether the new lease agreement is substantially similar to the original will be determined case by case.

5. While the section does not draw a bright line, it is possible to describe some of the factors that should be considered in a finding that a new lease agreement is substantially similar to the original. The various elements of the new lease agreement should be examined. Those elements include the options to purchase or release; the lessor's representations, warranties, and covenants to the lessee as well as those to be provided by the lessee to the lessor; and the services, if any, to be provided by the lessor or by the lessee. All of these factors allocate cost and risk between the lessor and the lessee and thus affect the amount of rent to be paid. These findings should not be made with scientific precision, as they are a function of economics, nor should they be made independently, as it is important that a sense of commercial judgment pervade the finding. See section 2A-507(2). To establish the new lease as a proper measure of damage under subsection (2), these various factors, taken as a whole, must result in a finding that the new lease agreement is substantially similar to the original. If the differences between the original lease and the new lease can be easily valued, it would be appropriate for a court to find that the new lease is substantially similar to the old lease, adjust the difference in the rent between the two leases to take account of the differences, and award damages under this section. If, for example, the new lease requires the lessor to insure the goods in the hands of the lessee, while the original lease required the lessee to insure, the usual cost of such insurance could be deducted from rent due under the new lease before the difference in rental between the two leases is determined.

6. The following hypothetical illustrates the difficulty of providing a bright line. Assume that A buys a jumbo tractor for \$1 million and then leases the tractor to B for a term of 36 months. The tractor is delivered to and is accepted by B on May 1. On June 1 B fails to pay the monthly rent to A. B returns the tractor to A, who immediately releases the tractor to C for a term identical to the term remaining under the lease between A and

B. All terms and conditions under the lease between A and C are identical to those under the original lease between A and B, except that C does not provide any property damage or other insurance coverage, and B agreed to provide complete coverage. Coverage is expensive and difficult to obtain. It is a question of fact whether it is so difficult to adjust the recovery to take account of the difference between the two leases as to insurance that the second lease is not substantially similar to the original.

7. A new lease can be substantially similar to the original lease even though its term extends beyond the remaining term of the original lease, so long as both (a) the lease terms are commercially comparable (e.g., it is highly unlikely that a one-month rental and a five-year lease would reflect similar realities), and (b) the court can fairly apportion a part of the rental payments under the new lease to that part of the term of the new lease which is comparable to the remaining lease term under the original lease. Also, the lease term of the new lease may be comparable to the remaining term of the original lease even though the beginning and ending dates of the two leases are not the same. For example, a two-month lease of agricultural equipment for the months of August and September may be comparable to a two-month lease running from the 15th of August to the 15th of October if in the particular location two-month leases beginning on August 15th are basically interchangeable with two-month leases beginning August 1st. Similarly, the term of a one-year truck lease beginning on the 15th of January may be comparable to the term of a one-year truck lease beginning January 2nd. If the lease terms are found to be comparable, the court may base cover damages on the entire difference between the costs under the two leases.

8. Subsection (3), which is new, provides that if the lessor's disposition is by lease that does not qualify under subsection (2), or is by sale or otherwise, section 2A-528 governs.

9. Subsection (4), a revised version of subsection 2-706(5), applies to protect a subsequent buyer or lessee who buys or leases from the lessor in good faith and for value, pursuant to a disposition under this section. Note that by its terms, the rule in subsection 2A-304(1), which provides that the subsequent lessee takes subject to the original lease contract, is controlled by the rule stated in this subsection.

10. Subsection (5), a revised version of subsection 2-706(6), provides that the lessor is not accountable to the lessee for any profit made by the lessor on a disposition. This rule follows from the fundamental premise of the bailment for hire that the lessee under a lease of goods has no equity of redemption to protect.

Cross References:

Sections 1-302, 2-706(1), 2-706(5), 2-706(6), 2A-103(4), 2A-304(1), 2A-504, 2A-507(2), 2A-523(1)(e), 2A-525(2), 2A-527(5), 2A-528, and 9-625.

Definitional Cross References:

"Buyer". Section 2-103(1)(a).

"Delivery". Section 1-201(b)(15).

"Good faith". Section 1-201(b)(20).

"Goods". Section 2A-103(1)(h).

"Lease". Section 2A-103(1)(j).

"Lease contract". Section 2A-103(1)(l).

"Lessee". Section 2A-103(1)(n).

"Lessor". Section 2A-103(1)(p).

"Present value". Section 1-201(b)(28).

"Rights". Section 1-201(b)(34).

"Sale". Section 2-106(1).

"Security interest". Sections 1-201(b)(35) and 1-203.

"Value". Section 1-204.

2A-528 Lessor's damages for nonacceptance, failure to pay, repudiation, or other default.

(1) Except as otherwise provided with respect to damages liquidated in the lease agreement (section 2A-504) or otherwise determined pursuant to agreement of the parties (sections 1-302 and 2A-503), if a lessor elects to retain the goods or a lessor elects to dispose of the goods and the disposition is by lease agreement that for any reason does not qualify for treatment under section 2A-527(2), or is by sale or otherwise, the lessor may recover from the lessee as damages for a default of the type described in section 2A-523(1) or 2A-523(3)(a), or, if agreed, for other default of the lessee, (i) accrued and unpaid rent as of the date of default if the lessee has never taken possession of the goods, or, if the lessee has taken possession of the goods, as of the date the lessor repossesses the goods or an earlier date on which the lessee makes a tender of the goods to the lessor, (ii) the present value as of the date determined under clause (i) of the total rent for the then remaining lease term of the original lease agreement minus the present value as of the same date of the market rent at the place where the goods are located computed for the same lease term, and (iii) any incidental damages allowed under section 2A-530, less expenses saved in consequence of the lessee's default.

(2) If the measure of damages provided in subsection (1) is inadequate to put a lessor in as good a position as performance would have, the measure of damages is the present value of the profit, including reasonable overhead, the lessor would have made from full performance by the lessee, together with any incidental damages allowed under section 2A-530, due allowance for costs reasonably incurred, and due credit for payments or proceeds of disposition.

Source: Laws 1991, LB 159, § 78; Laws 2005, LB 570, § 49.

COMMENT

Uniform Statutory Source: Section 2-708.

Changes: Substantially revised.

Purposes:

1. Subsection (1), a substantially revised version of section 2-708(1), states the basic rule governing the measure of lessor's damages for a default described in section 2A-523(1) or (3)(a) and, if agreed, for a contractual default. This measure will apply if the lessor elects to retain the goods (whether undelivered, returned by the lessee, or repossessed by the lessor after acceptance and default by the lessee) or if the lessor's disposition does not qualify under subsection 2A-527(2). Section 2A-527(3). Note that under some of these conditions, the lessor may recover damages from the lessee pursuant to the rule set forth in section 2A-529. There is no sanction for disposition that does not qualify under subsection 2A-527(2). Application of the rule set forth in this section is subject to agreement to the contrary. Sections 1-302, 2A-103(4), and 2A-504.

2. If the lessee has never taken possession of the goods, the measure of damage is the accrued and unpaid rent as of the date of default together with the present value, as of the date of default, of the original rent for the remaining term of the lease less the present value as of the same date of market rent, and incidental damages, less expenses saved in consequence of the default. Note that the reference in section 2A-528(1)(i) and (ii) is to the date of default not to the date of an event of default. An event of default under a lease agreement becomes a default under a lease agreement only after the expiration of any relevant period of grace and compliance with any notice requirements under this article and the lease agreement. American Bar Foundation, Commentaries on Indentures, section 5-1, at 216-217 (1971). Section 2A-501(1). This conclusion is also a function of whether, as a matter of fact or law, the event of default has been waived, suspended, or cured. Sections 1-103 and 2A-103(4). If the lessee has taken possession of the goods, the measure of damages is the accrued and unpaid rent as of the earlier of the time the lessor repossesses the goods or the time the lessee tenders the goods to the lessor plus the difference between the present value, as of the same time, of the rent under the lease for the remaining lease term and the present value, as of the same time, of the market rent.

3. Market rent will be computed pursuant to section 2A-507.

4. Subsection (2), a somewhat revised version of the provisions of subsection 2-708(2), states a measure of damages which applies if the measure of damages in subsection (1) is inadequate to put the lessor in as good a position as performance would have. The measure of damage is the lessor's profit, including overhead, together with incidental damages, with allowance for costs reasonably incurred and credit for payments or proceeds of disposition. In determining the amount of due credit with respect to proceeds of disposition a proper value should be attributed to the lessor's residual interest in the goods. Sections 2A-103(1)(q) and 2A-507(4).

5. In calculating profit, a court should include any expected appreciation of the goods, e.g., the foal of a leased brood mare. Because this subsection is intended to give the lessor the benefit of the bargain, a court should consider any reasonable benefit or profit expected by the lessor from the performance of the lease agreement. See *Honeywell, Inc. v. Lithonia Lighting, Inc.*, 317 F.Supp. 406, 413 (N.D. Ga. 1970); *Locks v. Wade*, 36 N.J. Super. 128, 131, 114 A.2d 875, 877 (Super. Ct. App. Div. 1955). Further, in calculating profit the concept of present value must be given effect. *Taylor v. Commercial Credit Equip. Corp.*, 170 Ga. App. 322, 316 S.E.2d 788 (Ct. App. 1984). See generally section 2A-103(1)(u).

Cross References:

Sections 1-302, 2-708, 2A-103(1)(u), 2A-402, 2A-504, 2A-507, 2A-527(2), and 2A-529.

Definitional Cross References:

"Agreement". Section 1-201(b)(3).

"Goods". Section 2A-103(1)(h).

"Lease". Section 2A-103(1)(j).

"Lease agreement". Section 2A-103(1)(k).

"Lessee". Section 2A-103(1)(n).

"Lessor". Section 2A-103(1)(p).

"Party". Section 1-201(b)(26).

"Present value". Section 1-201(b)(28).

"Sale". Section 2-106(1).

ARTICLE 3

NEGOTIABLE INSTRUMENTS

Part 1

GENERAL PROVISIONS AND DEFINITIONS

Section

- 3-103. Definitions.
- 3-104. Negotiable instrument.
- 3-118. Statute of limitations.

Part 3

ENFORCEMENT OF INSTRUMENTS

- 3-309. Enforcement of lost, destroyed, or stolen instrument.

Part 4

LIABILITY OF PARTIES

- 3-416. Transfer warranties.
- 3-417. Presentment warranties.

Part 1

GENERAL PROVISIONS AND DEFINITIONS

3-103 Definitions.

(a) In this article:

(1) "Acceptor" means a drawee who has accepted a draft.

(2) "Drawee" means a person ordered in a draft to make payment.

(3) "Drawer" means a person who signs or is identified in a draft as a person ordering payment.

(4) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(5) "Maker" means a person who signs or is identified in a note as a person undertaking to pay.

(6) "Order" means a written instruction to pay money signed by the person giving the instruction. The instruction may be addressed to any person, including the person giving the instruction, or to one or more persons jointly or in the alternative but not in succession. An authorization to pay is not an order unless the person authorized to pay is also instructed to pay.

(7) "Ordinary care" in the case of a person engaged in business means observance of reasonable commercial standards, prevailing in the area in which the person is located, with respect to the business in which the person is engaged. In the case of a bank that takes an instrument for processing for collection or payment by automated means, reasonable commercial standards do not require the bank to examine the instrument if the failure to examine does not violate the bank's prescribed procedures and the bank's procedures do not vary unreasonably from general banking usage not disapproved by this article or article 4.

(8) "Party" means a party to an instrument.

(9) "Promise" means a written undertaking to pay money signed by the person undertaking to pay. An acknowledgment of an obligation by the obligor is not a promise unless the obligor also undertakes to pay the obligation.

(10) "Prove" with respect to a fact means to meet the burden of establishing the fact (section 1-201(b)(8)).

(11) "Remitter" means a person who purchases an instrument from its issuer if the instrument is payable to an identified person other than the purchaser.

(b) Other definitions applying to this article and the sections in which they appear are:

"Acceptance".	Section 3-409.
"Accommodated party".	Section 3-419.
"Accommodation party".	Section 3-419.
"Alteration".	Section 3-407.
"Anomalous indorsement".	Section 3-205.
"Blank indorsement".	Section 3-205.
"Cashier's check".	Section 3-104.
"Certificate of deposit".	Section 3-104.
"Certified check".	Section 3-409.
"Check".	Section 3-104.

“Consideration”.	Section 3-303.
“Demand draft”.	Section 3-104.
“Draft”.	Section 3-104.
“Holder in due course”.	Section 3-302.
“Incomplete instrument”.	Section 3-115.
“Indorsement”.	Section 3-204.
“Indorser”.	Section 3-204.
“Issue”.	Section 3-105.
“Issuer”.	Section 3-105.
“Negotiable instrument”.	Section 3-104.
“Negotiation”.	Section 3-201.
“Note”.	Section 3-104.
“Payable at a definite time”.	Section 3-108.
“Payable on demand”.	Section 3-108.
“Payable to bearer”.	Section 3-109.
“Payable to order”.	Section 3-109.
“Payment”.	Section 3-602.
“Person entitled to enforce”.	Section 3-301.
“Presentment”.	Section 3-501.
“Reacquisition”.	Section 3-207.
“Special indorsement”.	Section 3-205.
“Teller’s check”.	Section 3-104.
“Transfer of instrument”.	Section 3-203.
“Traveler’s check”.	Section 3-104.
“Value”.	Section 3-303.

(c) The following definitions in other articles apply to this article:

“Bank”.	Section 4-105.
“Banking day”.	Section 4-104.
“Clearinghouse”.	Section 4-104.
“Collecting bank”.	Section 4-105.
“Depository bank”.	Section 4-105.
“Documentary draft”.	Section 4-104.
“Intermediary bank”.	Section 4-105.
“Item”.	Section 4-104.
“Payor bank”.	Section 4-105.
“Suspends payments”.	Section 4-104.

(d) In addition, article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

Source: Laws 1991, LB 161, § 7; Laws 2003, LB 128, § 1; Laws 2005, LB 570, § 50.

COMMENT

1. Subsection (a) defines some common terms used throughout the article that were not defined by former article 3 and adds the definitions of “order” and “promise” found in former section 3-102(1)(b) and (c).

2. The definition of “order” includes an instruction given by the signer to itself. The most common example of this kind of order is a cashier’s check: A draft with respect to which the drawer and drawee are the same bank or branches of the same bank. Former section 3-118(a) treated a cashier’s check as a note. It stated “a draft drawn on the drawer is effective as a note”. Although it is technically more correct to treat a cashier’s check as a promise by the issuing bank to pay rather than an order to pay, a cashier’s check is in the form of a check and it is normally referred to as a check. Thus, revised article 3 follows

banking practice in referring to a cashier’s check as both a draft and a check rather than a note. Some insurance companies also follow the practice of issuing drafts in which the drawer draws on itself and makes the draft payable at or through a bank. These instruments are also treated as drafts. The obligation of the drawer of a cashier’s check or other draft drawn on the drawer is stated in section 3-412.

An order may be addressed to more than one person as drawee either jointly or in the alternative. The authorization of alternative drawees follows former section 3-102(1)(b) and recognizes the practice of drawers, such as corporations issuing dividend checks, who for commercial convenience name a number of drawees, usually in different parts of the country. Section 3-501(b)(1) provides that presentment may be made to any one

of multiple drawees. Drawees in succession are not permitted because the holder should not be required to make more than one presentment. Dishonor by any drawee named in the draft entitles the holder to rights of recourse against the drawer or indorsers.

3. The last sentence of subsection (a)(9) is intended to make it clear that an I.O.U. or other written acknowledgment of indebtedness is not a note unless there is also an undertaking to pay the obligation.

4. Subsection (a)(7) is a definition of ordinary care which is applicable not only to article 3 but to article 4 as well. See section 4-104(c). The general rule is stated in the first sentence of subsection (a)(7) and it applies both to banks and to persons

engaged in businesses other than banking. Ordinary care means observance of reasonable commercial standards of the relevant business prevailing in the area in which the person is located. The second sentence of subsection (a)(7) is a particular rule limited to the duty of a bank to examine an instrument taken by a bank for processing for collection or payment by automated means. This particular rule applies primarily to section 4-406 and it is discussed in comment 4 to that section. Nothing in section 3-103(a)(7) is intended to prevent a customer from proving that the procedures followed by a bank are unreasonable, arbitrary, or unfair.

5. In subsection (c) reference is made to a new definition of "bank" in amended article 4.

3-104 Negotiable instrument.

(a) Except as provided in subsections (c) and (d), "negotiable instrument" means an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:

(1) is payable to bearer or to order at the time it is issued or first comes into possession of a holder;

(2) is payable on demand or at a definite time; and

(3) does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain (i) an undertaking or power to give, maintain, or protect collateral to secure payment, (ii) an authorization or power to the holder to confess judgment or realize on or dispose of collateral, or (iii) a waiver of the benefit of any law intended for the advantage or protection of an obligor.

(b) "Instrument" means a negotiable instrument.

(c) An order that meets all of the requirements of subsection (a), except paragraph (1), and otherwise falls within the definition of "check" in subsection (f) is a negotiable instrument and a check.

(d) A promise or order other than a check is not an instrument if, at the time it is issued or first comes into possession of a holder, it contains a conspicuous statement, however expressed, to the effect that the promise or order is not negotiable or is not an instrument governed by this article.

(e) An instrument is a "note" if it is a promise and is a "draft" if it is an order. If an instrument falls within the definition of both "note" and "draft", a person entitled to enforce the instrument may treat it as either.

(f) "Check" means (i) a draft, other than a documentary draft, payable on demand and drawn on a bank, (ii) a cashier's check or teller's check, or (iii) a demand draft. An instrument may be a check even though it is described on its face by another term, such as "money order".

(g) "Cashier's check" means a draft with respect to which the drawer and drawee are the same bank or branches of the same bank.

(h) "Teller's check" means a draft drawn by a bank (i) on another bank, or (ii) payable at or through a bank.

(i) "Traveler's check" means an instrument that (i) is payable on demand, (ii) is drawn on or payable at or through a bank, (iii) is designated by the term "traveler's check" or by a substantially similar term, and (iv) requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the instrument.

(j) “Certificate of deposit” means an instrument containing an acknowledgment by a bank that a sum of money has been received by the bank and a promise by the bank to repay the sum of money. A certificate of deposit is a note of the bank.

(k) “Demand draft” means a writing not signed by a customer, as defined in section 4-104, that is created by a third party under the purported authority of the customer for the purpose of charging the customer’s account with a bank. A demand draft shall contain the customer’s account number and may contain any or all of the following:

- (i) The customer’s printed or typewritten name;
- (ii) A notation that the customer authorized the draft; or
- (iii) The statement “no signature required”, “authorization on file”, “signature on file”, or words to that effect.

Demand draft does not include a check purportedly drawn by and bearing the signature of a fiduciary, as defined in section 3-307.

Source: Laws 1991, LB 161, § 8; Laws 2003, LB 128, § 2.

3-118 Statute of limitations.

(a) Except as provided in subsection (e), an action to enforce the obligation of a party to pay a note payable at a definite time must be commenced within six years after the due date or dates stated in the note or, if a due date is accelerated, within six years after the accelerated due date.

(b) Except as provided in subsection (d) or (e), if demand for payment is made to the maker of a note payable on demand, an action to enforce the obligation of a party to pay the note must be commenced within six years after the demand. If no demand for payment is made to the maker, an action to enforce the note is barred if neither principal nor interest on the note has been paid for a continuous period of ten years.

(c) Except as provided in subsection (d), an action to enforce the obligation of a party to an unaccepted draft to pay the draft must be commenced within three years after dishonor of the draft or ten years after the date of the draft, whichever period expires first.

(d) An action to enforce the obligation of the acceptor of a certified check or the issuer of a teller’s check, cashier’s check, or traveler’s check must be commenced within three years after demand for payment is made to the acceptor or issuer, as the case may be.

(e) Subject to the provisions of section 25-227, an action to enforce the obligation of a party to a certificate of deposit to pay the instrument must be commenced within six years after demand for payment is made to the maker, but if the instrument states a due date and the maker is not required to pay before that date, the six-year period begins when a demand for payment is in effect and the due date has passed.

(f) An action to enforce the obligation of a party to pay an accepted draft, other than a certified check, must be commenced (i) within six years after the due date or dates stated in the draft or acceptance if the obligation of the acceptor is payable at a definite time, or (ii) within six years after the date of the acceptance if the obligation of the acceptor is payable on demand.

(g) Unless governed by other law regarding claims for indemnity or contribution, an action (i) for conversion of an instrument, for money had and received, or like action based on conversion, (ii) for breach of warranty, or (iii) to enforce an obligation, duty, or right arising under this article and not governed by this section must be commenced within three years after the cause of action accrues.

Source: Laws 1945, c. 5, § 6(12), p. 86; Laws 2008, LB151, § 2.
Operative date July 1, 2008.

Part 3

ENFORCEMENT OF INSTRUMENTS

3-309 Enforcement of lost, destroyed, or stolen instrument.

(a) A person not in possession of an instrument is entitled to enforce the instrument if (i) the person seeking to enforce the instrument (1) was entitled to enforce the instrument when loss of possession occurred or (2) had directly or indirectly acquired ownership of the instrument from a person who was entitled to enforce the instrument when loss of possession occurred, (ii) the loss of possession was not the result of a transfer by the person or a lawful seizure, and (iii) the person cannot reasonably obtain possession of the instrument because the instrument was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.

(b) A person seeking enforcement of an instrument under subsection (a) must prove the terms of the instrument and the person's right to enforce the instrument. If that proof is made, section 3-308 applies to the case as if the person seeking enforcement had produced the instrument. The court may not enter judgment in favor of the person seeking enforcement unless it finds that the person required to pay the instrument is adequately protected against loss that might occur by reason of a claim by another person to enforce the instrument. Adequate protection may be provided by any reasonable means.

Source: Laws 1991, LB 161, § 39; Laws 2003, LB 128, § 3.

Part 4

LIABILITY OF PARTIES

3-416 Transfer warranties.

(a) A person who transfers an instrument for consideration warrants to the transferee and, if the transfer is by indorsement, to any subsequent transferee that:

- (1) the warrantor is a person entitled to enforce the instrument;
- (2) all signatures on the instrument are authentic and authorized;
- (3) the instrument has not been altered;
- (4) the instrument is not subject to a defense or claim in recoupment of any party which can be asserted against the warrantor;
- (5) the warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer; and

(6) if the instrument is a demand draft, creation of the instrument according to the terms on its face was authorized by the person identified as drawer.

(b) A person to whom the warranties under subsection (a) are made and who took the instrument in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the instrument plus expenses and loss of interest incurred as a result of the breach.

(c) The warranties stated in subsection (a) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under subsection (b) is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(d) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

(e) If the warranty under subdivision (a)(6) of this section is not given by a transferor under applicable conflict of law rules, then the warranty is not given to that transferor when that transferor is a transferee.

Source: Laws 1991, LB 161, § 57; Laws 2003, LB 128, § 4.

3-417 Presentment warranties.

(a) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, (i) the person obtaining payment or acceptance, at the time of presentment, and (ii) a previous transferor of the draft, at the time of transfer, warrant to the drawee making payment or accepting the draft in good faith that:

(1) the warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;

(2) the draft has not been altered;

(3) the warrantor has no knowledge that the signature of the drawer of the draft is unauthorized; and

(4) if the draft is a demand draft, creation of the demand draft according to the terms on its face was authorized by the person identified as drawer.

(b) A drawee making payment may recover from any warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft, breach of warranty is a defense to the obligation of the acceptor. If the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from any warrantor for breach of warranty the amounts stated in this subsection.

(c) If a drawee asserts a claim for breach of warranty under subsection (a) based on an unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the indorsement is effective under

section 3-404 or 3-405 or the drawer is precluded under section 3-406 or 4-406 from asserting against the drawee the unauthorized indorsement or alteration.

(d) If (i) a dishonored draft is presented for payment to the drawer or an indorser or (ii) any other instrument is presented for payment to a party obliged to pay the instrument, and (iii) payment is received, the following rules apply:

(1) The person obtaining payment and a prior transferor of the instrument warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the instrument, a person entitled to enforce the instrument or authorized to obtain payment on behalf of a person entitled to enforce the instrument.

(2) The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

(e) The warranties stated in subsections (a) and (d) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under subsection (b) or (d) is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(f) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

(g) A demand draft is a check as provided in subsection (f) of section 3-104.

(h) If the warranty under subdivision (a)(4) of this section is not given by a transferor under applicable conflict of law rules, then the warranty is not given to that transferor when that transferor is a transferee.

Source: Laws 1991, LB 161, § 58; Laws 2003, LB 128, § 5.

ARTICLE 4

BANK DEPOSITS AND COLLECTIONS

Part 1

GENERAL PROVISIONS AND DEFINITIONS

Section

4-104. Definitions and index of definitions.

Part 2

COLLECTION OF ITEMS: DEPOSITARY AND COLLECTING BANKS

4-207. Transfer warranties.

4-208. Presentment warranties.

4-210. Security interest of collecting bank in items, accompanying documents and proceeds.

Part 1

GENERAL PROVISIONS AND DEFINITIONS

4-104 Definitions and index of definitions.

(a) In this article, unless the context otherwise requires:

(1) "Account" means any deposit or credit account with a bank, including a demand, time, savings, passbook, share draft, or like account, other than an account evidenced by a certificate of deposit;

- (2) "Afternoon" means the period of a day between noon and midnight;
- (3) "Banking day" means that part of any day on which a bank is open to the public for carrying on substantially all of its banking functions but, for purposes of a bank's midnight deadline, shall not include Saturday, Sunday, or any holiday when the federal reserve banks are not performing check clearing functions;
- (4) "Clearinghouse" means an association of banks or other payors regularly clearing items;
- (5) "Customer" means a person having an account with a bank or for whom a bank has agreed to collect items, including a bank that maintains an account at another bank;
- (6) "Documentary draft" means a draft to be presented for acceptance or payment if specified documents, certificated securities (section 8-102) or instructions for uncertificated securities (section 8-102), or other certificates, statements, or the like are to be received by the drawee or other payor before acceptance or payment of the draft;
- (7) "Draft" means a draft as defined in section 3-104 or an item, other than an instrument, that is an order;
- (8) "Drawee" means a person ordered in a draft to make payment;
- (9) "Item" means an instrument or a promise or order to pay money handled by a bank for collection or payment. The term does not include a payment order governed by article 4A or a credit or debit card slip;
- (10) "Midnight deadline" with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later;
- (11) "Settle" means to pay in cash, by clearinghouse settlement, in a charge or credit or by remittance, or otherwise as agreed. A settlement may be either provisional or final;
- (12) "Suspend payments" with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over, or that it ceases or refuses to make payments in the ordinary course of business.

(b) Other definitions applying to this article and the sections in which they appear are:

"Agreement for electronic presentment".	Section 4-110.
"Bank".	Section 4-105.
"Collecting bank".	Section 4-105.
"Depository bank".	Section 4-105.
"Intermediary bank".	Section 4-105.
"Payor bank".	Section 4-105.
"Presenting bank".	Section 4-105.
"Presentment notice".	Section 4-110.

(c) "Control" as provided in section 7-106 and the following definitions in other articles apply to this article:

"Acceptance".	Section 3-409.
"Alteration".	Section 3-407.

“Cashier’s check”.	Section 3-104.
“Certificate of deposit”.	Section 3-104.
“Certified check”.	Section 3-409.
“Check”.	Section 3-104.
“Good faith”.	Section 3-103.
“Holder in due course”.	Section 3-302.
“Instrument”.	Section 3-104.
“Notice of dishonor”.	Section 3-503.
“Order”.	Section 3-103.
“Ordinary care”.	Section 3-103.
“Person entitled to enforce”.	Section 3-301.
“Presentment”.	Section 3-501.
“Promise”.	Section 3-103.
“Prove”.	Section 3-103.
“Teller’s check”.	Section 3-104.
“Unauthorized signature”.	Section 3-403.

(d) In addition article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

Source: Laws 1963, c. 544, Art. IV, § 4-104, p. 1812; Laws 1991, LB 161, § 75; Laws 1994, LB 1015, § 1; Laws 1995, LB 97, § 3; Laws 2005, LB 570, § 51.

Generally, under former subsection (1)(e) of this section, payees of a cashier’s check are not “customers.” *Hecker v. Ravenna Bank*, 237 Neb. 810, 468 N.W.2d 88 (1991).

COMMENT

1. Paragraph (a)(1): “Account” is defined to include both asset accounts in which a customer has deposited money and accounts from which a customer may draw on a line of credit. The limiting factor is that the account must be in a bank.

2. Paragraph (a)(3): “Banking day”. Under this definition that part of a business day when a bank is open only for limited functions, e.g., to receive deposits and cash checks, but with loan, bookkeeping, and other departments closed, is not part of a banking day.

3. Paragraph (a)(4): “Clearinghouse”.

Occasionally express companies, governmental agencies, and other nonbanks deal directly with a clearinghouse; hence the definition does not limit the term to an association of banks.

4. Paragraph (a)(5): “Customer”. It is to be noted that this term includes a bank carrying an account with another bank as well as the more typical nonbank customer or depositor.

5. Paragraph (a)(6): “Documentary draft” applies even though the documents do not accompany the draft but are to be received by the drawee or other payor before acceptance or payment of the draft. Documents may be either in electronic or tangible form. See article 5, section 5-102, comment 2 and article 1, section 1-201 (definition of “document of title”).

6. Paragraph (a)(7): “Draft” is defined in section 3-104 as a form of instrument. Since article 4 applies to items that may not fall within the definition of instrument, the term is defined here to include an item that is a written order to pay money, even though the item may not qualify as an instrument. The term “order” is defined in section 3-103.

7. Paragraph (a)(8): “Drawee” is defined in section 3-103 in terms of an article 3 draft which is a form of instrument. Here “drawee” is defined in terms of an article 4 draft which includes items that may not be instruments.

8. Paragraph (a)(9): “Item” is defined broadly to include an instrument, as defined in section 3-104, as well as promises or orders that may not be within the definition of “instrument”.

The terms “promise” and “order” are defined in section 3-103. A promise is a written undertaking to pay money. An order is a written instruction to pay money. But see section 4-110(c). Since bonds and other investment securities under article 8 may be within the term “instrument” or “promise”, they are items and when handled by banks for collection are subject to this article. See comment 1 to section 4-102. The functional limitation on the meaning of this term is the willingness of the banking system to handle the instrument, undertaking, or instruction for collection or payment.

9. Paragraph (a)(10): “Midnight deadline”. The use of this phrase is an example of the more mechanical approach used in this article. Midnight is selected as a termination point or time limit to obtain greater uniformity and definiteness than would be possible from other possible terminating points, such as the close of the banking day or business day.

10. Paragraph (a)(11): The term “settle” has substantial importance throughout article 4. In the American Bankers Association Bank Collection Code, in deferred posting statutes, in Federal Reserve regulations and operating circulars, in clearinghouse rules, in agreements between banks and customers, and in legends on deposit tickets and collection letters, there is repeated reference to “conditional” or “provisional” credits or payments. Tied in with this concept of credits or payments being in some way tentative, has been a related but somewhat different problem as to when an item is “paid” or “finally paid” either to determine the relative priority of the item as against attachments, stop-payment orders, and the like or in insolvency situations. There has been extensive litigation in the various states on these problems. To a substantial extent the confusion, the litigation, and even the resulting court decisions fail to take into account that in the collection process some debits or credits are provisional or tentative, and others are final and that very many debits or credits are provisional or tentative for awhile but later become final. Similarly, some cases fail to recognize that within a single bank, particularly a payor bank, each item goes through a series of processes and that in a payor bank most of

these processes are preliminary to the basic act of payment or "final payment".

The term "settle" is used as a convenient term to characterize a broad variety of conditional, provisional, tentative, and also final payments of items. Such a comprehensive term is needed because it is frequently difficult or unnecessary to determine whether a particular action is tentative or final or when a particular credit shifts from the tentative class to the final class. Therefore, its use throughout the article indicates that in that particular context it is unnecessary or unwise to determine whether the debit or the credit or the payment is tentative or final. However, if qualified by the adjective "provisional" its tentative nature is intended, and if qualified by the adjective "final" its permanent nature is intended.

Examples of the various types of settlement contemplated by the term include payments in cash; the efficient but somewhat complicated process of payment through the adjustment and offsetting of balances through clearinghouses; debit or credit entries in accounts between banks; the forwarding of various types of remittance instruments, sometimes to cover a particular item but more frequently to cover an entire group of items received on a particular day.

11. Paragraph (a)(12): "Suspends payments".

This term is designed to afford an objective test to determine when a bank is no longer operating as a part of the banking system.

Part 2

COLLECTION OF ITEMS: DEPOSITARY AND COLLECTING BANKS

4-207 Transfer warranties.

(a) A customer or collecting bank that transfers an item and receives a settlement or other consideration warrants to the transferee and to any subsequent collecting bank that:

- (1) the warrantor is a person entitled to enforce the item;
- (2) all signatures on the item are authentic and authorized;
- (3) the item has not been altered;
- (4) the item is not subject to a defense or claim in recoupment (section 3-305(a)) of any party that can be asserted against the warrantor;
- (5) the warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer; and
- (6) if the item is a demand draft, creation of the item according to the terms on its face was authorized by the person identified as drawer.

(b) If an item is dishonored, a customer or collecting bank transferring the item and receiving settlement or other consideration is obliged to pay the amount due on the item (i) according to the terms of the item at the time it was transferred, or (ii) if the transfer was of an incomplete item, according to its terms when completed as stated in sections 3-115 and 3-407. The obligation of a transferor is owed to the transferee and to any subsequent collecting bank that takes the item in good faith. A transferor cannot disclaim its obligation under this subsection by an indorsement stating that it is made "without recourse" or otherwise disclaiming liability.

(c) A person to whom the warranties under subsection (a) are made and who took the item in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the item plus expenses and loss of interest incurred as a result of the breach.

(d) The warranties stated in subsection (a) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(e) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

(f) If the warranty under subdivision (a)(6) of this section is not given by a transferor or collecting bank under applicable conflict of law rules, the warranty is not given to that transferor when that transferor is a transferee or to any prior collecting bank of that transferee.

Source: Laws 1963, c. 544, Art. IV, § 4-207, p. 1818; Laws 1991, LB 161, § 89; Laws 2003, LB 128, § 6.

4-208 Presentment warranties.

(a) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, (i) the person obtaining payment or acceptance, at the time of presentment, and (ii) a previous transferor of the draft, at the time of transfer, warrant to the drawee that pays or accepts the draft in good faith that:

(1) the warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;

(2) the draft has not been altered;

(3) the warrantor has no knowledge that the signature of the purported drawer of the draft is unauthorized; and

(4) if the draft is a demand draft, creation of the demand draft according to the terms on its face was authorized by the person identified as drawer.

(b) A drawee making payment may recover from a warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft (i) breach of warranty is a defense to the obligation of the acceptor, and (ii) if the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from a warrantor for breach of warranty the amounts stated in this subsection.

(c) If a drawee asserts a claim for breach of warranty under subsection (a) based on an unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the indorsement is effective under section 3-404 or 3-405 or the drawer is precluded under section 3-406 or 4-406 from asserting against the drawee the unauthorized indorsement or alteration.

(d) If (i) a dishonored draft is presented for payment to the drawer or an indorser or (ii) any other item is presented for payment to a party obliged to pay the item, and the item is paid, the person obtaining payment and a prior transferor of the item warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the item, a person entitled to enforce the item or authorized to obtain payment on behalf of a person entitled to enforce the item. The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

(e) The warranties stated in subsections (a) and (d) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty days after the claimant has reason to know of the

breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(f) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

(g) A demand draft is a check as provided in subsection (f) of section 3-104.

(h) If the warranty under subdivision (a)(4) of this section is not given by a transferor under applicable conflict of law rules, the warranty is not given to that transferor when that transferor is a transferee.

Source: Laws 1963, c. 544, Art. IV, § 4-208, p. 1820; Laws 1991, LB 161, § 90; Laws 2003, LB 128, § 7.

4-210 Security interest of collecting bank in items, accompanying documents and proceeds.

(a) A collecting bank has a security interest in an item and any accompanying documents, or the proceeds of either:

(1) in case of an item deposited in an account, to the extent to which credit given for the item has been withdrawn or applied;

(2) in case of an item for which it has given credit available for withdrawal as of right, to the extent of the credit given, whether or not the credit is drawn upon or there is a right of chargeback; or

(3) if it makes an advance on or against the item.

(b) If credit given for several items received at one time or pursuant to a single agreement is withdrawn or applied in part, the security interest remains upon all the items, any accompanying documents, or the proceeds of either. For the purpose of this section, credits first given are first withdrawn.

(c) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents, and proceeds. So long as the bank does not receive final settlement for the item or give up possession of the item or possession or control of the accompanying documents for purposes other than collection, the security interest continues to that extent and is subject to article 9, but:

(1) no security agreement is necessary to make the security interest enforceable (section 9-203(b)(3)(A));

(2) no filing is required to perfect the security interest; and

(3) the security interest has priority over conflicting perfected security interests in the item, accompanying documents, or proceeds.

Source: Laws 1963, c. 544, Art. IV, § 4-210, p. 1821; Laws 1991, LB 161, § 92; Laws 1999, LB 550, § 63; Laws 2005, LB 570, § 52.

ARTICLE 4A

FUNDS TRANSFERS

Part 1

SUBJECT MATTER AND DEFINITIONS

Section

4A-105. Other definitions.

4A-106. Time payment order is received.

Part 2

ISSUE AND ACCEPTANCE OF PAYMENT ORDER

4A-204. Refund of payment and duty of customer to report with respect to unauthorized payment order.

Part 1

SUBJECT MATTER AND DEFINITIONS

4A-105 Other definitions.

(a) In this article:

(1) "Authorized account" means a deposit account of a customer in a bank designated by the customer as a source of payment of payment orders issued by the customer to the bank. If a customer does not so designate an account, any account of the customer is an authorized account if payment of a payment order from that account is not inconsistent with a restriction on the use of that account.

(2) "Bank" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company. A branch or separate office of a bank is a separate bank for purposes of this article.

(3) "Customer" means a person, including a bank, having an account with a bank or from whom a bank has agreed to receive payment orders.

(4) "Funds-transfer business day" of a receiving bank means the part of a day during which the receiving bank is open for the receipt, processing, and transmittal of payment orders and cancellations and amendments of payment orders.

(5) "Funds-transfer system" means a wire transfer network, automated clearinghouse, or other communication system of a clearinghouse or other association of banks through which a payment order by a bank may be transmitted to the bank to which the order is addressed.

(6) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(7) "Prove" with respect to a fact means to meet the burden of establishing the fact (section 1-201(b)(8)).

(b) Other definitions applying to this article and the sections in which they appear are:

"Acceptance".	Section 4A-209.
"Beneficiary".	Section 4A-103.
"Beneficiary's bank".	Section 4A-103.
"Executed".	Section 4A-301.
"Execution date".	Section 4A-301.
"Funds transfer".	Section 4A-104.
"Funds-transfer system rule".	Section 4A-501.
"Intermediary bank".	Section 4A-104.
"Originator".	Section 4A-104.
"Originator's bank".	Section 4A-104.
"Payment by beneficiary's bank to beneficiary".	Section 4A-405.
"Payment by originator to beneficiary".	Section 4A-406.
"Payment by sender to receiving bank".	Section 4A-403.
"Payment date".	Section 4A-401.
"Payment order".	Section 4A-103.
"Receiving bank".	Section 4A-103.
"Security procedure".	Section 4A-201.

“Sender”. Section 4A-103.

(c) The following definitions in article 4 apply to this article:

“Clearinghouse”. Section 4-104.
 “Item”. Section 4-104.
 “Suspends payments”. Section 4-104.

(d) In addition article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

Source: Laws 1991, LB 160, § 6; Laws 2005, LB 570, § 53.

4A-106 Time payment order is received.

(a) The time of receipt of a payment order or communication canceling or amending a payment order is determined by the rules applicable to receipt of a notice stated in section 1-202. A receiving bank may fix a cutoff time or times on a funds-transfer business day for the receipt and processing of payment orders and communications canceling or amending payment orders. Different cutoff times may apply to payment orders, cancellations, or amendments, or to different categories of payment orders, cancellations, or amendments. A cutoff time may apply to senders generally or different cutoff times may apply to different senders or categories of payment orders. If a payment order or communication canceling or amending a payment order is received after the close of a funds-transfer business day or after the appropriate cutoff time on a funds-transfer business day, the receiving bank may treat the payment order or communication as received at the opening of the next funds-transfer business day.

(b) If this article refers to an execution date or payment date or states a day on which a receiving bank is required to take action, and the date or day does not fall on a funds-transfer business day, the next day that is a funds-transfer business day is treated as the date or day stated, unless the contrary is stated in this article.

Source: Laws 1991, LB 160, § 7; Laws 2005, LB 570, § 54.

COMMENT

The time that a payment order is received by a receiving bank usually defines the payment date or the execution date of a payment order. Section 4A-301 and section 4A-401. The time of receipt of a payment order, or communication canceling or amending a payment order is defined in subsection (a) by reference to the rules stated in section 1-202. Thus, time of receipt is determined by the same rules that determine when a notice is received. Time of receipt, however, may be altered by a cutoff time.

Part 2

ISSUE AND ACCEPTANCE OF PAYMENT ORDER

4A-204 Refund of payment and duty of customer to report with respect to unauthorized payment order.

(a) If a receiving bank accepts a payment order issued in the name of its customer as sender which is (i) not authorized and not effective as the order of the customer under section 4A-202, or (ii) not enforceable, in whole or in part, against the customer under section 4A-203, the bank shall refund any payment of the payment order received from the customer to the extent the bank is not entitled to enforce payment and shall pay interest on the refundable amount

calculated from the date the bank received payment to the date of the refund. However, the customer is not entitled to interest from the bank on the amount to be refunded if the customer fails to exercise ordinary care to determine that the order was not authorized by the customer and to notify the bank of the relevant facts within a reasonable time not exceeding ninety days after the date the customer received notification from the bank that the order was accepted or that the customer's account was debited with respect to the order. The bank is not entitled to any recovery from the customer on account of a failure by the customer to give notification as stated in this section.

(b) Reasonable time under subsection (a) may be fixed by agreement as stated in section 1-302(b), but the obligation of a receiving bank to refund payment as stated in subsection (a) may not otherwise be varied by agreement.

Source: Laws 1991, LB 160, § 13; Laws 2005, LB 570, § 55.

ARTICLE 5

LETTERS OF CREDIT

Part 1

GENERAL PROVISIONS

Section

5-103. Scope.

Part 1

GENERAL PROVISIONS

5-103 Scope.

(a) This article applies to letters of credit and to certain rights and obligations arising out of transactions involving letters of credit.

(b) The statement of a rule in this article does not by itself require, imply, or negate application of the same or a different rule to a situation not provided for, or to a person not specified, in this article.

(c) With the exception of this subsection, subsections (a) and (d), sections 5-102(a)(9) and (10), 5-106(d), and 5-114(d), and except to the extent prohibited in sections 1-302 and 5-117(d), the effect of this article may be varied by agreement or by a provision stated or incorporated by reference in an undertaking. A term in an agreement or undertaking generally excusing liability or generally limiting remedies for failure to perform obligations is not sufficient to vary obligations prescribed by this article.

(d) Rights and obligations of an issuer to a beneficiary or a nominated person under a letter of credit are independent of the existence, performance, or nonperformance of a contract or arrangement out of which the letter of credit arises or which underlies it, including contracts or arrangements between the issuer and the applicant and between the applicant and the beneficiary.

Source: Laws 1996, LB 1028, § 5; Laws 2005, LB 570, § 56.

COMMENT

1. Sections 5-102(a)(10) and 5-103 are the principal limits on the scope of article 5. Many undertakings in commerce and contract are similar, but not identical to the letter of credit. Principal among those are "secondary", "accessory", or "suretyship" guarantees. Although the word "guarantee" is some-

times used to describe an independent obligation like that of the issuer of a letter of credit (most often in the case of European bank undertakings but occasionally in the case of undertakings of American banks), in the United States the word "guarantee" is more typically used to describe a suretyship transaction in

which the “guarantor” is only secondarily liable and has the right to assert the underlying debtor’s defenses. This article does not apply to secondary or accessory guarantees and it is important to recognize the distinction between letters of credit and those guarantees. It is often a defense to a secondary or accessory guarantor’s liability that the underlying debt has been discharged or that the debtor has other defenses to the underlying liability. In letter of credit law, on the other hand, the independence principle recognized throughout article 5 states that the issuer’s liability is independent of the underlying obligation. That the beneficiary may have breached the underlying contract and thus have given a good defense on that contract to the applicant against the beneficiary is no defense for the issuer’s refusal to honor. Only staunch recognition of this principle by the issuers and the courts will give letters of credit the continuing vitality that arises from the certainty and speed of payment under letters of credit. To that end, it is important that the law not carry into letter of credit transactions rules that properly apply only to secondary guarantees or to other forms of engagement.

2. Like all of the provisions of the Uniform Commercial Code, article 5 is supplemented by section 1-103 and, through it, by many rules of statutory and common law. Because this article is quite short and has no rules on many issues that will affect liability with respect to a letter of credit transaction, law beyond article 5 will often determine rights and liabilities in letter of credit transactions. Even within letter of credit law, the article is far from comprehensive; it deals only with “certain” rights of the parties. Particularly with respect to the standards of performance that are set out in section 5-108, it is appropriate for the parties and the courts to turn to customs and practice such as the Uniform Customs and Practice for Documentary Credits, currently published by the International Chamber of Commerce as I.C.C. Pub. No. 500 (hereafter UCP). Many letters of credit specifically adopt the UCP as applicable to the particular transaction. Where the UCP are adopted but conflict with article 5 and except where variation is prohibited, the UCP terms are permissible contractual modifications under sections 1-302 and 5-103(c). See section 5-116(c). Normally article 5 should not be considered to conflict with practice except when a rule explicitly stated in the UCP or other practice is different from a rule explicitly stated in article 5.

Except by choosing the law of a jurisdiction that has not adopted the Uniform Commercial Code, it is not possible entirely to escape the Uniform Commercial Code. Since incorporation of the UCP avoids only “conflicting” article 5 rules, parties who do not wish to be governed by the nonconflicting provisions of article 5 must normally either adopt the law of a jurisdiction other than a state of the United States or state explicitly the rule that is to govern. When rules of custom and practice are

incorporated by reference, they are considered to be explicit terms of the agreement or undertaking.

Neither the obligation of an issuer under section 5-108 nor that of an adviser under section 5-107 is an obligation of the kind that is invariable under section 1-102(3). Section 5-103(c) and comment 1 to section 5-108 make it clear that the applicant and the issuer may agree to almost any provision establishing the obligations of the issuer to the applicant. The last sentence of subsection (c) limits the power of the issuer to achieve that result by a nonnegotiated disclaimer or limitation of remedy.

What the issuer could achieve by an explicit agreement with its applicant or by a term that explicitly defines its duty, it cannot accomplish by a general disclaimer. The restriction on disclaimers in the last sentence of subsection (c) is based more on procedural than on substantive unfairness. Where, for example, the reimbursement agreement provides explicitly that the issuer need not examine any documents, the applicant understands the risk it has undertaken. A term in a reimbursement agreement which states generally that an issuer will not be liable unless it has acted in “bad faith” or committed “gross negligence” is ineffective under section 5-103(c). On the other hand, less general terms such as terms that permit issuer reliance on an oral or electronic message believed in good faith to have been received from the applicant or terms that entitle an issuer to reimbursement when it honors a “substantially” though not “strictly” complying presentation, are effective. In each case the question is whether the disclaimer or limitation is sufficiently clear and explicit in reallocating a liability or risk that is allocated differently under a variable article 5 provision.

Of course, no term in a letter of credit, whether incorporated by reference to practice rules or stated specifically, can free an issuer from a conflicting contractual obligation to its applicant. If, for example, an issuer promised its applicant that it would pay only against an inspection certificate of a particular company but failed to require such a certificate in its letter of credit or made the requirement only a nondocumentary condition that had to be disregarded, the issuer might be obliged to pay the beneficiary even though its payment might violate its contract with its applicant.

3. Parties should generally avoid modifying the definitions in section 5-102. The effect of such an agreement is almost inevitably unclear. To say that something is a “guarantee” in the typical domestic transaction is to say that the parties intend that particular legal rules apply to it. By acknowledging that something is a guarantee, but asserting that it is to be treated as a “letter of credit”, the parties leave a court uncertain about where the rules on guarantees stop and those concerning letters of credit begin.

4. Former section 5-102(2) and (3) of article 5 are omitted as unneeded; the omission does not change the law.

ARTICLE 7

DOCUMENTS OF TITLE

Part 1 GENERAL

Section

- 7-101. Short title.
- 7-102. Definitions and index of definitions.
- 7-103. Relation of article to treaty or statute.
- 7-104. Negotiable and nonnegotiable document of title.
- 7-105. Reissuance in alternative medium.
- 7-106. Control of electronic document of title.

Part 2

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Part 1

GENERAL

7-101 Short title.

This article may be cited as Uniform Commercial Code—Documents of Title.

Source: Laws 2005, LB 570, § 57.

COMMENT

Prior Uniform Statutory Provision: Former section 7-101.

Changes: Revised for style only.

This article is a revision of the 1962 official text with comments as amended since 1962. The 1962 official text was a consolidation and revision of the Uniform Warehouse Receipts Act and the Uniform Bills of Lading Act, and embraced the provisions of the Uniform Sales Act relating to negotiation of documents of title.

This article does not contain the substantive criminal provisions found in the Uniform Warehouse Receipts and Bills of Lading Acts. These criminal provisions are inappropriate to a commercial code, and for the most part duplicate portions of the ordinary criminal law relating to frauds. This revision deletes the former section 7-105 that provided that courts could apply a rule from parts 2 and 3 by analogy to a situation not

explicitly covered in the provisions on warehouse receipts or bills of lading when it was appropriate. This is, of course, an unexceptional proposition and need not be stated explicitly in the statute. Thus former section 7-105 has been deleted. Whether applying a rule by analogy to a situation is appropriate depends upon the facts of each case.

The article does not attempt to define the tort liability of bailees, except to hold certain classes of bailees to a minimum standard of reasonable care. For important classes of bailees, liabilities in case of loss, damages, or destruction, as well as other legal questions associated with particular documents of title, are governed by federal statutes, international treaties, and in some cases regulatory state laws, which supersede the provisions of this article in case of inconsistency. See section 7-103.

7-102 Definitions and index of definitions.

(a) In this article, unless the context otherwise requires:

(1) “Bailee” means a person that by a warehouse receipt, bill of lading, or other document of title acknowledges possession of goods and contracts to deliver them.

(2) “Carrier” means a person that issues a bill of lading.

(3) “Consignee” means a person named in a bill of lading to which or to whose order the bill promises delivery.

(4) “Consignor” means a person named in a bill of lading as the person from which the goods have been received for shipment.

(5) “Delivery order” means a record that contains an order to deliver goods directed to a warehouse, carrier, or other person that in the ordinary course of business issues warehouse receipts or bills of lading.

(6) “Good faith” means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(7) “Goods” means all things that are treated as movable for the purposes of a contract for storage or transportation.

(8) “Issuer” means a bailee that issues a document of title or, in the case of an unaccepted delivery order, the person that orders the possessor of goods to deliver. The term includes a person for which an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, even if the issuer did not receive any goods, the goods were misdescribed, or in any other respect the agent or employee violated the issuer’s instructions.

(9) “Person entitled under the document” means the holder, in the case of a negotiable document of title, or the person to which delivery of the goods is to be made by the terms of, or pursuant to instructions in a record under, a nonnegotiable document of title.

(10) “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.

(11) “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 sound, symbol, or process.

(12) “Shipper” means a person that enters into a contract of transportation with a carrier.

(13) “Warehouse” means a person engaged in the business of storing goods for hire.

(b) Definitions in other articles applying to this article and the sections in which they appear are:

- (1) “Contract for sale”, section 2-106.
- (2) “Lessee in ordinary course of business”, section 2A-103.
- (3) “Receipt” of goods, section 2-103.

(c) In addition, article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

Source: Laws 2005, LB 570, § 58.

COMMENT

Prior Uniform Statutory Provision: Former section 7-102.

Changes: New definitions of “carrier”, “good faith”, “record”, “sign”, and “shipper”. Other definitions revised to accommodate electronic mediums.

Purposes:

1. “Bailee” is used in this article as a blanket term to designate carriers, warehousemen, and others who normally issue documents of title on the basis of goods which they have received. The definition does not, however, require actual possession of the goods. If a bailee acknowledges possession when it does not have possession, the bailee is bound by sections of this article which declare the “bailee’s” obligations. (See definition of “issuer” in this section and sections 7-203 and 7-301 on liability in case of nonreceipt.) A “carrier” is one type of bailee and is defined as a person that issues a bill of lading. A “shipper” is a person who enters into the contract of transportation with the carrier. The definitions of “bailee”, “consignee”, “consignor”, “goods”, and “issuer”, are unchanged in substance from prior law. “Document of title” is defined in article 1, and may be in either tangible or electronic form.

2. The definition of warehouse receipt contained in the general definitions section of this code (section 1-201) does not require that the issuing warehouse be “lawfully engaged” in business or for profit. The warehouse’s compliance with applicable state regulations such as the filing of a bond has no bearing on the substantive issues dealt with in this article. Certainly the issuer’s violations of law should not diminish its responsibility on documents the issuer has put in commercial circulation. But it is still essential that the business be storing goods “for hire” (section 1-201 and this section). A person does not become a warehouse by storing its own goods.

3. When a delivery order has been accepted by the bailee it is for practical purposes indistinguishable from a warehouse receipt. Prior to such acceptance there is no basis for imposing obligations on the bailee other than the ordinary obligation of contract which the bailee may have assumed to the depositor of the goods. Delivery orders may be either electronic or tangible

documents of title. See definition of “document of title” in section 1-201.

4. The obligation of good faith imposed by this article and by article 1, section 1-304 includes the observance of reasonable commercial standards of fair dealing.

5. The definitions of “record” and “sign” are included to facilitate electronic mediums. See comment 9 to section 9-102 discussing “record” and the comment to amended section 2-103 discussing “sign”.

6. “Person entitled under the document” is moved from former section 7-403.

7. These definitions apply in this article unless the context otherwise requires. The “context” is intended to refer to the context in which the defined term is used in the Uniform Commercial Code. The definition applies whenever the defined term is used unless the context in which the defined term is used in the statute indicates that the term was not used in its defined sense. See comment to section 1-201.

Cross References:

Point 1: Sections 1-201, 7-203, and 7-301. Point 2: Sections 1-201 and 7-203. Point 3: Section 1-201. Point 4: Section 1-304. Point 5: Sections 2-103 and 9-102. See general comment to document of title in section 1-201.

Definitional Cross References:

“Bill of lading”. Section 1-201.
 “Contract”. Section 1-201.
 “Contract for sale”. Section 2-106.
 “Delivery”. Section 1-201.
 “Document of title”. Section 1-201.
 “Person”. Section 1-201.
 “Purchase”. Section 1-201.
 “Receipt of goods”. Section 2-103.
 “Right”. Section 1-201.
 “Warehouse receipt”. Section 1-201.

7-103 Relation of article to treaty or statute.

(a) This article is subject to any treaty or statute of the United States or regulatory statute of this state to the extent the treaty, statute, or regulatory statute is applicable.

(b) This article does not modify or repeal any law prescribing the form or content of a document of title or the services or facilities to be afforded by a bailee, or otherwise regulating a bailee’s business in respects not specifically treated in this article. However, violation of such a law does not affect the

status of a document of title that otherwise is within the definition of a document of title.

(c) This article modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. section 7001, et seq.) but does not modify, limit, or supersede section 101(c) of that act (15 U.S.C. section 7001(c)) or authorize electronic delivery of any of the notices described in section 103(b) of that act (15 U.S.C. section 7003(b)).

(d) To the extent there is a conflict between the Uniform Electronic Transactions Act and this article, this article governs.

Source: Laws 2005, LB 570, § 59.

COMMENT

Prior Uniform Statutory Provision: Former sections 7-103 and 10-104.

Changes: Deletion of references to tariffs and classifications; incorporation of former section 10-104 into subsection (b), provide for intersection with federal and state law governing electronic transactions.

Purposes:

1. To make clear what would of course be true without the section, that applicable federal law is paramount.

2. To make clear also that regulatory state statutes (such as those fixing or authorizing a commission to fix rates and prescribe services, authorizing different charges for goods of different values, and limiting liability for loss to the declared value on which the charge was based) are not affected by the article and are controlling on the matters which they cover unless preempted by federal law. The reference in former section 7-103 to tariffs, classifications, and regulations filed or issued pursuant to regulatory state statutes has been deleted as inappropriate in the modern era of diminished regulation of carriers and warehouses. If a regulatory scheme requires a carrier or warehouse to issue a tariff or classification, that tariff or classification would be given effect via the state regulatory scheme that this article recognizes as controlling. Permissive tariffs or classifications would not displace the provisions of this code, pursuant to this section, but may be given effect through the ability of parties to incorporate those terms by reference into their agreement.

3. The document of title provisions of this code supplement the federal law and regulatory state law governing bailees. This article focuses on the commercial importance and usage of documents of title. State ex. rel Public Service Commission v. Gunkelman & Sons, Inc., 219 N.W.2d 853 (N.D. 1974).

4. Subsection (c) is included to make clear the interrelationship between the federal Electronic Signatures in Global and National Commerce Act and this article and the conforming amendments to other articles of the Uniform Commercial Code promulgated as part of the revision of this article. Section 102 of the federal act allows a state statute to modify, limit, or supersede the provisions of section 101 of the federal act. See the comments to revised article 1, section 1-108.

5. Subsection (d) makes clear that once this article is in effect, its provisions regarding electronic commerce and regarding electronic documents of title control in the event there is a conflict with the provisions of the Uniform Electronic Transactions Act or other applicable state law governing electronic transactions.

Cross References:

Sections 1-108, 7-201, 7-202, 7-204, 7-206, 7-309, 7-401, and 7-403.

Definitional Cross References:

“Bill of lading”. Section 1-201.

7-104 Negotiable and nonnegotiable document of title.

(a) Except as otherwise provided in subsection (c), a document of title is negotiable if by its terms the goods are to be delivered to bearer or to the order of a named person.

(b) A document of title other than one described in subsection (a) is nonnegotiable. A bill of lading that states that the goods are consigned to a named person is not made negotiable by a provision that the goods are to be delivered only against an order in a record signed by the same or another named person.

(c) A document of title is nonnegotiable if, at the time it is issued, the document has a conspicuous legend, however expressed, that it is nonnegotiable.

Source: Laws 2005, LB 570, § 60.

COMMENT

Prior Uniform Statutory Provision: Former section 7-104.

Changes: Subsection (a) is revised to reflect modern style and trade practice. Subsection (b) is revised for style and medium neutrality. Subsection (c) is new.

Purposes:

1. This article deals with a class of commercial paper representing commodities in storage or transportation. This “commodity paper” is to be distinguished from what might be called “money paper” dealt with in the article of this code on commercial paper (article 3) and “investment paper” dealt with in the article of this code on investment securities (article 8). The class

of “commodity paper” is designated “document of title” following the terminology of the Uniform Sales Act section 76. Section 1-201. The distinction between negotiable and nonnegotiable documents in this section makes the most important subclassification employed in the article, in that the holder of negotiable documents may acquire more rights than its transferor had (see section 7-502). The former section 7-104, which provided that a document of title was negotiable if it runs to a named person or assigns if such designation was recognized in overseas trade, has been deleted as not necessary in light of current commercial practice.

A document of title is negotiable only if it satisfies this section. “Deliverable on proper indorsement and surrender of this receipt” will not render a document negotiable. Bailees often include such provisions as a means of insuring return of nonnegotiable receipts for record purposes. Such language may be regarded as insistence by the bailee upon a particular kind of receipt in connection with delivery of the goods. Subsection (a) makes it clear that a document is not negotiable which provides for delivery to order or bearer only if written instructions to that effect are given by a named person. Either tangible or electronic documents of title may be negotiable if the document meets the requirement of this section.

2. Subsection (c) is derived from section 3-104(d). Prior to issuance of the document of title, an issuer may stamp or

otherwise provide by a notation on the document that it is nonnegotiable even if the document would otherwise comply with the requirement of subsection (a). Once issued as a negotiable document of title, the document cannot be changed from a negotiable document to a nonnegotiable document. A document of title that is nonnegotiable cannot be made negotiable by stamping or providing a notation that the document is negotiable. The only way to make a document of title negotiable is to comply with subsection (a). A negotiable document of title may fail to be duly negotiated if the negotiation does not comply with the requirements for “due negotiation” stated in section 7-501.

Cross References:

Sections 7-501 and 7-502.

Definitional Cross References:

“Bearer”. Section 1-201.

“Bill of lading”. Section 1-201.

“Delivery”. Section 1-201.

“Document of title”. Section 1-201.

“Person”. Section 1-201.

“Sign”. Section 7-102

“Warehouse receipt”. Section 1-201.

7-105 Reissuance in alternative medium.

(a) Upon request of a person entitled under an electronic document of title, the issuer of the electronic document may issue a tangible document of title as a substitute for the electronic document if:

- (1) the person entitled under the electronic document surrenders control of the document to the issuer; and
- (2) the tangible document when issued contains a statement that it is issued in substitution for the electronic document.

(b) Upon issuance of a tangible document of title in substitution for an electronic document of title in accordance with subsection (a):

- (1) the electronic document ceases to have any effect or validity; and
- (2) the person that procured issuance of the tangible document warrants to all subsequent persons entitled under the tangible document that the warrantor was a person entitled under the electronic document when the warrantor surrendered control of the electronic document to the issuer.

(c) Upon request of a person entitled under a tangible document of title, the issuer of the tangible document may issue an electronic document of title as a substitute for the tangible document if:

- (1) the person entitled under the tangible document surrenders possession of the document to the issuer; and
- (2) the electronic document when issued contains a statement that it is issued in substitution for the tangible document.

(d) Upon issuance of an electronic document of title in substitution for a tangible document of title in accordance with subsection (c):

- (1) the tangible document ceases to have any effect or validity; and
- (2) the person that procured issuance of the electronic document warrants to all subsequent persons entitled under the electronic document that the warrantor was a person entitled under the tangible document when the warrantor surrendered possession of the tangible document to the issuer.

Source: Laws 2005, LB 570, § 61.

COMMENT

Prior Uniform Statutory Provisions: None.

Other relevant law: UNCITRAL Draft Instrument on the Carriage of Goods by Sea--Transport Law.

Purpose:

1. This section allows for documents of title issued in one medium to be reissued in another medium. This section applies to both negotiable and nonnegotiable documents. This section sets forth minimum requirements for giving the reissued document effect and validity. The issuer is not required to issue a document in an alternative medium and if the issuer chooses to do so, it may impose additional requirements. Because a document of title imposes obligations on the issuer of the document, it is imperative for the issuer to be the one who issues the substitute document in order for the substitute document to be effective and valid.

2. The request must be made to the issuer by the person entitled to enforce the document of title (section 7-102(a)(9)) and that person must surrender possession or control of the original document to the issuer. The reissued document must have a notation that it has been issued as a substitute for the

original document. These minimum requirements must be met in order to give the substitute document effect and validity. If these minimum requirements are not met for issuance of a substitute document of title, the original document of title continues to be effective and valid. Section 7-402. However, if the minimum requirements imposed by this section are met, in addition to any other requirements that the issuer may impose, the substitute document will be the document that is effective and valid.

3. To protect parties who subsequently take the substitute document of title, the person who procured issuance of the substitute document warrants that it was a person entitled under the original document at the time it surrendered possession or control of the original document to the issuer. This warranty is modeled after the warranty found in section 4-209.

Cross References:

Sections 7-106, 7-402, and 7-601.

Definitional Cross References:

"Person entitled to enforce". Section 7-102.

7-106 Control of electronic document of title.

(a) A person has control of an electronic document of title if a system employed for evidencing the transfer of interests in the electronic document reliably establishes that person as the person to which the electronic document was issued or transferred.

(b) A system satisfies subsection (a), and a person is deemed to have control of an electronic document of title, if the document is created, stored, and assigned in such a manner that:

(1) a single authoritative copy of the document exists which is unique, identifiable, and, except as otherwise provided in paragraphs (4), (5), and (6), unalterable;

(2) the authoritative copy identifies the person asserting control as:

(A) the person to which the document was issued; or

(B) if the authoritative copy indicates that the document has been transferred, the person to which the document was most recently transferred;

(3) the authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(4) copies or amendments that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

(5) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) any amendment of the authoritative copy is readily identifiable as authorized or unauthorized.

Source: Laws 2005, LB 570, § 62.

COMMENT

Prior Uniform Statutory Provision: Uniform Electronic Transactions Act section 16.

Purpose:

1. The section defines "control" for electronic documents of title and derives its rules from the Uniform Electronic Transactions Act section 16 on transferable records. Unlike UETA

section 16, however, a document of title may be reissued in an alternative medium pursuant to section 7-105. At any point in time in which a document of title is in electronic form, the control concept of this section is relevant. As under UETA section 16, the control concept embodied in this section provides the legal framework for developing systems for electronic documents of title.

2. Control of an electronic document of title substitutes for the concept of indorsement and possession in the tangible document of title context. See section 7-501. A person with a tangible document of title delivers the document by voluntarily transferring possession and a person with an electronic document of title delivers the document by voluntarily transferring control. (Delivery is defined in section 1-201.)

3. Subsection (a) sets forth the general rule that the “system employed for evidencing the transfer of interests in the electronic document reliably establishes that person as the person to which the electronic document was issued or transferred”. The key to having a system that satisfies this test is that identity of the person to which the document was issued or transferred must be reliably established. Of great importance to the functioning of the control concept is to be able to demonstrate, at any point in time, the person entitled under the electronic document. For example, a carrier may issue an electronic bill of lading by having the required information in a data base that is encrypted and accessible by virtue of a password. If the computer system in which the required information is maintained identifies the person as the person to which the electronic bill of lading was issued or transferred, that person has control of the electronic document of title. That identification may be by virtue of passwords or other encryption methods. Registry systems may satisfy this test. For example, see the electronic warehouse receipt system established pursuant to 7 C.F.R. part 735. This article leaves to the marketplace the development of sufficient technologies and business practices that will meet the test.

An electronic document of title is evidenced by a record consisting of information stored in an electronic medium. Section 1-201. For example, a record in a computer data base could be an electronic document of title assuming that it otherwise meets the definition of document of title. To the extent that third parties wish to deal in paper mediums, section 7-105 provides a mechanism for exiting the electronic environment by having the issuer reissue the document of title in a tangible medium. Thus if a person entitled to enforce an electronic document of title causes the information in the record to be printed onto paper without the issuer’s involvement in issuing the document of title pursuant to section 7-105, that paper is not a document of title.

4. Subsection (a) sets forth the general test for control. Subsection (b) sets forth a safe harbor test that if satisfied, results in control under the general test in subsection (a). The test in subsection (b) is also used in section 9-105 although section 9-105 does not include the general test of subsection (a). Under subsection (b), at any point in time, a party should be able to identify the single authoritative copy which is unique and identifiable as the authoritative copy. This does not mean that once created that the authoritative copy need be static and never moved or copied from its original location. To the extent that

backup systems exist which result in multiple copies, the key to this idea is that at any point in time, the one authoritative copy needs to be unique and identifiable.

Parties may not by contract provide that control exists. The test for control is a factual test that depends upon whether the general test in subsection (a) or the safe harbor in subsection (b) is satisfied.

5. Article 7 has historically provided for rights under documents of title and rights of transferees of documents of title as those rights relate to the goods covered by the document. Third parties may possess or have control of documents of title. While misfeasance or negligence in failure to transfer or misdelivery of the document by those third parties may create serious issues, this article has never dealt with those issues as it relates to tangible documents of title, preferring to leave those issues to the law of contracts, agency, and tort law. In the electronic document of title regime, third party registry systems are just beginning to develop. It is very difficult to write rules regulating those third parties without some definitive sense of how the third party registry systems will be structured. Systems that are evolving to date tend to be “closed” systems in which all participants must sign on to the master agreement which provides for rights as against the registry system as well as rights among the members. In those closed systems, the document of title never leaves the system so the parties rely upon the master agreement as to rights against the registry for its failures in dealing with the document. This article contemplates that those “closed” systems will continue to evolve and that the control mechanism in this statute provides a method for the participants in the closed system to achieve the benefits of obtaining control allowed by this article.

This article also contemplates that parties will evolve open systems where parties need not be subject to a master agreement. In an open system a party that is expecting to obtain rights through an electronic document may not be a party to the master agreement. To the extent that open systems evolve by use of the control concept contained in this section, the law of contracts, agency, and torts as it applies to the registry’s misfeasance or negligence concerning the transfer of control of the electronic document will allocate the risks and liabilities of the parties as that other law now does so for third parties who hold tangible documents and fail to deliver the documents.

Cross References:

Sections 7-105 and 7-501.

Definitional Cross References:

“Delivery”. Section 1-201.

“Document of Title”. Section 1-201.

Part 2

WAREHOUSE RECEIPTS: SPECIAL PROVISIONS

7-201 Person that may issue a warehouse receipt; storage under bond.

(a) A warehouse receipt may be issued by any warehouse.

(b) If goods, including distilled spirits and agricultural commodities, are stored under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature of warehouse receipts, a receipt issued for the goods is deemed to be a warehouse receipt even if issued by a person that is the owner of the goods and is not a warehouse.

Source: Laws 2005, LB 570, § 63.

COMMENT

Prior Uniform Statutory Provision: Former section 7-201.

Purposes:

Changes: Update for style only.

It is not intended by reenactment of subsection (a) to repeal any provisions of special licensing or other statutes regulating who may become a warehouse. Limitations on the transfer of the receipts and criminal sanctions for violation of such limitations are not impaired. Section 7-103. Compare section 7-401(4) on the liability of the issuer in such cases. Subsection (b) covers receipts issued by the owner for whiskey or other goods stored in bonded warehouses under such statutes as 26 U.S.C. chapter 51.

Cross References:

Sections 7-103 and 7-401.

Definitional Cross References:

"Warehouse receipt". Section 1-201.

"Warehouse". Section 7-102.

7-202 Form of warehouse receipt; effect of omission.

(a) A warehouse receipt need not be in any particular form.

(b) Unless a warehouse receipt provides for each of the following, the warehouse is liable for damages caused to a person injured by its omission:

(1) a statement of the location of the warehouse facility where the goods are stored;

(2) the date of issue of the receipt;

(3) the unique identification code of the receipt;

(4) a statement whether the goods received will be delivered to the bearer, to a named person, or to a named person or its order;

(5) the rate of storage and handling charges, unless goods are stored under a field warehousing arrangement, in which case a statement of that fact is sufficient on a nonnegotiable receipt;

(6) a description of the goods or the packages containing them;

(7) the signature of the warehouse or its agent;

(8) if the receipt is issued for goods that the warehouse owns, either solely, jointly, or in common with others, a statement of the fact of that ownership; and

(9) a statement of the amount of advances made and of liabilities incurred for which the warehouse claims a lien or security interest, unless the precise amount of advances made or liabilities incurred, at the time of the issue of the receipt, is unknown to the warehouse or to its agent that issued the receipt, in which case a statement of the fact that advances have been made or liabilities incurred and the purpose of the advances or liabilities is sufficient.

(c) A warehouse may insert in its receipt any terms that are not contrary to the Uniform Commercial Code and do not impair its obligation of delivery under section 7-403 or its duty of care under section 7-204. Any contrary provision is ineffective.

Source: Laws 2005, LB 570, § 64.

COMMENT

Prior Uniform Statutory Provision: Former section 7-202.

Changes: Language is updated to accommodate electronic commerce and to reflect modern style.

Purposes:

1. This section does not displace any particular legislation that requires other terms in a warehouse receipt or that may require a particular form of a warehouse receipt. This section does not require that a warehouse receipt be issued. A warehouse receipt that is issued need not contain any of the terms listed in subsection (b) in order to qualify as a warehouse receipt as long as the receipt falls within the definition of "warehouse receipt" in article 1. Thus the title has been changed to eliminate the phrase "essential terms" as provided in prior law. The only consequence of a warehouse receipt not containing any term listed in subsection (b) is that a person injured by a term's

omission has a right as against the warehouse for harm caused by the omission. Cases, such as *In re Celotex Corp.*, 134 B.R. 993 (Bankr. M.D. Fla. (1991)), that held that in order to have a valid warehouse receipt all of the terms listed in this section must be contained in the receipt, are disapproved.

2. The unique identification code referred to in subsection (b)(3) can include any combination of letters, numbers, signs, and/or symbols that provide a unique identification. Whether an electronic or tangible warehouse receipt contains a signature will be resolved with the definition of sign in section 7-102.

Cross References:

Sections 7-103 and 7-401.

Definitional Cross References:

"Bearer". Section 1-201.

"Delivery". Section 1-201.

"Goods". Section 7-102.

"Person". Section 1-201.

"Security interest". Section 1-201.

"Sign". Section 7-102.

"Term". Section 1-201.

"Warehouse receipt". Section 1-201.

"Warehouse". Section 7-102.

7-203 Liability for nonreceipt or misdescription.

A party to or purchaser for value in good faith of a document of title, other than a bill of lading, that relies upon the description of the goods in the document may recover from the issuer damages caused by the nonreceipt or misdescription of the goods, except to the extent that:

(1) the document conspicuously indicates that the issuer does not know whether all or part of the goods in fact were received or conform to the description, such as a case in which the description is in terms of marks or labels or kind, quantity, or condition, or the receipt or description is qualified by "contents, condition, and quality unknown", "said to contain", or words of similar import, if the indication is true; or

(2) the party or purchaser otherwise has notice of the nonreceipt or misdescription.

Source: Laws 2005, LB 570, § 65.

COMMENT

Prior Uniform Statutory Provision: Former section 7-203.

Changes: Changes to this section are for style only.

Purpose:

This section is a simplified restatement of existing law as to the method by which a bailee may avoid responsibility for the accuracy of descriptions which are made by or in reliance upon information furnished by the depositor. The issuer is liable on documents issued by an agent, contrary to instructions of its principal, without receiving goods. No disclaimer of the latter liability is permitted.

Cross References:

Section 7-301.

Definitional Cross References:

"Conspicuous". Section 1-201.

"Document of title". Section 1-201.

"Goods". Section 7-102.

"Good faith". Sections 1-201 and 7-102.

"Issuer". Section 7-102.

"Notice". Section 1-202.

"Party". Section 1-201.

"Purchaser". Section 1-201.

"Receipt of goods". Section 2-103.

"Value". Section 1-204.

7-204 Duty of care; contractual limitation of warehouse's liability.

(a) A warehouse is liable for damages for loss of or injury to the goods caused by its failure to exercise care with regard to the goods that a reasonably careful person would exercise under similar circumstances. Unless otherwise agreed, the warehouse is not liable for damages that could not have been avoided by the exercise of that care.

(b) Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage beyond which the warehouse is not liable. Such a limitation is not effective with respect to the warehouse's liability for conversion to its own use. On request of the bailor in a record at the time of signing the storage agreement or within a reasonable time after receipt of the warehouse receipt, the warehouse's liability may be increased on part or all of the goods covered by the storage agreement or the warehouse receipt. In this event, increased rates may be charged based on an increased valuation of the goods.

(c) Reasonable provisions as to the time and manner of presenting claims and commencing actions based on the bailment may be included in the warehouse receipt or storage agreement.

(d) This section does not modify or repeal any law of this state that imposes a higher responsibility upon the warehouse or invalidates contractual limitations that would be permissible under this article.

Source: Laws 2005, LB 570, § 66.

COMMENT

Prior Uniform Statutory Provision: Former section 7-204.

Changes: Updated to reflect modern, standard commercial practices.

Purposes of Changes:

1. Subsection (a) continues the rule without change from former section 7-204 on the warehouse's obligation to exercise reasonable care.

2. Former section 7-204(2) required that the term limiting damages do so by setting forth a specific liability per article or item or of a value per unit of weight. This requirement has been deleted as out of step with modern industry practice. Under subsection (b) a warehouse may limit its liability for damages for loss of or damage to the goods by a term in the warehouse receipt or storage agreement without the term constituting an impermissible disclaimer of the obligation of reasonable care. The parties cannot disclaim by contract the warehouse's obligation of care. Section 1-302. For example, limitations based upon per unit of weight, per package, per occurrence, or per receipt as well as limitations based upon a multiple of the storage rate may be commercially appropriate. As subsection (d) makes clear, the states or the federal government may supplement this section with more rigid standards of responsibility for some or all bailees.

3. Former section 7-204(2) also provided that an increased rate can not be charged if contrary to a tariff. That language has been deleted. If a tariff is required under state or federal law, pursuant to section 7-103(a), the tariff would control over the rule of this section allowing an increased rate. The provisions of a nonmandatory tariff may be incorporated by reference in the parties' agreement. See comment 2 to section 7-103. Subsection (c) deletes the reference to tariffs for the same reason that the reference has been omitted in subsection (b).

4. As under former section 7-204(2), subsection (b) provides that a limitation of damages is ineffective if the warehouse has converted the goods to its own use. A mere failure to redeliver the goods is not conversion to the warehouse's own use. See *Adams v. Ryan & Christie Storage, Inc.*, 563 F.Supp. 409 (E.D. Pa. 1983) aff'd 725 F.2d 666 (3rd Cir. 1983). Cases such as *I.C.C. Metals Inc. v. Municipal Warehouse Co.*, 409 N.E.2d 849 (N.Y. Ct. App. 1980) holding that mere failure to redeliver results in a presumption of conversion to the warehouse's own use are disapproved. "Conversion to its own use" is narrower than the idea of conversion generally. Cases such as *Lipman v. Peterson*, 575 P.2d 19 (Kan. 1978) holding to the contrary are disapproved.

5. Storage agreements commonly establish the contractual relationship between warehouses and depositors who have an ongoing relationship. The storage agreement may allow for the movement of goods into and out of a warehouse without the necessity of issuing or amending a warehouse receipt upon each entry or exit of goods from the warehouse.

Cross References:

Sections 1-302, 7-103, 7-309, and 7-403.

Definitional Cross References:

"Goods". Section 7-102.

"Reasonable time". Section 1-204.

"Sign". Section 7-102.

"Term". Section 1-201.

"Value". Section 1-204.

"Warehouse receipt". Section 1-201.

"Warehouse". Section 7-102.

7-205 Title under warehouse receipt defeated in certain cases.

A buyer in ordinary course of business of fungible goods sold and delivered by a warehouse that is also in the business of buying and selling such goods takes the goods free of any claim under a warehouse receipt even if the receipt is negotiable and has been duly negotiated.

Source: Laws 2005, LB 570, § 67.

COMMENT

Prior Uniform Statutory Provision: Former section 7-205.

Changes: Changes for style only.

Purposes:

1. The typical case covered by this section is that of the warehouse-dealer in grain, and the substantive question at issue is whether in case the warehouse becomes insolvent the receipt holders shall be able to trace and recover grain shipped to farmers and other purchasers from the elevator. This was possible under the old acts, although courts were eager to find estoppels to prevent it. The practical difficulty of tracing fungible grain means that the preservation of this theoretical right adds little to the commercial acceptability of negotiable grain receipts, which really circulate on the credit of the warehouse. Moreover, on default of the warehouse, the receipt holders at least share in what grain remains, whereas retaking the grain from a good faith cash purchaser reduces the purchaser completely to the status of general creditor in a situation where there was very little the purchaser could do to guard against the loss. Compare 15 U.S.C. section 714p enacted in 1955.

2. This provision applies to both negotiable and nonnegotiable warehouse receipts. The concept of due negotiation is provided for in section 7-501. The definition of "buyer in ordinary course" is in article 1 and provides, among other things, that a buyer must either have possession or a right to obtain the goods under article 2 in order to be a buyer in ordinary course. This section requires actual delivery of the fungible goods to the buyer in ordinary course. Delivery requires voluntary transfer of possession of the fungible goods to the buyer. See amended section 2-103. This section is not satisfied by the delivery of the document of title to the buyer in ordinary course.

Cross References:

Sections 2-403 and 9-320.

Definitional Cross References:

"Buyer in ordinary course of business". Section 1-201.

"Delivery". Section 1-201.

"Duly negotiate". Section 7-501.

"Fungible goods". Section 1-201.
 "Goods". Section 7-102.
 "Value". Section 1-204.

"Warehouse receipt". Section 1-201.
 "Warehouse". Section 7-102.

7-206 Termination of storage at warehouse's option.

(a) A warehouse, by giving notice to the person on whose account the goods are held and any other person known to claim an interest in the goods, may require payment of any charges and removal of the goods from the warehouse at the termination of the period of storage fixed by the document of title or, if a period is not fixed, within a stated period not less than 30 days after the warehouse gives notice. If the goods are not removed before the date specified in the notice, the warehouse may sell them pursuant to section 7-210.

(b) If a warehouse in good faith believes that goods are about to deteriorate or decline in value to less than the amount of its lien within the time provided in subsection (a) and section 7-210, the warehouse may specify in the notice given under subsection (a) any reasonable shorter time for removal of the goods and, if the goods are not removed, may sell them at public sale held not less than one week after a single advertisement or posting.

(c) If, as a result of a quality or condition of the goods of which the warehouse did not have notice at the time of deposit, the goods are a hazard to other property, the warehouse facilities, or other persons, the warehouse may sell the goods at public or private sale without advertisement or posting on reasonable notification to all persons known to claim an interest in the goods. If the warehouse, after a reasonable effort, is unable to sell the goods, it may dispose of them in any lawful manner and does not incur liability by reason of that disposition.

(d) A warehouse shall deliver the goods to any person entitled to them under this article upon due demand made at any time before sale or other disposition under this section.

(e) A warehouse may satisfy its lien from the proceeds of any sale or disposition under this section but shall hold the balance for delivery on the demand of any person to which the warehouse would have been bound to deliver the goods.

Source: Laws 2005, LB 570, § 68.

COMMENT

Prior Uniform Statutory Provision: Former section 7-206.

Changes: Changes for style.

Purposes:

1. This section provides for three situations in which the warehouse may terminate storage for reasons other than enforcement of its lien as permitted by section 7-210. Most warehousing is for an indefinite term, the bailor being entitled to delivery on reasonable demand. It is necessary to define the warehouse's power to terminate the bailment, since it would be commercially intolerable to allow warehouses to order removal of the goods on short notice. The thirty-day period provided where the document does not carry its own period of termination corresponds to commercial practice of computing rates on a monthly basis. The right to terminate under subsection (a) includes a right to require payment of "any charges", but does not depend on the existence of unpaid charges.

2. In permitting expeditious disposition of perishable and hazardous goods the precode Uniform Warehouse Receipts Act, section 34, made no distinction between cases where the warehouse knowingly undertook to store such goods and cases where the goods were discovered to be of that character subsequent to

storage. The former situation presents no such emergency as justifies the summary power of removal and sale. Subsections (b) and (c) distinguish between the two situations. The reason of this section should apply if the goods become hazardous during the course of storage. The process for selling the goods described in section 7-210 governs the sale of goods under this section except as provided in subsections (b) and (c) for the situations described in those subsections respectively.

3. Protection of its lien is the only interest which the warehouse has to justify summary sale of perishable goods which are not hazardous. This same interest must be recognized when the stored goods, although not perishable, decline in market value to a point which threatens the warehouse's security.

4. The right to order removal of stored goods is subject to provisions of the public warehousing laws of some states forbidding warehouses from discriminating among customers. Nor does the section relieve the warehouse of any obligation under the state laws to secure the approval of a public official before disposing of deteriorating goods. Such regulatory statutes and the regulations under them remain in force and operative. Section 7-103.

Cross References:

Sections 7-103 and 7-403.

Definitional Cross References:

"Delivery". Section 1-201.

"Document of title". Section 1-102.

"Good faith". Sections 1-201 and 7-102.

"Goods". Section 7-102.

"Notice". Section 1-202.

"Notification". Section 1-202.

"Person". Section 1-201.

"Reasonable time". Section 1-205.

"Value". Section 1-204.

"Warehouse". Section 7-102.

7-207 Goods must be kept separate; fungible goods.

(a) Unless the warehouse receipt provides otherwise, a warehouse shall keep separate the goods covered by each receipt so as to permit at all times identification and delivery of those goods. However, different lots of fungible goods may be commingled.

(b) If different lots of fungible goods are commingled, the goods are owned in common by the persons entitled thereto and the warehouse is severally liable to each owner for that owner's share. If, because of overissue, a mass of fungible goods is insufficient to meet all the receipts the warehouse has issued against it, the persons entitled include all holders to which overissued receipts have been duly negotiated.

Source: Laws 2005, LB 570, § 69.

COMMENT

Prior Uniform Statutory Provision: Former section 7-207.

Changes: Changes for style only.

Purposes:

No change of substance is made from former section 7-207. Holders to whom overissued receipts have been duly negotiated shall share in a mass of fungible goods. Where individual ownership interests are merged into claims on a common fund, as is necessarily the case with fungible goods, there is no policy reason for discriminating between successive purchasers of similar claims.

Definitional Cross References:

"Delivery". Section 1-201.

"Duly negotiate". Section 7-501.

"Fungible goods". Section 1-201.

"Goods". Section 7-102.

"Holder". Section 1-201.

"Person". Section 1-201.

"Warehouse receipt". Section 1-201.

"Warehouse". Section 7-102.

7-208 Altered warehouse receipts.

If a blank in a negotiable tangible warehouse receipt has been filled in without authority, a good faith purchaser for value and without notice of the lack of authority may treat the insertion as authorized. Any other unauthorized alteration leaves any tangible or electronic warehouse receipt enforceable against the issuer according to its original tenor.

Source: Laws 2005, LB 570, § 70.

COMMENT

Prior Uniform Statutory Provision: Former section 7-208.

Changes: To accommodate electronic documents of title.

Purpose:

1. The execution of tangible warehouse receipts in blank is a dangerous practice. As between the issuer and an innocent purchaser the risks should clearly fall on the former. The purchaser must have purchased the tangible negotiable warehouse receipt in good faith and for value to be protected under the rule of the first sentence which is a limited exception to the general rule in the second sentence. Electronic document of title systems should have protection against unauthorized access and unauthorized changes. See section 7-106. Thus the protection for good faith purchasers found in the first sentence is not necessary in the context of electronic documents.

2. Under the second sentence of this section, an unauthorized alteration whether made with or without fraudulent intent does not relieve the issuer of its liability on the warehouse receipt as originally executed. The unauthorized alteration itself is of course ineffective against the warehouse. The rule stated in the second sentence applies to both tangible and electronic warehouse receipts.

Definitional Cross References:

"Good faith". Sections 1-201 and 7-102.

"Issuer". Section 7-102.

"Notice". Section 1-202.

"Purchaser". Section 1-201.

"Value". Section 1-204.

"Warehouse receipt". Section 1-201.

7-209 Lien of warehouse.

(a) A warehouse has a lien against the bailor on the goods covered by a warehouse receipt or storage agreement or on the proceeds thereof in its possession for charges for storage or transportation, including demurrage and terminal charges, insurance, labor, or other charges, present or future, in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for similar charges or expenses in relation to other goods whenever deposited and it is stated in the warehouse receipt or storage agreement that a lien is claimed for charges and expenses in relation to other goods, the warehouse also has a lien against the goods covered by the warehouse receipt or storage agreement or on the proceeds thereof in its possession for those charges and expenses, whether or not the other goods have been delivered by the warehouse. However, as against a person to which a negotiable warehouse receipt is duly negotiated, a warehouse's lien is limited to charges in an amount or at a rate specified in the warehouse receipt or, if no charges are so specified, to a reasonable charge for storage of the specific goods covered by the receipt subsequent to the date of the receipt.

(b) A warehouse may also reserve a security interest against the bailor for the maximum amount specified on the receipt for charges other than those specified in subsection (a), such as for money advanced and interest. The security interest is governed by article 9.

(c) A warehouse's lien for charges and expenses under subsection (a) or a security interest under subsection (b) is also effective against any person that so entrusted the bailor with possession of the goods that a pledge of them by the bailor to a good faith purchaser for value would have been valid. However, the lien or security interest is not effective against a person that before issuance of a document of title had a legal interest or a perfected security interest in the goods and that did not:

(1) deliver or entrust the goods or any document of title covering the goods to the bailor or the bailor's nominee with:

(A) actual or apparent authority to ship, store, or sell;

(B) power to obtain delivery under section 7-403; or

(C) power of disposition under section 2-403, 2A-304(2), 2A-305(2), 9-320, or 9-321(c) or other statute or rule of law; or

(2) acquiesce in the procurement by the bailor or its nominee of any document.

(d) A warehouse's lien on household goods for charges and expenses in relation to the goods under subsection (a) is also effective against all persons if the depositor was the legal possessor of the goods at the time of deposit. In this subsection, "household goods" means furniture, furnishings, or personal effects used by the depositor in a dwelling.

(e) A warehouse loses its lien on any goods that it voluntarily delivers or unjustifiably refuses to deliver.

Source: Laws 2005, LB 570, § 71.

COMMENT

Prior Uniform Statutory Provision: Former sections 7-209 and 7-503.

Changes: Expanded to recognize warehouse lien when a warehouse receipt is not issued but goods are covered by a storage agreement.

Purposes:

1. Subsection (a) defines the warehouse's statutory lien. Other than allowing a warehouse to claim a lien under this section when there is a storage agreement and not a warehouse receipt, this section remains unchanged in substance from former section 7-209(1). Under the first sentence, a specific lien attaches automatically without express notation on the receipt or storage agreement with regard to goods stored under the receipt or the storage agreement. That lien is limited to the usual charges arising out of a storage transaction.

Example 1: Bailor stored goods with a warehouse and the warehouse issued a warehouse receipt. A lien against those goods arose as set forth in subsection (a), the first sentence, for the charges for storage and the other expenses of those goods. The warehouse may enforce its lien under section 7-210 as against the bailor. Whether the warehouse receipt is negotiable or nonnegotiable is not important to the warehouse's rights as against the bailor.

Under the second sentence, by notation on the receipt or storage agreement, the lien can be made a general lien extending to like charges in relation to other goods. Both the specific lien and general lien are as to goods in the possession of the warehouse and extend to proceeds from the goods as long as the proceeds are in the possession of the warehouse. The same rules apply whether the receipt is negotiable or nonnegotiable.

Example 2: Bailor stored goods (lot A) with a warehouse and the warehouse issued a warehouse receipt for those goods. In the warehouse receipt it is stated that the warehouse will also have a lien on goods covered by the warehouse receipt for storage charges and the other expenses for any other goods that are stored with the warehouse by the bailor. The statement about the lien on other goods does not specify an amount or a rate. Bailor then stored other goods (lot B) with the warehouse. Under subsection (a), first sentence, the warehouse has a lien on the specific goods (lot A) covered by the warehouse receipt. Under subsection (a), second sentence, the warehouse has a lien on the goods in lot A for the storage charges and the other expenses arising from the goods in lot B. That lien is enforceable as against the bailor regardless of whether the receipt is negotiable or nonnegotiable.

Under the third sentence, if the warehouse receipt is negotiable, the lien as against a holder of that receipt by due negotiation is limited to the amount or rate specified on the receipt for the specific lien or the general lien, or, if none is specified, to a reasonable charge for storage of the specific goods covered by the receipt for storage after the date of the receipt.

Example 3: Same facts as example 1 except that the warehouse receipt is negotiable and has been duly negotiated (section 7-501) to a person other than the bailor. Under the last sentence of subsection (a), the warehouse may enforce its lien against the bailor's goods stored in the warehouse as against the person to whom the negotiable warehouse receipt has been duly negotiated. Section 7-502. That lien is limited to the charges or rates specified in the receipt or a reasonable charge for storage as stated in the last sentence of subsection (a).

Example 4: Same facts as example 2 except that the warehouse receipt is negotiable and has been duly negotiated (section 7-501) to a person other than the bailor. Under the last sentence of subsection (a), the lien on lot A goods for the storage charges and the other expenses arising from storage of lot B goods is not enforceable as against the person to whom the receipt has been duly negotiated. Without a statement of a specified amount or rate for the general lien, the warehouse's general lien is not enforceable as against the person to whom the negotiable document has been duly negotiated. However, the warehouse lien for charges and expenses related to storage

of lot A goods is still enforceable as against the person to whom the receipt was duly negotiated.

Example 5: Same facts as examples 2 and 4 except the warehouse had stated on the negotiable warehouse receipt a specified amount or rate for the general lien on other goods (lot B). Under the last sentence of subsection (a), the general lien on lot A goods for the storage charges and the other expenses arising from storage of lot B goods is enforceable as against the person to whom the receipt has been duly negotiated.

2. Subsection (b) provides for a security interest based upon agreement. Such a security interest arises out of relations between the parties other than bailment for storage or transportation, as where the bailee assumes the role of financier or performs a manufacturing operation, extending credit in reliance upon the goods covered by the receipt. Such a security interest is not a statutory lien. Compare sections 9-109 and 9-333. It is governed in all respects by article 9, except that subsection (b) requires that the receipt specify a maximum amount and limits the security interest to the amount specified. A warehouse could also take a security interest to secure its charges for storage and the other expenses listed in subsection (a) to protect these claims upon the loss of the statutory possessory warehouse lien if the warehouse loses possession of the goods as provided in subsection (e).

Example 6: Bailor stores goods with a warehouse and the warehouse issues a warehouse receipt that states that the warehouse is taking a security interest in the bailed goods for charges of storage, expenses, for money advanced, for manufacturing services rendered, and all other obligations that the bailor may owe the warehouse. That is a security interest covered in all respects by article 9. Subsection (b). As allowed by this section, a warehouse may rely upon its statutory possessory lien to protect its charges for storage and the other expenses related to storage. For those storage charges covered by the statutory possessory lien, the warehouse is not required to use a security interest under subsection (b).

3. Subsections (a) and (b) validate the lien and security interest "against the bailor". Under basic principles of derivative rights as provided in section 7-504, the warehouse lien is also valid as against parties who obtain their rights from the bailor except as otherwise provided in subsection (a), third sentence, or subsection (c).

Example 7: Bailor stores goods with a warehouse and the warehouse issues a nonnegotiable warehouse receipt that also claims a general lien in other goods stored with the warehouse. A lien on the bailed goods for the charges for storage and the other expenses arises under subsection (a). Bailor notifies the warehouse that the goods have been sold to Buyer and the bailee acknowledges that fact to the Buyer. Section 2-503. The warehouse lien for storage of those goods is effective against Buyer for both the specific lien and the general lien. Section 7-504.

Example 8: Bailor stores goods with a warehouse and the warehouse issues a nonnegotiable warehouse receipt. A lien on the bailed goods for the charges for storage and the other expenses arises under subsection (a). Bailor grants a security interest in the goods while the goods are in the warehouse's possession to secured party (SP) who properly perfects a security interest in the goods. See revised section 9-312(d). The warehouse lien is superior in priority over SP's security interest. See revised section 9-203(b)(2) (debtor can grant a security interest to the extent of debtor's rights in the collateral).

Example 9: Bailor stores goods with a warehouse and the warehouse issues a negotiable warehouse receipt. A lien on the bailed goods for the charges for storage and the other expenses arises under subsection (a). Bailor grants a security interest in the negotiable document to SP. SP properly perfects its interest in the negotiable document by taking possession through a "due negotiation". Revised section 9-312(c). SP's security interest is subordinate to the warehouse lien. Section 7-209(a), third sentence. Given that bailor's rights are subject to the warehouse lien, the bailor cannot grant to the SP greater rights than the

bailor has under section 9-203(b)(2), perfection of the security interest in the negotiable document and the goods covered by the document through SP's filing of a financing statement should not give a different result.

As against third parties who have interests in the goods prior to the storage with the warehouse, subsection (c) continues the rule under the prior uniform statutory provision that to validate the lien or security interest of the warehouse, the owner must have entrusted the goods to the depositor, and that the circumstances must be such that a pledge by the depositor to a good faith purchaser for value would have been valid. Thus the owner's interest will not be subjected to a lien or security interest arising out of a deposit of its goods by a thief. The warehouse may be protected because of the actual, implied, or apparent authority of the depositor, because of a Factor's Act, or because of other circumstances which would protect a bona fide pledgee, unless those circumstances are denied effect under the second sentence of subsection (c). The language of section 7-503 is brought into subsection (c) for purposes of clarity. The comments to section 7-503 are helpful in interpreting delivery, entrustment, or acquiescence.

Where the third party is the holder of a security interest, obtained prior to the issuance of a negotiable warehouse receipt, the rights of the warehouse depend on the priority given to a hypothetical bona fide pledgee by article 9, particularly section 9-322. Thus the special priority granted to statutory liens by section 9-333 does not apply to liens under subsection (a) of this section, since subsection (c), second sentence, "expressly provides otherwise" within the meaning of section 9-333.

As to household goods, however, subsection (d) makes the warehouse's lien "for charges and expenses in relation to the goods" effective against all persons if the depositor was the legal possessor. The purpose of the exception is to permit the warehouse to accept household goods for storage in sole reliance on the value of the goods themselves, especially in situations of family emergency.

Example 10: Bailor grants a perfected security interest in the goods to SP prior to storage of the goods with the warehouse. Bailor then stores goods with the warehouse and the warehouse issues a warehouse receipt for the goods. A warehouse lien on the bailed goods for the charges for storage or other expenses arises under subsection (a). The warehouse lien is not effective as against SP unless SP entrusted the goods to the bailor with actual or apparent authority to ship, store, or sell the goods or with power of disposition under subsection (c)(1) or acquiesced in the bailor's procurement of a document of title under subsection (c)(2). This result obtains whether the receipt is negotiable or nonnegotiable.

Example 11: Sheriff who had lawfully repossessed household goods in an eviction action stored the goods with a warehouse. A lien on the bailed goods arises under subsection (a). The lien is effective as against the owner of the goods. Subsection (d).

4. As under previous law, this section creates a statutory possessory lien in favor of the warehouse on the goods stored with the warehouse or on the proceeds of the goods. The warehouse loses its lien if it loses possession of the goods or the proceeds. Subsection (e).

5. Where goods have been stored under a nonnegotiable warehouse receipt and are sold by the person to whom the receipt has been issued, frequently the goods are not withdrawn by the new owner. The obligations of the seller of the goods in this situation are set forth in section 2-503(4) on tender of delivery and include procurement of an acknowledgment by the bailee of the buyer's right to possession of the goods. If a new receipt is requested, such an acknowledgment can be withheld until storage charges have been paid or provided for. The statutory lien for charges on the goods sold, granted by the first sentence of subsection (a), continues valid unless the bailee gives it up. See section 7-403. But once a new receipt is issued to the buyer, the buyer becomes "the person on whose account the goods are held" under the second sentence of subsection (a); unless the buyer undertakes liability for charges in relation to other goods stored by the seller, there is no general lien against the buyer for such charges. Of course, the bailee may preserve the general lien in such a case either by an arrangement by which the buyer "is liable for" such charges, or by reserving a security interest under subsection (b).

6. A possessory warehouse lien arises as provided under subsection (a) if the parties to the bailment have a storage agreement or a warehouse receipt is issued. In the modern warehouse, the bailor and the bailee may enter into a master contract governing the bailment with the bailee and bailor keeping track of the goods stored pursuant to the master contract by notation on their respective books and records and the parties send notification via electronic communication as to what goods are covered by the master contract. Warehouse receipts are not issued. See comment 4 to section 7-204. There is no particular form for a warehouse receipt and failure to contain any of the terms listed in section 7-202 does not deprive the warehouse of its lien that arises under subsection (a). See the comment to section 7-202.

Cross References:

Point 1: Sections 7-501 and 7-502.

Point 2: Sections 9-109 and 9-333.

Point 3: Sections 2-503, 7-503, 7-504, 9-203, 9-312, and 9-322.

Point 4: Sections 2-503, 7-501, 7-502, 7-504, 9-312, 9-331, 9-333, and 9-401.

Point 5: Sections 2-503 and 7-403.

Point 6: Sections 7-202 and 7-204.

Definitional Cross References:

"Deliver". Section 1-201.

"Document of title". Section 1-201.

"Goods". Section 7-102.

"Money". Section 1-201.

"Person". Section 1-201.

"Purchaser". Section 1-201.

"Right". Section 1-201.

"Security interest". Section 1-201.

"Value". Section 1-204.

"Warehouse receipt". Section 1-201.

"Warehouse". Section 7-102.

7-210 Enforcement of warehouse's lien.

(a) Except as otherwise provided in subsection (b), a warehouse's lien may be enforced by public or private sale of the goods, in bulk or in packages, at any time or place and on any terms that are commercially reasonable, after notifying all persons known to claim an interest in the goods. The notification must include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a method different from that selected by the warehouse is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. The warehouse sells in a

commercially reasonable manner if the warehouse sells the goods in the usual manner in any recognized market therefor, sells at the price current in that market at the time of the sale, or otherwise sells in conformity with commercially reasonable practices among dealers in the type of goods sold. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable, except in cases covered by the preceding sentence.

(b) A warehouse may enforce its lien on goods, other than goods stored by a merchant in the course of its business, only if the following requirements are satisfied:

(1) All persons known to claim an interest in the goods must be notified.

(2) The notification must include an itemized statement of the claim, a description of the goods subject to the lien, a demand for payment within a specified time not less than 10 days after receipt of the notification, and a conspicuous statement that unless the claim is paid within that time the goods will be advertised for sale and sold by auction at a specified time and place.

(3) The sale must conform to the terms of the notification.

(4) The sale must be held at the nearest suitable place to where the goods are held or stored.

(5) After the expiration of the time given in the notification, an advertisement of the sale must be published once a week for two weeks consecutively in a newspaper of general circulation where the sale is to be held. The advertisement must include a description of the goods, the name of the person on whose account the goods are being held, and the time and place of the sale. The sale must take place at least 15 days after the first publication. If there is no newspaper of general circulation where the sale is to be held, the advertisement must be posted at least 10 days before the sale in not fewer than six conspicuous places in the neighborhood of the proposed sale.

(c) Before any sale pursuant to this section, any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred in complying with this section. In that event, the goods may not be sold but must be retained by the warehouse subject to the terms of the receipt and this article.

(d) A warehouse may buy at any public sale held pursuant to this section.

(e) A purchaser in good faith of goods sold to enforce a warehouse's lien takes the goods free of any rights of persons against which the lien was valid, despite the warehouse's noncompliance with this section.

(f) A warehouse may satisfy its lien from the proceeds of any sale pursuant to this section but shall hold the balance, if any, for delivery on demand to any person to which the warehouse would have been bound to deliver the goods.

(g) The rights provided by this section are in addition to all other rights allowed by law to a creditor against a debtor.

(h) If a lien is on goods stored by a merchant in the course of its business, the lien may be enforced in accordance with subsection (a) or (b).

(i) A warehouse is liable for damages caused by failure to comply with the requirements for sale under this section and, in case of willful violation, is liable for conversion.

Source: Laws 2005, LB 570, § 72.

COMMENT

Prior Uniform Statutory Provision: Former section 7-210.

Changes: Update to accommodate electronic commerce and for style.

Purposes:

1. Subsection (a) makes “commercial reasonableness” the standard for foreclosure proceedings in all cases except non-commercial storage with a warehouse. The latter category embraces principally storage of household goods by private owners; and for such cases the detailed provisions as to notification, publication, and public sale are retained in subsection (b) with one change. The requirement in former section 7-210(2)(b) that the notification must be sent in person or by registered or certified mail has been deleted. Notification may be sent by any reasonable means as provided in section 1-202. The swifter, more flexible procedure of subsection (a) is appropriate to commercial storage. Compare seller’s power of resale on breach by buyer under the provisions of the Article on Sales (section 2-706). Commercial reasonableness is a flexible concept that allows for a wide variety of actions to satisfy the rule of this section, including electronic means of posting and sale.

2. The provisions of subsections (d) and (e) permitting the bailee to bid at public sales and confirming the title of purchasers at foreclosure sales are designed to secure more bidding and better prices and remain unchanged from former section 7-210.

3. A warehouse may have recourse to an interpleader action in appropriate circumstances. See section 7-603.

4. If a warehouse has both a warehouse lien and a security interest, the warehouse may enforce both the lien and the

security interest simultaneously by using the procedures of article 9. Section 7-210 adopts as its touchstone “commercial reasonableness” for the enforcement of a warehouse lien. Following the procedures of article 9 satisfies “commercial reasonableness”.

Cross References:

Sections 2-706, 7-403, 7-603, and part 6 of article 9.

Definitional Cross References:

“Bill of lading”. Section 1-201.

“Conspicuous”. Section 1-201.

“Creditor”. Section 1-201.

“Delivery”. Section 1-201.

“Document of title”. Section 1-201.

“Good faith”. Sections 1-201 and 7-102.

“Goods”. Section 7-102.

“Notification”. Section 1-202.

“Notifies”. Section 1-202.

“Person”. Section 1-201.

“Purchaser”. Section 1-201.

“Rights”. Section 1-201.

“Term”. Section 1-201.

“Warehouse”. Section 7-102.

Part 3

BILLS OF LADING: SPECIAL PROVISIONS

7-301 Liability for nonreceipt or misdescription; “said to contain”; “shipper’s weight, load, and count”; improper handling.

(a) A consignee of a nonnegotiable bill of lading which has given value in good faith, or a holder to which a negotiable bill has been duly negotiated, relying upon the description of the goods in the bill or upon the date shown in the bill, may recover from the issuer damages caused by the misdating of the bill or the nonreceipt or misdescription of the goods, except to the extent that the bill indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, such as in a case in which the description is in terms of marks or labels or kind, quantity, or condition or the receipt or description is qualified by “contents or condition of contents of packages unknown”, “said to contain”, “shipper’s weight, load, and count”, or words of similar import, if that indication is true.

(b) If goods are loaded by the issuer of a bill of lading:

(1) the issuer shall count the packages of goods if shipped in packages and ascertain the kind and quantity if shipped in bulk; and

(2) words such as “shipper’s weight, load, and count”, or words of similar import indicating that the description was made by the shipper are ineffective except as to goods concealed in packages.

(c) If bulk goods are loaded by a shipper that makes available to the issuer of a bill of lading adequate facilities for weighing those goods, the issuer shall ascertain the kind and quantity within a reasonable time after receiving the shipper’s request in a record to do so. In that case, “shipper’s weight” or words of similar import are ineffective.

(d) The issuer of a bill of lading, by including in the bill the words “shipper’s weight, load, and count”, or words of similar import, may indicate that the goods were loaded by the shipper, and, if that statement is true, the issuer is not liable for damages caused by the improper loading. However, omission of such words does not imply liability for damages caused by improper loading.

(e) A shipper guarantees to an issuer the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity, condition, and weight, as furnished by the shipper, and the shipper shall indemnify the issuer against damage caused by inaccuracies in those particulars. This right of indemnity does not limit the issuer’s responsibility or liability under the contract of carriage to any person other than the shipper.

Source: Laws 2005, LB 570, § 73.

COMMENT

Prior Uniform Statutory Provision: Former section 7-301.

Changes: Changes for clarity, style, and to recognize deregulation in the transportation industry.

Purposes:

1. This section continues the rules from former section 7-301 with one substantive change. The obligations of the issuer of the bill of lading under former subsections (2) and (3) were limited to issuers who were common carriers. Subsections (b) and (c) apply the same rules to all issuers not just common carriers. This section is compatible with the policies stated in the federal Bills of Lading Act, 49 U.S.C. section 80113 (2000).

2. The language of the precode Uniform Bills of Lading Act suggested that a carrier is ordinarily liable for damage caused by improper loading, but may relieve itself of liability by disclosing on the bill that shipper actually loaded. A more accurate statement of the law is that the carrier is not liable for losses caused by act or default of the shipper, which would include improper loading. *D.H. Overmeyer Co. v. Nelson Brantley Glass Co.*, 168 S.E.2d 176 (Ga. Ct. App. 1969). There was some question whether under precode law a carrier was liable even to a good faith purchaser of a negotiable bill for such losses, if the shipper’s faulty loading in fact caused the loss. Subsection (d) permits the carrier to bar, by disclosure of shipper’s loading, liability to a good faith purchaser. There is no implication that decisions such as *Modern Tool Corp. v. Pennsylvania R. Co.*, 100 F.Supp. 595 (D.N.J.1951), are disapproved.

3. This section is a restatement of existing law as to the method by which a bailee may avoid responsibility for the accuracy of descriptions which are made by or in reliance upon information furnished by the depositor or shipper. The wording in this section—“contents or condition of contents of packages unknown” or “shipper’s weight, load, and count”—to indicate that the shipper loaded the goods or that the carrier does not know the description, condition, or contents of the loaded packages continues to be appropriate as commonly understood in the transportation industry. The reasons for this wording are

as important in 2002 as when the prior section initially was approved. The issuer is liable on documents issued by an agent, contrary to instructions of his or her principal, without receiving goods. No disclaimer of this liability is permitted since it is not a matter either of the care of the goods or their description.

4. The shipper’s erroneous report to the carrier concerning the goods may cause damage to the carrier. Subsection (e) therefor provides appropriate indemnity.

5. The word “freight” in the former section 7-301 has been changed to “goods” to conform to international and domestic land transport usage in which “freight” means the price paid for carriage of the goods and not the goods themselves. Hence, changing the word “freight” to the word “goods” is a clarifying change that fits both international and domestic practice.

Cross References:

Sections 7-203, 7-309, and 7-501.

Definitional Cross References:

“Bill of lading”. Section 1-201.

“Consignee”. Section 7-102.

“Document of title”. Section 1-201.

“Duly negotiate”. Section 7-501.

“Good faith”. Sections 1-201 and 7-102.

“Goods”. Section 7-102.

“Holder”. Section 1-201.

“Issuer”. Section 7-102.

“Notice”. Section 1-202.

“Party”. Section 1-201.

“Purchaser”. Section 1-201.

“Receipt of goods”. Section 2-103.

“Value”. Section 1-204.

7-302 Through bills of lading and similar documents of title.

(a) The issuer of a through bill of lading, or other document of title embodying an undertaking to be performed in part by a person acting as its agent or by a performing carrier, is liable to any person entitled to recover on the bill or other document for any breach by the other person or the performing carrier of its obligation under the bill or other document. However, to the extent that the bill or other document covers an undertaking to be performed overseas or in territory not contiguous to the continental United States or an undertaking including matters other than transportation, this liability for breach by the other person or the performing carrier may be varied by agreement of the parties.

(b) If goods covered by a through bill of lading or other document of title embodying an undertaking to be performed in part by a person other than the issuer are received by that person, the person is subject, with respect to its own performance while the goods are in its possession, to the obligation of the issuer. The person's obligation is discharged by delivery of the goods to another person pursuant to the bill or other document and does not include liability for breach by any other person or by the issuer.

(c) The issuer of a through bill of lading or other document of title described in subsection (a) is entitled to recover from the performing carrier, or other person in possession of the goods when the breach of the obligation under the bill or other document occurred:

(1) the amount it may be required to pay to any person entitled to recover on the bill or other document for the breach, as may be evidenced by any receipt, judgment, or transcript of judgment; and

(2) the amount of any expense reasonably incurred by the issuer in defending any action commenced by any person entitled to recover on the bill or other document for the breach.

Source: Laws 2005, LB 570, § 74.

COMMENT

Prior Uniform Statutory Provision: Former section 7-302.

Changes: To conform to current terminology and for style.

Purposes:

1. This section continues the rules from former section 7-302 without substantive change. The term "performing carrier" is substituted for the term "connecting carrier" to conform to the terminology of this section with terminology used in recent UNCITRAL and OAS proposals concerning transportation and through bills of lading. This change in terminology is not substantive. This section is compatible with liability on carriers under federal law. See 49 U.S.C. sections 11706, 14706, and 15906.

The purpose of this section is to subject the initial carrier under a through bill to suit for breach of the contract of carriage by any performing carrier and to make it clear that any such performing carrier holds the goods on terms which are defined by the document of title even though such performing carrier did not issue the document. Since the performing carrier does hold the goods on the terms of the document, it must honor a proper demand for delivery or a diversion order just as the original bailee would have to. Similarly it has the benefits of the excuses for nondelivery and limitations of liability provided for the original bailee who issued the bill. Unlike the original bailee-issuer, the performing carrier's responsibility is limited to the period while the goods are in its possession. The section does not impose any obligation to issue through bills.

2. The reference to documents other than through bills looks to the possibility that multi-purpose documents may come into use, e.g., combination warehouse receipts and bills of lading. As

electronic documents of title come into common usage, storage documents (e.g. warehouse receipts), and transportation documents (e.g. bills of lading) may merge seamlessly into one electronic document that can serve both the storage and transportation segments of the movement of goods.

3. Under subsection (a) the issuer of a through bill of lading may become liable for the fault of another person. Subsection (c) gives the issuer appropriate rights of recourse.

4. Despite the broad language of subsection (a), section 7-302 is subject to preemption by federal laws and treaties. Section 7-103. The precise scope of federal preemption in the transportation sector is a question determined under federal law.

Cross reference:

Section 7-103.

Definitional Cross References:

"Agreement". Section 1-201.

"Bailee". Section 7-102.

"Bill of lading". Section 1-201.

"Delivery". Section 1-201.

"Document of title". Section 1-201.

"Goods". Section 7-102.

"Issuer". Section 7-102.

"Party". Section 1-201.

"Person". Section 1-201.

7-303 Diversion; reconsignment; change of instructions.

(a) Unless the bill of lading otherwise provides, a carrier may deliver the goods to a person or destination other than that stated in the bill or may otherwise dispose of the goods, without liability for misdelivery, on instructions from:

(1) the holder of a negotiable bill;

(2) the consignor on a nonnegotiable bill, even if the consignee has given contrary instructions;

(3) the consignee on a nonnegotiable bill in the absence of contrary instructions from the consignor, if the goods have arrived at the billed destination or if the consignee is in possession of the tangible bill or in control of the electronic bill; or

(4) the consignee on a nonnegotiable bill, if the consignee is entitled as against the consignor to dispose of the goods.

(b) Unless instructions described in subsection (a) are included in a negotiable bill of lading, a person to which the bill is duly negotiated may hold the bailee according to the original terms.

Source: Laws 2005, LB 570, § 75.

COMMENT

Prior Uniform Statutory Provision: Former section 7-303.

Changes: To accommodate electronic documents and for style.

Purposes:

1. Diversion is a very common commercial practice which defeats delivery to the consignee originally named in a bill of lading. This section continues former section 7-303's safe harbor rules for carriers in situations involving diversion and adapts those rules to electronic documents of title. This section works compatibly with section 2-705. Carriers may as a business matter be willing to accept instructions from consignees in which case the carrier will be liable for misdelivery if the consignee was not the owner or otherwise empowered to dispose of the goods under subsection (a)(4). The section imposes no duty on carriers to undertake diversion. The carrier is of course subject to the provisions of mandatory filed tariffs as provided in section 7-103.

2. It should be noted that the section provides only an immunity for carriers against liability for "misdelivery". It does not, for example, defeat the title to the goods which the consignee-buyer may have acquired from the consignor-seller upon delivery of the goods to the carrier under a nonnegotiable bill of lading. Thus if the carrier, upon instructions from the consignor, returns the goods to the consignor, the consignee may recover the goods from the consignor or the consignor's insolvent estate. However, under certain circumstances, the consign-

ee's title may be defeated by diversion of the goods in transit to a different consignee. The rights that arise between the consignor-seller and the consignee-buyer out of a contract for the sale of goods are governed by article 2.

Cross References:

Point 1: Sections 2-705 and 7-103.

Point 2: Article 2, sections 7-403 and 7-504(3).

Definitional Cross References:

"Bailee". Section 7-102.

"Bill of lading". Section 1-201.

"Carrier". Section 7-102.

"Consignee". Section 7-102.

"Consignor". Section 7-102.

"Delivery". Section 1-201.

"Goods". Section 7-102.

"Holder". Section 1-201.

"Notice". Section 1-202.

"Person". Section 1-201.

"Purchaser". Section 1-201.

"Term". Section 1-201.

7-304 Tangible bills of lading in a set.

(a) Except as customary in international transportation, a tangible bill of lading may not be issued in a set of parts. The issuer is liable for damages caused by violation of this subsection.

(b) If a tangible bill of lading is lawfully issued in a set of parts, each of which contains an identification code and is expressed to be valid only if the goods have not been delivered against any other part, the whole of the parts constitutes one bill.

(c) If a tangible negotiable bill of lading is lawfully issued in a set of parts and different parts are negotiated to different persons, the title of the holder to which the first due negotiation is made prevails as to both the document of title and the goods even if any later holder may have received the goods from the carrier in good faith and discharged the carrier's obligation by surrendering its part.

(d) A person that negotiates or transfers a single part of a tangible bill of lading issued in a set is liable to holders of that part as if it were the whole set.

(e) The bailee shall deliver in accordance with part 4 against the first presented part of a tangible bill of lading lawfully issued in a set. Delivery in this manner discharges the bailee's obligation on the whole bill.

Source: Laws 2005, LB 570, § 76.

COMMENT

Prior Uniform Statutory Provision: Former section 7-304.

Changes: To limit bills in a set to tangible bills of lading and to use terminology more consistent with modern usage.

Purposes:

1. Tangible bills of lading in a set are still used in some nations in international trade. Consequently, a tangible bill of lading part of a set could be at issue in a lawsuit that might come within article 7. The statement of the legal effect of a lawfully issued set is in accord with existing commercial law relating to maritime and other international tangible bills of lading. This law has been codified in the Hague and Warsaw Conventions and in the Carriage of Goods by Sea Act, the provisions of which would ordinarily govern in situations where bills in a set are recognized by this article. Tangible bills of lading in a set are prohibited in domestic trade.

2. Electronic bills of lading in domestic or international trade will not be issued in a set given the requirements of control necessary to deliver the bill to another person. An electronic bill of lading will be a single, authoritative copy. Section 7-106. Hence, this section differentiates between electronic bills of lading and tangible bills of lading. This section does not prohibit electronic data messages about goods in transit because these

electronic data messages are not the issued bill of lading. Electronic data messages contain information for the carrier's management and handling of the cargo but this information for the carrier's use is not the issued bill of lading.

Cross References:

Sections 7-103, 7-106, and 7-303.

Definitional Cross References:

"Bailee". Section 7-102.

"Bill of lading". Section 1-201.

"Delivery". Section 1-201.

"Document of title". Section 1-201.

"Duly negotiate". Section 7-501.

"Good faith". Sections 1-201 and 7-102.

"Goods". Section 7-102.

"Holder". Section 1-201.

"Issuer". Section 7-102.

"Person". Section 1-201.

"Receipt of goods". Section 2-103.

7-305 Destination bills.

(a) Instead of issuing a bill of lading to the consignor at the place of shipment, a carrier, at the request of the consignor, may procure the bill to be issued at destination or at any other place designated in the request.

(b) Upon request of any person entitled as against a carrier to control the goods while in transit and on surrender of possession or control of any outstanding bill of lading or other receipt covering the goods, the issuer, subject to section 7-105, may procure a substitute bill to be issued at any place designated in the request.

Source: Laws 2005, LB 570, § 77.

COMMENT

Prior Uniform Statutory Provision: Former section 7-305.

Changes: To accommodate electronic bills of lading and for style.

Purposes:

1. Subsection (a) continues the rules of former section 7-305(1) without substantive change. This proposal is designed to facilitate the use of order bills in connection with fast shipments. Use of order bills on high speed shipments is impeded by the fact that the goods may arrive at destination before the documents, so that no one is ready to take delivery from the carrier. This is especially inconvenient for carriers by truck and air, who do not have terminal facilities where shipments can be held to await the consignee's appearance. Order bills would be useful to take advantage of bank collection. This may be preferable to C.O.D. shipment in which the carrier, e.g. a truck driver, is the collecting and remitting agent. Financing of shipments under this plan would be handled as follows: Seller at San Francisco delivers the goods to an airline with instructions to issue a bill in New York to a named bank. Seller receives a receipt embodying this undertaking to issue a destination bill. Airline wires its New York freight agent to issue the bill as instructed by the seller. Seller wires the New York bank a draft on buyer. New York bank indorses the bill to buyer when the buyer honors the draft. Normally seller would act through its

own bank in San Francisco, which would extend credit in reliance on the airline's contract to deliver a bill to the order of its New York correspondent. This section is entirely permissive; it imposes no duty to issue such bills. Whether a performing carrier will act as issuing agent is left to agreement between carriers.

2. Subsection (b) continues the rule from former section 7-305(2) with accommodation for electronic bills of lading. If the substitute bill changes from an electronic to a tangible medium or vice versa, the issuance of the substitute bill must comply with section 7-105 to give the substitute bill validity and effect.

Cross References:

Section 7-105.

Definitional Cross References:

"Bill of lading". Section 1-201.

"Consignor". Section 7-102.

"Goods". Section 7-102.

"Issuer". Section 7-102.

"Receipt of goods". Section 2-103.

7-306 Altered bills of lading.

An unauthorized alteration or filling in of a blank in a bill of lading leaves the bill enforceable according to its original tenor.

Source: Laws 2005, LB 570, § 78.

COMMENT

Prior Uniform Statutory Provision: Former section 7-306.

Changes: None

Purposes:

An unauthorized alteration or filling in of a blank, whether made with or without fraudulent intent, does not relieve the issuer of its liability on the document as originally executed. This section applies to both tangible and electronic bills of lading, applying the same rule to both types of bills of lading. The control concept of section 7-106 requires that any changes to the electronic document of title be readily identifiable as

authorized or unauthorized. Section 7-306 should be compared to section 7-208 where a different rule applies to the unauthorized filling in of a blank for tangible warehouse receipts.

Cross References:

Sections 7-106 and 7-208.

Definitional Cross References:

"Bill of lading". Section 1-201.

"Issuer". Section 7-102.

7-307 Lien of carrier.

(a) A carrier has a lien on the goods covered by a bill of lading or on the proceeds thereof in its possession for charges after the date of the carrier's receipt of the goods for storage or transportation, including demurrage and terminal charges, and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law. However, against a purchaser for value of a negotiable bill of lading, a carrier's lien is limited to charges stated in the bill or the applicable tariffs or, if no charges are stated, a reasonable charge.

(b) A lien for charges and expenses under subsection (a) on goods that the carrier was required by law to receive for transportation is effective against the consignor or any person entitled to the goods unless the carrier had notice that the consignor lacked authority to subject the goods to those charges and expenses. Any other lien under subsection (a) is effective against the consignor and any person that permitted the bailor to have control or possession of the goods unless the carrier had notice that the bailor lacked authority.

(c) A carrier loses its lien on any goods that it voluntarily delivers or unjustifiably refuses to deliver.

Source: Laws 2005, LB 570, § 79.

COMMENT

Prior Uniform Statutory Provision: Former section 7-307.

Changes: Expanded to cover proceeds of the goods transported.

Purposes:

1. The section is intended to give carriers a specific statutory lien for charges and expenses similar to that given to warehouses by the first sentence of section 7-209(a) and extends that lien to the proceeds of the goods as long as the carrier has possession of the proceeds. But because carriers do not commonly claim a lien for charges in relation to other goods or lend money on the security of goods in their hands, provisions for a general lien or a security interest similar to those in section 7-209(a) and (b) are omitted. Carriers may utilize article 9 to obtain a security interest and become a secured party or a carrier may agree to limit its lien rights in a transportation agreement with the shipper. As the lien given by this section is specific, and the storage or transportation often preserves or increases the value of the goods, subsection (b) validates the lien against anyone who permitted the bailor to have possession of the goods. Where the carrier is required to receive the goods for transportation, the owner's interest may be subjected to charges and expenses arising out of deposit of his or her goods by a thief. The crucial mental element is the carrier's knowledge or reason to know of the bailor's lack of authority. If the carrier does not know or have reason to know of the bailor's lack of authority, the carrier has a lien under this section against any person so long as the conditions of subsection (b) are satisfied. In light of the crucial mental element, sections 7-307 and 9-333 combine to give priority to a carrier's lien over security interests in the goods. In

this regard, the judicial decision in *In re Sharon Steel Corp.*, 25 U.C.C. Rep.2d 503, 176 B.R. 384 (W.D. Pa. 1995) is correct and is the controlling precedent.

2. The reference to charges in this section means charges relating to the bailment relationship for transportation. Charges does not mean that the bill of lading must state a specific rate or a specific amount. However, failure to state a specific rate or a specific amount has legal consequences under the second sentence of subsection (a).

3. The carrier's specific lien under this section is a possessory lien. See subsection (c). Part 3 of article 7 does not require any particular form for a bill of lading. The carrier's lien arises when the carrier has issued a bill of lading.

Cross References:

Point 1: Sections 7-209, 9-109, and 9-333.

Point 3: Sections 7-202 and 7-209.

Definitional Cross References:

"Bill of lading". Section 1-201.

"Carrier". Section 7-102.

"Consignor". Section 7-102.

"Delivery". Section 1-201.

"Goods". Section 7-102.

"Person". Section 1-201.

"Purchaser". Section 1-201.

"Value". Section 1-204.

7-308 Enforcement of carrier's lien.

(a) A carrier's lien on goods may be enforced by public or private sale of the goods, in bulk or in packages, at any time or place and on any terms that are commercially reasonable, after notifying all persons known to claim an interest in the goods. The notification must include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a method different from that selected by the carrier is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. The carrier sells goods in a commercially reasonable manner if the carrier sells the goods in the usual manner in any recognized market therefor, sells at the price current in that market at the time of the sale, or otherwise sells in conformity with commercially reasonable practices among dealers in the type of goods sold. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable, except in cases covered by the preceding sentence.

(b) Before any sale pursuant to this section, any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred in complying with this section. In that event, the goods may not be sold but must be retained by the carrier, subject to the terms of the bill of lading and this article.

(c) A carrier may buy at any public sale pursuant to this section.

(d) A purchaser in good faith of goods sold to enforce a carrier's lien takes the goods free of any rights of persons against which the lien was valid, despite the carrier's noncompliance with this section.

(e) A carrier may satisfy its lien from the proceeds of any sale pursuant to this section but shall hold the balance, if any, for delivery on demand to any person to which the carrier would have been bound to deliver the goods.

(f) The rights provided by this section are in addition to all other rights allowed by law to a creditor against a debtor.

(g) A carrier's lien may be enforced pursuant to either subsection (a) or the procedure set forth in section 7-210(b).

(h) A carrier is liable for damages caused by failure to comply with the requirements for sale under this section and, in case of willful violation, is liable for conversion.

Source: Laws 2005, LB 570, § 80.

COMMENT

Prior Uniform Statutory Provision: Former section 7-308.

Changes: To conform language to modern usage and for style.

Purposes:

This section is intended to give the carrier an enforcement procedure of its lien coextensive with that given the warehouse in cases other than those covering noncommercial storage by the warehouse. See section 7-210 and comments.

Cross References:

Section 7-210.

Definitional Cross References:

"Bill of lading". Section 1-201.

"Carrier". Section 7-102.

"Creditor". Section 1-201.

"Delivery". Section 1-201.

"Good faith". Sections 1-201 and 7-102.

"Goods". Section 7-102.

"Notification". Section 1-202.

"Notifies". Section 1-202.

"Person". Section 1-201.

"Purchaser". Section 1-201.

"Rights". Section 1-201.

"Term". Section 1-201.

7-309 Duty of care; contractual limitation of carrier's liability.

(a) A carrier that issues a bill of lading, whether negotiable or nonnegotiable, shall exercise the degree of care in relation to the goods which a reasonably careful person would exercise under similar circumstances. This subsection does not affect any statute, regulation, or rule of law that imposes liability upon a common carrier for damages not caused by its negligence.

(b) Damages may be limited by a term in the bill of lading or in a transportation agreement that the carrier's liability may not exceed a value stated in the bill or transportation agreement if the carrier's rates are dependent upon value and the consignor is afforded an opportunity to declare a higher value and the consignor is advised of the opportunity. However, such a limitation is not effective with respect to the carrier's liability for conversion to its own use.

(c) Reasonable provisions as to the time and manner of presenting claims and commencing actions based on the shipment may be included in a bill of lading or a transportation agreement.

Source: Laws 2005, LB 570, § 81.

COMMENT

Prior Uniform Statutory Provision: Former section 7-309.

Changes: References to tariffs eliminated because of deregulation, adding reference to transportation agreements, and for style.

Purposes:

1. A bill of lading may also serve as the contract between the carrier and the bailor. Parties in their contract should be able to limit the amount of damages for breach of that contract including breach of the duty to take reasonable care of the goods. The parties cannot disclaim by contract the carrier's obligation of care. Section 1-302.

Federal statutes and treaties for air, maritime, and rail transport may alter the standard of care. These federal statutes and treaties preempt this section when applicable. Section 7-103. Subsection (a) does not impair any rule of law imposing the liability of an insurer on a common carrier in intrastate commerce. Subsection (b), however, applies to the common carrier's liability as an insurer as well as to liability based on negligence. Subsection (b) allows the term limiting damages to appear either in the bill of lading or in the parties' transportation agreement. Compare section 7-204(b). Subsection (c) allows the parties to agree to provisions regarding time and manner of presenting claims or commencing actions if the provisions are either in the bill of lading or the transportation agreement. Compare section 7-204(c). Transportation agreements are commonly used to establish agreed terms between carriers and shippers that have an ongoing relationship.

2. References to public tariffs in former section 7-309(2) and (3) have been deleted in light of the modern era of deregulation. See comment 2 to section 7-103. If a tariff is required under state or federal law, pursuant to section 7-103(a), the tariff would control over the rule of this section. As governed by

contract law, parties may incorporate by reference the limits on the amount of damages or the reasonable provisions as to the time and manner of presenting claims set forth in applicable tariffs, e.g. a maximum unit value beyond which goods are not taken or a disclaimer of responsibility for undeclared articles of extraordinary value.

3. As under former section 7-309(2), subsection (b) provides that a limitation of damages is ineffective if the carrier has converted the goods to its own use. A mere failure to redeliver the goods is not conversion to the carrier's own use. "Conversion to its own use" is narrower than the idea of conversion generally. *Art Masters Associates, Ltd. v. United Parcel Service*, 77 N.Y.2d 200, 567 N.E.2d 226 (1990); see, *Kemper Ins. Co. v. Fed. Ex. Corp.*, 252 F.3d 509 (1st Cir.), cert. denied 534 U.S. 1020 (2001) (opinion interpreting federal law).

4. As used in this section, damages may include damages arising from delay in delivery. Delivery dates and times are often specified in the parties' contract. See section 7-403.

Cross References:

Sections 1-302, 7-103, 7-204, and 7-403.

Definitional Cross References:

"Action". Section 1-201.

"Bill of lading". Section 1-201.

"Carrier". Section 7-102.

"Consignor". Section 7-102.

"Document of title". Section 1-102.

"Goods". Section 7-102.

"Value". Section 1-204.

Part 4

WAREHOUSE RECEIPTS AND BILLS OF LADING: GENERAL OBLIGATIONS

7-401 Irregularities in issue of receipt or bill or conduct of issuer.

The obligations imposed by this article on an issuer apply to a document of title even if:

(1) the document does not comply with the requirements of this article or of any other statute, rule, or regulation regarding its issuance, form, or content;

- (2) the issuer violated laws regulating the conduct of its business;
- (3) the goods covered by the document were owned by the bailee when the document was issued; or
- (4) the person issuing the document is not a warehouse but the document purports to be a warehouse receipt.

Source: Laws 2005, LB 570, § 82.

COMMENT

Prior Uniform Statutory Provision: Former section 7-401.

Changes: Changes for style only.

Purposes:

The bailee's liability on its document despite nonreceipt or misdescription of the goods is affirmed in sections 7-203 and 7-301. The purpose of this section is to make it clear that regardless of irregularities a document which falls within the definition of document of title imposes on the issuer the obligations stated in this article. For example, a bailee will not be permitted to avoid its obligation to deliver the goods (section 7-403) or its obligation of due care with respect to them (sections 7-204 and 7-309) by taking the position that no valid "document" was issued because it failed to file a statutory bond or did not pay stamp taxes or did not disclose the place of storage in the document. *Tate v. Action Moving & Storage, Inc.*, 383 S.E.2d 229 (N.C. App. 1989), rev. denied 389 S.E.2d 104 (N.C. 1990). Sanctions against violations of statutory or admin-

istrative duties with respect to documents should be limited to revocation of license or other measures prescribed by the regulation imposing the duty. See section 7-103.

Cross References:

Sections 7-103, 7-203, 7-204, 7-301, and 7-309.

Definitional Cross References:

"Bailee". Section 7-102.

"Document of title". Section 1-201.

"Goods". Section 7-102.

"Issuer". Section 7-102.

"Person". Section 1-201.

"Warehouse receipt". Section 1-201.

"Warehouse". Section 7-102.

7-402 Duplicate document of title; overissue.

A duplicate or any other document of title purporting to cover goods already represented by an outstanding document of the same issuer does not confer any right in the goods, except as provided in the case of tangible bills of lading in a set of parts, overissue of documents for fungible goods, substitutes for lost, stolen, or destroyed documents, or substitute documents issued pursuant to section 7-105. The issuer is liable for damages caused by its overissue or failure to identify a duplicate document by a conspicuous notation.

Source: Laws 2005, LB 570, § 83.

COMMENT

Prior Uniform Statutory Provision: Former section 7-402.

Changes: Changes to accommodate electronic documents.

Purposes:

1. This section treats a duplicate which is not properly identified as a duplicate like any other overissue of documents: A purchaser of such a document acquires no title but only a cause of action for damages against the person that made the deception possible, except in the cases noted in the section. But parts of a tangible bill lawfully issued in a set of parts are not "overissue" (section 7-304). Of course, if the issuer has clearly indicated that a document is a duplicate so that no one can be deceived by it, and in fact the duplicate is a correct copy of the original, the issuer is not liable for preparing and delivering such a duplicate copy.

Section 7-105 allows documents of title to be reissued in another medium. Reissuance of a document in an alternative medium under section 7-105 requires that the original document be surrendered to the issuer in order to make the substitute document the effective document. If the substitute document is not issued in compliance with section 7-105, then the document should be treated as a duplicate under this section.

2. The section applies to nonnegotiable documents to the extent of providing an action for damages for one who acquires an unmarked duplicate from a transferor who knew the facts and would therefore have had no cause of action against the

issuer of the duplicate. Ordinarily the transferee of a nonnegotiable document acquires only the rights of its transferor.

3. Overissue is defined so as to exclude the common situation where two valid documents of different issuers are outstanding for the same goods at the same time. Thus freight forwarders commonly issue bills of lading to their customers for small shipments to be combined into carload shipments for which the railroad will issue a bill of lading to the forwarder. So also a warehouse receipt may be outstanding against goods, and the holder of the receipt may issue delivery orders against the same goods. In these cases dealings with the subsequently issued documents may be effective to transfer title; e.g. negotiation of a delivery order will effectively transfer title in the ordinary case where no dishonesty has occurred and the goods are available to satisfy the orders. Section 7-503 provides for cases of conflict between documents of different issuers.

Cross References:

Point 1: Sections 7-105, 7-207, 7-304, and 7-601.

Point 3: Section 7-503.

Definitional Cross References:

"Bill of lading". Section 1-201.

"Conspicuous". Section 1-201.

"Document of title". Section 1-201.

"Fungible goods". Section 1-201.

"Goods". Section 7-102.

"Issuer". Section 7-102.

"Right". Section 1-201.

7-403 Obligation of bailee to deliver; excuse.

(a) A bailee shall deliver the goods to a person entitled under a document of title if the person complies with subsections (b) and (c), unless and to the extent that the bailee establishes any of the following:

(1) delivery of the goods to a person whose receipt was rightful as against the claimant;

(2) damage to or delay, loss, or destruction of the goods for which the bailee is not liable;

(3) previous sale or other disposition of the goods in lawful enforcement of a lien or on a warehouse's lawful termination of storage;

(4) the exercise by a seller of its right to stop delivery pursuant to section 2-705 or by a lessor of its right to stop delivery pursuant to section 2A-526;

(5) a diversion, reconsignment, or other disposition pursuant to section 7-303;

(6) release, satisfaction, or any other personal defense against the claimant; or

(7) any other lawful excuse.

(b) A person claiming goods covered by a document of title shall satisfy the bailee's lien if the bailee so requests or if the bailee is prohibited by law from delivering the goods until the charges are paid.

(c) Unless a person claiming the goods is a person against which the document of title does not confer a right under section 7-503(a):

(1) the person claiming under a document shall surrender possession or control of any outstanding negotiable document covering the goods for cancellation or indication of partial deliveries; and

(2) the bailee shall cancel the document or conspicuously indicate in the document the partial delivery or the bailee is liable to any person to which the document is duly negotiated.

Source: Laws 2005, LB 570, § 84.

COMMENT

Prior Uniform Statutory Provision: Former section 7-403.

Changes: Definition in former section 7-403(4) moved to section 7-102; bracketed language in former section 7-403(1)(b) deleted; added cross reference to section 2A-526; changes for style.

Purposes:

1. The present section, following former section 7-403, is constructed on the basis of stating what previous deliveries or other circumstances operate to excuse the bailee's normal obligation on the document. Accordingly, "justified" deliveries under the precode uniform acts now find their place as "excuse" under subsection (a).

2. The principal case covered by subsection (a)(1) is delivery to a person whose title is paramount to the rights represented by the document. For example, if a thief deposits stolen goods in a warehouse facility and takes a negotiable receipt, the warehouse is not liable on the receipt if it has surrendered the goods to the true owner, even though the receipt is held by a good faith purchaser. See section 7-503(a). However, if the owner entrusted

the goods to a person with power of disposition, and that person deposited the goods and took a negotiable document, the owner receiving delivery would not be rightful as against a holder to whom the negotiable document was duly negotiated, and delivery to the owner would not give the bailee a defense against such a holder. See sections 7-502(a)(2) and 7-503(a)(1).

3. Subsection (a)(2) amounts to a cross reference to all the tort law that determines the varying responsibilities and standards of care applicable to commercial bailees. A restatement of this tort law would be beyond the scope of this code. Much of the applicable law as to responsibility of bailees for the preservation of the goods and limitation of liability in case of loss has been codified for particular classes of bailees in interstate and foreign commerce by federal legislation and treaty and for intrastate carriers and other bailees by the regulatory state laws preserved by section 7-103. In the absence of governing legislation the common law will prevail subject to the minimum standard of reasonable care prescribed by sections 7-204 and 7-309 of this article.

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The bracketed language found in former section 7-403(1)(b) has been deleted thereby leaving the allocations of the burden of going forward with the evidence and the burden of proof to the procedural law of the various states.

Subsection (a)(4) contains a cross reference to both the seller's and the lessor's rights to stop delivery under article 2 and article 2A respectively.

4. As under former section 7-403, there is no requirement that a request for delivery must be accompanied by a formal tender of the amount of the charges due. Rather, the bailee must request payment of the amount of its lien when asked to deliver, and only in case this request is refused is it justified in declining to deliver because of nonpayment of charges. Where delivery without payment is forbidden by law, the request is treated as implicit. Such a prohibition reflects a policy of uniformity to prevent discrimination by failure to request payment in particular cases. Subsection (b) must be read in conjunction with the priorities given to the warehouse lien and the carrier lien under sections 7-209 and 7-307, respectively. If the parties are in dispute about whether the request for payment of the lien is legally proper, the bailee may have recourse to interpleader. See section 7-603.

5. Subsection (c) states the obvious duty of a bailee to take up a negotiable document or note partial deliveries conspicuously thereon, and the result of failure in that duty. It is subject to only one exception, that stated in subsection (a)(1) of this section and in section 7-503(a). Subsection (c) is limited to cases of delivery to a claimant; it has no application, for example, where goods held under a negotiable document are lawfully sold to enforce the bailee's lien.

6. When courts are considering subsection (a)(7), "any other lawful excuse", among others, refers to compliance with court orders under sections 7-601, 7-602, and 7-603.

Cross References:

Point 2: Sections 7-502 and 7-503.

Point 3: Sections 2-705, 2A-526, 7-103, 7-204, 7-309, and 10-103.

Point 4: Sections 7-209, 7-307, and 7-603.

Point 5: Section 7-503(1).

Point 6: Sections 7-601, 7-602, and 7-603.

Definitional Cross References:

"Bailee". Section 7-102.

"Conspicuous". Section 1-201.

"Delivery". Section 1-201.

"Document of title". Section 1-201.

"Duly negotiate". Section 7-501.

"Goods". Section 7-102.

"Lessor". Section 2A-103.

"Person". Section 1-201.

"Receipt of goods". Section 2-103.

"Right". Section 1-201.

"Terms". Section 1-201.

"Warehouse". Section 7-102.

7-404 No liability for good faith delivery pursuant to document of title.

A bailee that in good faith has received goods and delivered or otherwise disposed of the goods according to the terms of a document of title or pursuant to this article is not liable for the goods even if:

- (1) the person from which the bailee received the goods did not have authority to procure the document or to dispose of the goods; or
- (2) the person to which the bailee delivered the goods did not have authority to receive the goods.

Source: Laws 2005, LB 570, § 85.

COMMENT

Prior Uniform Statutory Provision: Former section 7-404.

Changes: Changes reflect the definition of good faith in sections 1-201 and 7-102 and for style.

Purposes:

This section uses the test of good faith, as defined in sections 1-201 and 7-102, to continue the policy of former section 7-404. Good faith now means "honesty in fact and the observance of reasonable commercial standards of fair dealing". The section states explicitly that the common-law rule of "innocent conversion" by unauthorized "intermeddling" with another's property is inapplicable to the operations of commercial carriers and warehousemen that in good faith perform obligations that they have assumed and that generally they are under a legal compulsion to assume. The section applies to delivery to a fraudulent holder of a valid document as well as to delivery to the holder of an invalid document. Of course, in appropriate circumstances, a

bailee may use interpleader or other dispute resolution process. See section 7-603.

Cross References:

Section 7-603.

Definitional Cross References:

"Bailee". Section 7-102.

"Delivery". Section 1-201.

"Document of title". Section 1-201.

"Good faith". Sections 1-201 and 7-102.

"Goods". Section 7-102.

"Person". Section 1-201.

"Receipt of goods". Section 2-103.

"Term". Section 1-201.

Part 5

WAREHOUSE RECEIPTS AND BILLS OF LADING: NEGOTIATION AND TRANSFER

7-501 Form of negotiation and requirements of due negotiation.

(a) The following rules apply to a negotiable tangible document of title:

(1) If the document's original terms run to the order of a named person, the document is negotiated by the named person's indorsement and delivery. After the named person's indorsement in blank or to bearer, any person may negotiate the document by delivery alone.

(2) If the document's original terms run to bearer, it is negotiated by delivery alone.

(3) If the document's original terms run to the order of a named person and it is delivered to the named person, the effect is the same as if the document had been negotiated.

(4) Negotiation of the document after it has been indorsed to a named person requires indorsement by the named person and delivery.

(5) A document is duly negotiated if it is negotiated in the manner stated in this subsection to a holder that purchases it in good faith, without notice of any defense against or claim to it on the part of any person, and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves receiving the document in settlement or payment of a monetary obligation.

(b) The following rules apply to a negotiable electronic document of title:

(1) If the document's original terms run to the order of a named person or to bearer, the document is negotiated by delivery of the document to another person. Indorsement by the named person is not required to negotiate the document.

(2) If the document's original terms run to the order of a named person and the named person has control of the document, the effect is the same as if the document had been negotiated.

(3) A document is duly negotiated if it is negotiated in the manner stated in this subsection to a holder that purchases it in good faith, without notice of any defense against or claim to it on the part of any person, and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves taking delivery of the document in settlement or payment of a monetary obligation.

(c) Indorsement of a nonnegotiable document of title neither makes it negotiable nor adds to the transferee's rights.

(d) The naming in a negotiable bill of lading of a person to be notified of the arrival of the goods does not limit the negotiability of the bill or constitute notice to a purchaser of the bill of any interest of that person in the goods.

Source: Laws 2005, LB 570, § 86.

COMMENT

Prior Uniform Statutory Provision: Former section 7-501.

Changes: To accommodate negotiable electronic documents of title.

Purpose:

1. Subsection (a) has been limited to tangible negotiable documents of title but otherwise remains unchanged in substance from the rules in former section 7-501. Subsection (b) is new and applies to negotiable electronic documents of title. Delivery of a negotiable electronic document is through voluntary transfer of control. Section 1-201 definition of "delivery". The control concept as applied to negotiable electronic documents of title is the substitute for both possession and indorse-

ment as applied to negotiable tangible documents of title. Section 7-106.

Article 7 does not separately define the term "duly negotiated". However, the elements of "duly negotiated" are set forth in subsection (a)(5) for tangible documents and (b)(3) for electronic documents. As under former section 7-501, in order to effect a "due negotiation", the negotiation must be in the "regular course of business or financing" in order to transfer greater rights than those held by the person negotiating. The foundation of the mercantile doctrine of good faith purchase for value has always been, as shown by the case situations, the furtherance and protection of the regular course of trade. The reason for allowing a person, in bad faith or in error, to convey away

rights which are not its own has from the beginning been to make possible the speedy handling of that great run of commercial transactions which are patently usual and normal.

There are two aspects to the usual and normal course of mercantile dealings, namely, the person making the transfer and the nature of the transaction itself. The first question which arises is: Is the transferor a person with whom it is reasonable to deal as having full powers? In regard to documents of title the only holder whose possession or control appears, commercially, to be in order is almost invariably a person in the trade. No commercial purpose is served by allowing a tramp or a professor to "duly negotiate" an order bill of lading for hides or cotton not their own, and since such a transfer is obviously not in the regular course of business, it is excluded from the scope of the protection of subsection (a)(5) or (b)(3).

The second question posed by the "regular course" qualification is: Is the transaction one which is normally proper to pass full rights without inquiry, even though the transferor itself may not have such rights to pass, and even though the transferor may be acting in breach of duty? In raising this question the "regular course" criterion has the further advantage of limiting the effective wrongful disposition to transactions whose protection will really further trade. Obviously, the snapping up of goods for quick resale at a price suspiciously below the market deserves no protection as a matter of policy: It is also clearly outside the range of regular course.

Any notice on the document sufficient to put a merchant on inquiry as to the "regular course" quality of the transaction will frustrate a "due negotiation". Thus irregularity of the document or unexplained staleness of a bill of lading may appropriately be recognized as negating a negotiation in "regular" course.

A preexisting claim constitutes value, and "due negotiation" does not require "new value". A usual and ordinary transaction in which documents are received as security for credit previously extended may be in "regular" course, even though there is a demand for additional collateral because the creditor "deems himself or herself insecure". But the matter has moved out of the regular course of financing if the debtor is thought to be insolvent, the credit previously extended is in effect cancelled, and the creditor snatches a plank in the shipwreck under the guise of a demand for additional collateral. Where a money debt is "paid" in commodity paper, any question of "regular" course disappears, as the case is explicitly excepted from "due negotiation".

7-502 Rights acquired by due negotiation.

(a) Subject to sections 7-205 and 7-503, a holder to which a negotiable document of title has been duly negotiated acquires thereby:

- (1) title to the document;
- (2) title to the goods;
- (3) all rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued; and
- (4) the direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of any defense or claim by the issuer except those arising under the terms of the document or under this article, but in the case of a delivery order, the bailee's obligation accrues only upon the bailee's acceptance of the delivery order and the obligation acquired by the holder is that the issuer and any indorser will procure the acceptance of the bailee.

(b) Subject to section 7-503, title and rights acquired by due negotiation are not defeated by any stoppage of the goods represented by the document of title or by surrender of the goods by the bailee and are not impaired even if:

- (1) the due negotiation or any prior due negotiation constituted a breach of duty;

2. Negotiation under this section may be made by any holder no matter how the holder acquired possession or control of the document.

3. Subsections (a)(3) and (b)(2) make explicit a matter upon which the intent of the precode law was clear but the language somewhat obscure: A negotiation results from a delivery to a banker or buyer to whose order the document has been taken by the person making the bailment. There is no presumption of irregularity in such a negotiation; it may very well be in "regular course".

4. This article does not contain any provision creating a presumption of due negotiation to, and full rights in, a holder of a document of title akin to that created by Uniform Commercial Code article 3. But the reason of the provisions of this code (section 1-307) on the prima facie authenticity and accuracy of third party documents, joins with the reason of the present section to work such a presumption in favor of any person who has power to make a due negotiation. It would not make sense for this code to authorize a purchaser to indulge the presumption of regularity if the courts were not also called upon to do so. Allocations of the burden of going forward with the evidence and the burden of proof are left to the procedural law of the various states.

5. Subsections (c) and (d) are unchanged from prior law and apply to both tangible and electronic documents of title.

Cross References:

Sections 1-307, 7-502, and 7-503.

Definitional Cross References:

"Bearer". Section 1-201.

"Control". Section 7-106.

"Delivery". Section 1-201.

"Document of title". Section 1-201.

"Good faith". Sections 1-201 and 7-102.

"Holder". Section 1-201.

"Notice". Section 1-202.

"Person". Section 1-201.

"Purchase". Section 1-201.

"Rights". Section 1-201.

"Term". Section 1-201.

"Value". Section 1-204.

(2) any person has been deprived of possession of a negotiable tangible document or control of a negotiable electronic document by misrepresentation, fraud, accident, mistake, duress, loss, theft, or conversion; or

(3) a previous sale or other transfer of the goods or document has been made to a third person.

Source: Laws 2005, LB 570, § 87.

COMMENT

Prior Uniform Statutory Provision: Former section 7-502.

Changes: To accommodate electronic documents of title and for style.

Purpose:

1. This section applies to both tangible and electronic documents of title. The elements of duly negotiated, which constitutes a due negotiation, are set forth in section 7-501. The several necessary qualifications of the broad principle that the holder of a document acquired in a due negotiation is the owner of the document and the goods have been brought together in the next section (section 7-503).

2. Subsection (a)(3) covers the case of “feeding” of a duly negotiated document by subsequent delivery to the bailee of such goods as the document falsely purported to cover; the bailee in such case is estopped as against the holder of the document.

3. The explicit statement in subsection (a)(4) of the bailee’s direct obligation to the holder precludes the defense that the document in question was “spent” after the carrier had delivered the goods to a previous holder. But the holder is subject to such defenses as nonnegligent destruction even though not apparent on the document. The sentence on delivery orders applies only to delivery orders in negotiable form which have been duly negotiated. On delivery orders, see also section 7-503(b) and comment.

4. Subsection (b) continues the law which gave full effect to the issuance or due negotiation of a negotiable document. The subsection adds nothing to the effect of the rules stated in

subsection (a), but it has been included since such explicit reference was provided under former section 7-502 to preserve the right of a purchaser by due negotiation. The listing is not exhaustive. The language “any stoppage” is included lest an inference be drawn that a stoppage of the goods before or after transit might cut off or otherwise impair the purchaser’s rights.

Cross References:

Sections 7-103, 7-205, 7-403, 7-501, and 7-503.

Definitional Cross References:

“Bailee”. Section 7-102.

“Control”. Section 7-106.

“Delivery”. Section 1-201.

“Delivery order”. Section 7-102.

“Document of title”. Section 1-201.

“Duly negotiate”. Section 7-501.

“Fungible goods”. Section 1-201.

“Goods”. Section 7-102.

“Holder”. Section 1-201.

“Issuer”. Section 7-102.

“Person”. Section 1-201.

“Rights”. Section 1-201.

“Term”. Section 1-201.

“Warehouse receipt”. Section 1-201.

7-503 Document of title to goods defeated in certain cases.

(a) A document of title confers no right in goods against a person that before issuance of the document had a legal interest or a perfected security interest in the goods and that did not:

(1) deliver or entrust the goods or any document of title covering the goods to the bailor or the bailor’s nominee with:

(A) actual or apparent authority to ship, store, or sell;

(B) power to obtain delivery under section 7-403; or

(C) power of disposition under section 2-403, 2A-304(2), 2A-305(2), 9-320, or 9-321(c) or other statute or rule of law; or

(2) acquiesce in the procurement by the bailor or its nominee of any document.

(b) Title to goods based upon an unaccepted delivery order is subject to the rights of any person to which a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. That title may be defeated under section 7-504 to the same extent as the rights of the issuer or a transferee from the issuer.

(c) Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of any person to which a bill issued by the freight forwarder is duly negotiated. However, delivery by the carrier in accordance

with part 4 pursuant to its own bill of lading discharges the carrier's obligation to deliver.

Source: Laws 2005, LB 570, § 88.

COMMENT

Prior Uniform Statutory Provision: Former section 7-503.

Changes: Changes to cross reference to article 2A and for style.

Purposes:

1. In general it may be said that the title of a purchaser by due negotiation prevails over almost any interest in the goods which existed prior to the procurement of the document of title if the possession of the goods by the person obtaining the document derived from any action by the prior claimant which introduced the goods into the stream of commerce or carried them along that stream. A thief of the goods cannot indeed by shipping or storing them to the thief's own order acquire power to transfer them to a good faith purchaser. Nor can a tenant or mortgagor defeat any rights of a landlord or mortgagee which have been perfected under the local law merely by wrongfully shipping or storing a portion of the crop or other goods. However, "acquiescence" by the landlord or mortgagee does not require active consent under subsection (a)(2) and knowledge of the likelihood of storage or shipment with no objection or effort to control it is sufficient to defeat the landlord's or the mortgagee's rights as against one who takes by due negotiation of a negotiable document. In re Sharon Steel, 176 B.R. 384 (Bankr. W.D. Pa. 1995); In re R.V. Segars Co., 54 B.R. 170 (Bankr. S.C. 1985); In re Jamestown Elevators, Inc., 49 B.R. 661 (Bankr. N.D. 1985).

On the other hand, where goods are delivered to a factor for sale, even though the factor has made no advances and is limited in its duty to sell for cash, the goods are "entrusted" to the factor "with actual ... authority ... to sell" under subsection (a)(1), and if the factor procures a negotiable document of title it can transfer the owner's interest to a purchaser by due negotiation. Further, where the factor is in the business of selling, goods entrusted to it simply for safekeeping or storage may be entrusted under circumstances which give the factor "apparent authority to ship, store, or sell" under subsection (a)(1), or power of disposition under section 2-403, 2A-304(2), 2A-305(2), 7-205, 9-320, or 9-321(c) or under a statute such as the earlier Factors Acts, or under a rule of law giving effect to apparent ownership. See section 1-103.

Persons having an interest in goods also frequently deliver or entrust them to agents or servants other than factors for the purpose of shipping or warehousing or under circumstances reasonably contemplating such action. This code is clear that such persons assume full risk that the agent to whom the goods are so delivered may ship or store in breach of duty, take a document to the agent's own order, and then proceed to misappropriate the negotiable document of title that embodies the goods. This code makes no distinction between possession or mere custody in such situations and finds no exception in the case of larceny by a bailee or the like. The safeguard in such situations lies in the requirement that a due negotiation can occur only "in the regular course of business or financing" and that the purchase be in good faith and without notice. See section 7-501. Documents of title have no market among the commercially inexperienced and the commercially experienced do not take them without inquiry from persons known to be truck drivers or petty clerks even though such persons purport to be operating in their own names.

Again, where the seller allows a buyer to receive goods under a contract for sale, though as a "conditional delivery" or under "cash sale" terms and on explicit agreement for immediate payment, the buyer thereby acquires power to defeat the seller's interest by transfer of the goods to certain good faith purchasers. See section 2-403. Both in policy and under the language of subsection (a)(1) that same power must be extended to accomplish the same result if the buyer procures a negotiable document of title to the goods and duly negotiates it.

This comment 1 should be considered in interpreting delivery, entrustment, or acquiescence in application of section 7-209.

2. Under subsection (a) a delivery order issued by a person having no right in or power over the goods is ineffective unless the owner acts as provided in subsection (a)(1) or (2). Thus the rights of a transferee of a nonnegotiable warehouse receipt can be defeated by a delivery order subsequently issued by the transferor only if the transferee "delivers or entrusts" to the "person procuring" the delivery order or "acquiesces" in that person's procurement. Similarly, a second delivery order issued by the same issuer for the same goods will ordinarily be subject to the first, both under this section and under section 7-402. After a delivery order is validly issued but before it is accepted, it may nevertheless be defeated under subsection (b) in much the same way that the rights of a transferee may be defeated under section 7-504. For example, a buyer in ordinary course from the issuer may defeat the rights of the holder of a prior delivery order if the bailee receives notification of the buyer's rights before notification of the holder's rights. Section 7-504(b)(2). But an accepted delivery order has the same effect as a document issued by the bailee.

3. Under subsection (c) a bill of lading issued to a freight forwarder is subordinated to the freight forwarder's document of title, since the bill on its face gives notice of the fact that a freight forwarder is in the picture and the freight forwarder has in all probability issued a document of title. But the carrier is protected in following the terms of its own bill of lading.

Cross References:

Point 1: Sections 1-103, 2-403, 2A-304(2), 2A-305(2), 7-205, 7-209, 7-501, 9-320, 9-321(c), and 9-331.

Point 2: Sections 7-402 and 7-504.

Point 3: Sections 7-402, 7-403, and 7-404.

Definitional Cross References:

"Bill of lading". Section 1-201.

"Contract for sale". Section 2-106.

"Delivery". Section 1-201.

"Delivery order". Section 7-102.

"Document of title". Section 1-201.

"Duly negotiate". Section 7-501.

"Goods". Section 7-102.

"Person". Section 1-201.

"Right". Section 1-201.

"Warehouse receipt". Section 1-201.

7-504 Rights acquired in absence of due negotiation; effect of diversion; stoppage of delivery.

(a) A transferee of a document of title, whether negotiable or nonnegotiable, to which the document has been delivered but not duly negotiated, acquires the title and rights that its transferor had or had actual authority to convey.

(b) In the case of a transfer of a nonnegotiable document of title, until but not after the bailee receives notice of the transfer, the rights of the transferee may be defeated:

(1) by those creditors of the transferor which could treat the transfer as void under section 2-402 or 2A-308;

(2) by a buyer from the transferor in ordinary course of business if the bailee has delivered the goods to the buyer or received notification of the buyer's rights;

(3) by a lessee from the transferor in ordinary course of business if the bailee has delivered the goods to the lessee or received notification of the lessee's rights; or

(4) as against the bailee, by good faith dealings of the bailee with the transferor.

(c) A diversion or other change of shipping instructions by the consignor in a nonnegotiable bill of lading which causes the bailee not to deliver the goods to the consignee defeats the consignee's title to the goods if the goods have been delivered to a buyer in ordinary course of business or a lessee in ordinary course of business and, in any event, defeats the consignee's rights against the bailee.

(d) Delivery of the goods pursuant to a nonnegotiable document of title may be stopped by a seller under section 2-705 or a lessor under section 2A-526, subject to the requirements of due notification in those sections. A bailee that honors the seller's or lessor's instructions is entitled to be indemnified by the seller or lessor against any resulting loss or expense.

Source: Laws 2005, LB 570, § 89.

COMMENT

Prior Uniform Statutory Provision: Former section 7-504.

Changes: To include cross references to article 2A and for style.

Purposes:

1. Under the general principles controlling negotiable documents, it is clear that in the absence of due negotiation a transferor cannot convey greater rights than the transferor has, even when the negotiation is formally perfect. This section recognizes the transferor's power to transfer rights which the transferor has or has "actual authority to convey". Thus, where a negotiable document of title is being transferred the operation of the principle of estoppel is not recognized, as contrasted with situations involving the transfer of the goods themselves. (Compare section 2-403 on good faith purchase of goods.) This section applies to both tangible and electronic documents of title.

A necessary part of the price for the protection of regular dealings with negotiable documents of title is an insistence that no dealing which is in any way irregular shall be recognized as a good faith purchase of the document or of any rights pertaining to it. So, where the transfer of a negotiable document fails as a negotiation because a requisite indorsement is forged or otherwise missing, the purchaser in good faith and for value may be in the anomalous position of having less rights, in part, than if the purchaser had purchased the goods themselves. True, the purchaser's rights are not subject to defeat by attachment of the goods or surrender of them to the purchaser's transferor (contrast subsection (b)); but on the other hand, the purchaser cannot acquire enforceable rights to control or receive the goods over the bailee's objection merely by giving notice to the bailee. Similarly, a consignee who makes payment to its consignor against a straight bill of lading can thereby acquire the position of a good faith purchaser of goods under provisions of

the article of this code on Sales (section 2-403), whereas the same payment made in good faith against an unendorsed order bill would not have such effect. The appropriate remedy of a purchaser in such a situation is to regularize its status by compelling indorsement of the document (see section 7-506).

2. As in the case of transfer—as opposed to "due negotiation"—of negotiable documents, subsection (a) empowers the transferor of a nonnegotiable document to transfer only such rights as the transferor has or has "actual authority" to convey. In contrast to situations involving the goods themselves the operation of estoppel or agency principles is not here recognized to enable the transferor to convey greater rights than the transferor actually has. Subsection (b) makes it clear, however, that the transferee of a nonnegotiable document may acquire rights greater in some respects than those of his or her transferor by giving notice of the transfer to the bailee. New subsection (b)(3) provides for the rights of a lessee in the ordinary course.

Subsection (b)(2) and (3) require delivery of the goods. Delivery of the goods means the voluntary transfer of physical possession of the goods. See amended section 2-103.

3. Subsection (c) is in part a reiteration of the carrier's immunity from liability if it honors instructions of the consignor to divert, but there is added a provision protecting the title of the substituted consignee if the latter is a buyer in ordinary course of business. A typical situation would be where a manufacturer, having shipped a lot of standardized goods to A on nonnegotiable bill of lading, diverts the goods to customer B who pays for them. Under precode passage-of-title-by-appropriation doctrine A might reclaim the goods from B. However, no consideration of commercial policy supports this involvement of an innocent third party in the default of the manufacturer on his or her contract to A; and the common commercial practice of diverting goods in transit suggests a trade understanding in

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accordance with this subsection. The same result should obtain if the substituted consignee is a lessee in ordinary course. The extent of the lessee's interest in the goods is less than a buyer's interest in the goods. However, as against the first consignee and the lessee in ordinary course as the substituted consignee, the lessee's rights in the goods as granted under the lease are superior to the first consignee's rights.

4. Subsection (d) gives the carrier an express right to indemnity where the carrier honors a seller's request to stop delivery.

5. Section 1-202 gives the bailee protection, if due diligence is exercised where the bailee's organization has not had time to act on a notification.

Cross References:

Point 1: Sections 2-403 and 7-506.

Point 2: Sections 2-403 and 2A-304.

Point 3: Sections 7-303, 7-403(a)(5), and 7-404.

Point 4: Sections 2-705 and 7-403(a)(4).

Point 5: Section 1-202.

Definitional Cross References:

"Bailee". Section 7-102.

"Bill of lading". Section 1-201.

"Buyer in ordinary course of business". Section 1-201.

"Consignee". Section 7-102.

"Consignor". Section 7-102.

"Creditor". Section 1-201.

"Delivery". Section 1-201.

"Document of title". Section 1-201.

"Duly negotiate". Section 7-501.

"Good faith". Sections 1-201 and 7-102.

"Goods". Section 7-102.

"Honor". Section 1-201.

"Lessee in ordinary course". Section 2A-103.

"Notification". Section 1-202.

"Purchaser". Section 1-201.

"Rights". Section 1-201.

7-505 Indorser not guarantor for other parties.

The indorsement of a tangible document of title issued by a bailee does not make the indorser liable for any default by the bailee or previous indorsers.

Source: Laws 2005, LB 570, § 90.

COMMENT

Prior Uniform Statutory Provision: Former section 7-505.

Changes: Limited to tangible documents of title.

Purposes:

This section is limited to tangible documents of title as the concept of indorsement is irrelevant to electronic documents of title. Electronic documents of title will be transferred by delivery of control. Section 7-106. The indorsement of a tangible document of title is generally understood to be directed towards perfecting the transferee's rights rather than towards assuming additional obligations. The language of the present section, however, does not preclude the one case in which an indorsement given for value guarantees future action, namely, that in which the bailee has not yet become liable upon the document at the time of the indorsement. Under such circumstances the indorser, of course, engages that appropriate honor of the

document by the bailee will occur. See section 7-502(a)(4) as to negotiable delivery orders. However, even in such a case, once the bailee attorns to the transferee, the indorser's obligation has been fulfilled and the policy of this section excludes any continuing obligation on the part of the indorser for the bailee's ultimate actual performance.

Cross References:

Sections 7-106 and 7-502.

Definitional Cross References:

"Bailee". Section 7-102.

"Document of title". Section 1-201.

"Party". Section 1-201.

7-506 Delivery without indorsement: right to compel indorsement.

The transferee of a negotiable tangible document of title has a specifically enforceable right to have its transferor supply any necessary indorsement, but the transfer becomes a negotiation only as of the time the indorsement is supplied.

Source: Laws 2005, LB 570, § 91.

COMMENT

Prior Uniform Statutory Provision: Former section 7-506.

Changes: Limited to tangible documents of title.

Purposes:

1. This section is limited to tangible documents of title as the concept of indorsement is irrelevant to electronic documents of title. Electronic documents of title will be transferred by delivery of control. Section 7-106. From a commercial point of view the intention to transfer a tangible negotiable document of title which requires an indorsement for its transfer, is incompatible with an intention to withhold such indorsement and so defeat the effective use of the document. Further, the preceding section

and the comment thereto make it clear that an indorsement generally imposes no responsibility on the indorser.

2. Although this section provides that delivery of a tangible document of title without the necessary indorsement is effective as a transfer, the transferee, of course, has not regularized its position until such indorsement is supplied. Until this is done the transferee cannot claim rights under due negotiation within the requirements of this article (section 7-501(a)(5)) on "due negotiation". Similarly, despite the transfer to the transferee of the transferor's title, the transferee cannot demand the goods from the bailee until the negotiation has been completed and the document is in proper form for surrender. See section 7-403(c).

Cross References:

Point 1: Sections 7-106 and 7-505.

"Document of title". Section 1-201.

Point 2: Sections 7-403(c) and 7-501(a)(5).

"Rights". Section 1-201.

Definitional Cross References:

7-507 Warranties on negotiation or delivery of document of title.

If a person negotiates or delivers a document of title for value, otherwise than as a mere intermediary under section 7-508, unless otherwise agreed, the transferor, in addition to any warranty made in selling or leasing the goods, warrants to its immediate purchaser only that:

- (1) the document is genuine;
- (2) the transferor does not have knowledge of any fact that would impair the document's validity or worth; and
- (3) the negotiation or delivery is rightful and fully effective with respect to the title to the document and the goods it represents.

Source: Laws 2005, LB 570, § 92.

COMMENT

Prior Uniform Statutory Provision: Former section 7-507.

Changes: Substitution of the word "delivery" for the word "transfer", reference leasing transactions and style.

Purposes:

1. Delivery of goods by use of a document of title does not limit or displace the ordinary obligations of a seller or lessor as to any warranties regarding the goods that arise under other law. If the transfer of documents attends or follows the making of a contract for the sale or lease of goods, the general obligations on warranties as to the goods (sections 2-312 through 2-318 and 2A-210 through 2A-316) are brought to bear as well as the special warranties under this section.

2. The limited warranties of a delivering or collecting intermediary, including a collecting bank, are stated in section 7-508.

Cross References:

Point 1: Sections 2-312 through 2-318 and 2A-310 through 2A-316.

Point 2: Section 7-508.

Definitional Cross References:

"Delivery". Section 1-201.

"Document of title". Section 1-201.

"Genuine". Section 1-201.

"Goods". Section 7-102.

"Person". Section 1-201.

"Purchaser". Section 1-201.

"Value". Section 1-204.

7-508 Warranties of collecting bank as to documents of title.

A collecting bank or other intermediary known to be entrusted with documents of title on behalf of another or with collection of a draft or other claim against delivery of documents warrants by the delivery of the documents only its own good faith and authority even if the collecting bank or other intermediary has purchased or made advances against the claim or draft to be collected.

Source: Laws 2005, LB 570, § 93.

COMMENT

Prior Uniform Statutory Provision: Former section 7-508.

Changes: Changes for style only.

Purposes:

1. To state the limited warranties given with respect to the documents accompanying a documentary draft.

2. In warranting its authority a collecting bank or other intermediary only warrants its authority from its transferor. See section 4-203. It does not warrant the genuineness or effectiveness of the document. Compare section 7-507.

3. Other duties and rights of banks handling documentary drafts for collection are stated in article 4, part 5. On the

meaning of draft, see section 4-104 and section 5-103, comment 11.

Cross References:

Sections 4-104, 4-203, 4-501 through 4-504, 5-102, and 7-507.

Definitional Cross References:

"Collecting bank". Section 4-105.

"Delivery". Section 1-201.

"Document of title". Section 1-102.

"Documentary draft". Section 4-104.

"Intermediary bank". Section 4-105.

"Good faith". Sections 1-201 and 7-102.

7-509 Adequate compliance with commercial contract.

Whether a document of title is adequate to fulfill the obligations of a contract for sale, a contract for lease, or the conditions of a letter of credit is determined by article 2, 2A, or 5.

Source: Laws 2005, LB 570, § 94.

COMMENT

Prior Uniform Statutory Provision: Former section 7-509.

Articles 2, 2A, and 5.

Changes: To reference article 2A.

Definitional Cross References:

Purposes:

To cross-refer to the articles of this code which deal with the substantive issues of the type of document of title required under the contract entered into by the parties.

“Contract for sale”. Section 2-106.

“Document of title”. Section 1-201.

Cross References:

“Lease”. Section 2A-103.

Part 6

WAREHOUSE RECEIPTS AND BILLS OF LADING:
MISCELLANEOUS PROVISIONS**7-601 Lost, stolen, or destroyed documents of title.**

(a) If a document of title is lost, stolen, or destroyed, a court may order delivery of the goods or issuance of a substitute document and the bailee may without liability to any person comply with the order. If the document was negotiable, a court may not order delivery of the goods or issuance of a substitute document without the claimant’s posting security unless it finds that any person that may suffer loss as a result of nonsurrender of possession or control of the document is adequately protected against the loss. If the document was nonnegotiable, the court may require security. The court may also order payment of the bailee’s reasonable costs and attorney’s fees in any action under this subsection.

(b) A bailee that, without a court order, delivers goods to a person claiming under a missing negotiable document of title is liable to any person injured thereby. If the delivery is not in good faith, the bailee is liable for conversion. Delivery in good faith is not conversion if the claimant posts security with the bailee in an amount at least double the value of the goods at the time of posting to indemnify any person injured by the delivery which files a notice of claim within one year after the delivery.

Source: Laws 2005, LB 570, § 95.

COMMENT

Prior Uniform Statutory Provision: Former section 7-601.

Changes: To accommodate electronic documents; to provide flexibility to courts similar to the flexibility in section 3-309; to update to the modern era of deregulation; and for style.

Purposes:

1. Subsection (a) authorizes courts to order compulsory delivery of the goods or compulsory issuance of a substitute document. Compare section 7-402. Using language similar to that found in section 3-309, courts are given discretion as to what is adequate protection when the lost, stolen, or destroyed document was negotiable or whether security should be required when the lost, stolen, or destroyed document was nonnegotiable. In determining whether a party is adequately protected against loss in the case of a negotiable document, the court should consider the likelihood that the party will suffer a loss. The court is also given discretion as to the bailee’s costs and attorney’s fees. The rights and obligations of a bailee under this section depend upon whether the document of title is lost, stolen, or destroyed and is in addition to the ability of the bailee to bring an action for interpleader. See section 7-603.

2. Courts have the authority under this section to order a substitute document for either tangible or electronic documents. If the substitute document will be in a different medium than the original document, the court should fashion its order in light of the requirements of section 7-105.

3. Subsection (b) follows prior section 7-601 in recognizing the legality of the well established commercial practice of bailees making delivery in good faith when they are satisfied that the claimant is the person entitled under a missing (i.e. lost, stolen, or destroyed) negotiable document. Acting without a court order, the bailee remains liable on the original negotiable document and, to avoid conversion liability, the bailee may insist that the claimant provide an indemnity bond. Compare section 7-403.

4. Claimants on nonnegotiable instruments are permitted to avail themselves of the subsection (a) procedure because straight (nonnegotiable) bills of lading sometimes contain provisions that the goods shall not be delivered except upon production of the bill. If the carrier should choose to insist upon production of the bill, the consignee should have some means of compelling delivery on satisfactory proof of entitlement. Without a court order, a bailee may deliver, subject to section 7-403, to a person claiming goods under a nonnegotiable document that the same person claims is lost, stolen, or destroyed.

5. The bailee’s lien should be protected when a court orders delivery of the goods pursuant to this section.

Cross References:

Point 1: Sections 3-309, 7-402, and 7-603.

Point 2: Section 7-105.

Point 3: Section 7-403.

Point 4: Section 7-403.

Point 5: Sections 7-209 and 7-307.

Definitional Cross References:

“Bailee”. Section 7-102.

“Delivery”. Section 1-201.

“Document of title”. Section 1-201.

“Good faith”. Sections 1-201 and 7-102.

“Goods”. Section 7-102.

“Person”. Section 1-201.

7-602 Judicial process against goods covered by negotiable document of title.

Unless a document of title was originally issued upon delivery of the goods by a person that did not have power to dispose of them, a lien does not attach by virtue of any judicial process to goods in the possession of a bailee for which a negotiable document of title is outstanding unless possession or control of the document is first surrendered to the bailee or the document’s negotiation is enjoined. The bailee may not be compelled to deliver the goods pursuant to process until possession or control of the document is surrendered to the bailee or to the court. A purchaser of the document for value without notice of the process or injunction takes free of the lien imposed by judicial process.

Source: Laws 2005, LB 570, § 96.

COMMENT

Prior Uniform Statutory Provisions: Former section 7-602.

Changes: Changes to accommodate electronic documents of title and for style.

Purposes:

1. The purpose of the section is to protect the bailee from conflicting claims of the document of title holder and the judgment creditors of the person who deposited the goods. The rights of the former prevail unless, in effect, the judgment creditors immobilize the negotiable document of title through the surrender of possession of a tangible document or control of an electronic document. However, if the document of title was issued upon deposit of the goods by a person who had no power to dispose of the goods so that the document is ineffective to pass title, judgment liens are valid to the extent of the debtor’s interest in the goods.

2. The last sentence covers the possibility that the holder of a document who has been enjoined from negotiating it will violate

the injunction by negotiating to an innocent purchaser for value. In such case the lien will be defeated.

Cross References:

Sections 7-106 and 7-501 through 7-503.

Definitional Cross References:

“Bailee”. Section 7-102.

“Delivery”. Section 1-201.

“Document of title”. Section 1-201.

“Goods”. Section 7-102.

“Notice”. Section 1-202.

“Person”. Section 1-201.

“Purchase”. Section 1-201.

“Value”. Section 1-204.

7-603 Conflicting claims; interpleader.

If more than one person claims title to or possession of the goods, the bailee is excused from delivery until the bailee has a reasonable time to ascertain the validity of the adverse claims or to commence an action for interpleader. The bailee may assert an interpleader either in defending an action for nondelivery of the goods or by original action.

Source: Laws 2005, LB 570, § 97.

COMMENT

Prior Uniform Statutory Provisions: Former section 7-603.

Changes: Changes for style only.

Purposes:

1. The section enables a bailee faced with conflicting claims to the goods to compel the claimants to litigate their claims with each other rather than with the bailee. The bailee is protected from legal liability when the bailee complies with court orders from the interpleader. See e.g. *Northwestern National Sales, Inc. v. Commercial Cold Storage, Inc.*, 162 Ga. App. 741, 293 S.E.2d. 30 (1982).

2. This section allows the bailee to bring an interpleader action but does not provide an exclusive basis for allowing interpleader. If either state or federal procedural rules allow an

interpleader in other situations, the bailee may commence an interpleader under those rules. Even in an interpleader to which this section applies, the state or federal process of interpleader applies to the bailee’s action for interpleader. For example, state or federal interpleader statutes or rules may permit a bailee to protect its lien or to seek attorney’s fees and costs in the interpleader action.

Cross reference:

Point 1: Section 7-403.

Definitional Cross References:

“Action”. Section 1-201.

“Bailee”. Section 7-102.

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"Delivery". Section 1-201.
"Goods". Section 7-102.

"Person". Section 1-201.
"Reasonable time". Section 1-205.

Part 7

MISCELLANEOUS PROVISIONS

7-701 Omitted.

7-702 Omitted.

7-703 Applicability.

This article applies to a document of title that is issued or a bailment that arises on or after January 1, 2006. This article does not apply to a document of title that is issued or a bailment that arises before January 1, 2006, even if the document of title or bailment would be subject to this article if the document of title had been issued or bailment had arisen on or after January 1, 2006. This article does not apply to a right of action that has accrued before January 1, 2006.

Source: Laws 2005, LB 570, § 98.

COMMENT

This article will apply prospectively only to documents of title issued or bailments that arise after the operative date of this article.

7-704 Savings clause.

A document of title issued or a bailment that arises before January 1, 2006, and the rights, obligations, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by Laws 2005, LB 570, as if amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule.

Source: Laws 2005, LB 570, § 99.

COMMENT

This article will apply prospectively only to documents of title issued or bailments that arise after the operative date of this article. To the extent that issues arise based upon documents of title or rights or obligations that arise prior to the operative date of this article, prior law will apply to resolve those issues.

ARTICLE 8

INVESTMENT SECURITIES

Part 1

SHORT TITLE AND GENERAL MATTERS

Section

8-103. Rules for determining whether certain obligations and interests are securities or financial assets.

Part 1

SHORT TITLE AND GENERAL MATTERS

8-103 Rules for determining whether certain obligations and interests are securities or financial assets.

(a) A share or similar equity interest issued by a corporation, business trust, joint stock company, or similar entity is a security.

(b) An “investment company security” is a security. “Investment company security” means a share or similar equity interest issued by an entity that is registered as an investment company under the federal investment company laws, an interest in a unit investment trust that is so registered, or a face-amount certificate issued by a face-amount certificate company that is so registered. Investment company security does not include an insurance policy or endowment policy or annuity contract issued by an insurance company.

(c) An interest in a partnership or limited liability company is not a security unless it is dealt in or traded on securities exchanges or in securities markets, its terms expressly provide that it is a security governed by this article, or it is an investment company security. However, an interest in a partnership or limited liability company is a financial asset if it is held in a securities account.

(d) A writing that is a security certificate is governed by this article and not by article 3, even though it also meets the requirements of that article. However, a negotiable instrument governed by article 3 is a financial asset if it is held in a securities account.

(e) An option or similar obligation issued by a clearing corporation to its participants is not a security, but is a financial asset.

(f) A commodity contract, as defined in section 9-102(a)(15), is not a security or a financial asset.

(g) A document of title is not a financial asset unless section 8-102(a)(9)(iii) applies.

Source: Laws 1995, LB 97, § 7; Laws 1999, LB 550, § 66; Laws 2005, LB 570, § 100.

COMMENT

1. This section contains rules that supplement the definitions of “financial asset” and “security” in section 8-102. The section 8-102 definitions are worded in general terms, because they must be sufficiently comprehensive and flexible to cover the wide variety of investment products that now exist or may develop. The rules in this section are intended to foreclose interpretive issues concerning the application of the general definitions to several specific investment products. No implication is made about the application of the section 8-102 definitions to investment products not covered by this section.

2. Subsection (a) establishes an unconditional rule that ordinary corporate stock is a security. That is so whether or not the particular issue is dealt in or traded on securities exchanges or in securities markets. Thus, shares of closely held corporations are article 8 securities.

3. Subsection (b) establishes that the article 8 term “security” includes the various forms of the investment vehicles offered to the public by investment companies registered as such under the federal Investment Company Act of 1940, as amended. This clarification is prompted principally by the fact that the typical transaction in shares of open-end investment companies is an issuance or redemption, rather than a transfer of shares from one person to another as is the case with ordinary corporate stock. For similar reasons, the definitions of indorsement, instruction, and entitlement order in section 8-102 refer to “redemptions” as well as “transfers”, to ensure that the article 8 rules on such matters as signature guaranties, section 8-306, assurances, sections 8-402 and 8-507, and effectiveness, section 8-107, apply to directions to redeem mutual fund shares. The exclusion of insurance products is needed because some insurance company separate accounts are registered under the In-

vestment Company Act of 1940, but these are not traded under the usual article 8 mechanics.

4. Subsection (c) is designed to foreclose interpretive questions that might otherwise be raised by the application of the “of a type” language of section 8-102(a)(15)(iii) to partnership interests. Subsection (c) establishes the general rule that partnership interests or shares of limited liability companies are not article 8 securities unless they are in fact dealt in or traded on securities exchanges or in securities markets. The issuer, however, may explicitly “opt-in” by specifying that the interests or shares are securities governed by article 8. Partnership interests or shares of limited liability companies are included in the broader term “financial asset”. Thus, if they are held through a securities account, the indirect holding system rules of part 5 apply, and the interest of a person who holds them through such an account is a security entitlement.

5. Subsection (d) deals with the line between article 3 negotiable instruments and article 8 investment securities. It continues the rule of the prior version of article 8 that a writing that meets the article 8 definition is covered by article 8 rather than article 3, even though it also meets the definition of negotiable instrument. However, subsection (d) provides that an article 3 negotiable instrument is a “financial asset” so that the indirect holding system rules apply if the instrument is held through a securities intermediary. This facilitates making items such as money market instruments eligible for deposit in clearing corporations.

6. Subsection (e) is included to clarify the treatment of investment products such as traded stock options, which are treated as financial assets but not securities. Thus, the indirect holding system rules of part 5 apply, but the direct holding system rules of parts 2, 3, and 4 do not.

7. Subsection (f) excludes commodity contracts from all of article 8. However, the article 9 rules on security interests in investment property do apply to security interests in commodity positions. "Commodity contract" is defined in section 9-102(a)(15).

8. Subsection (g) allows a document of title to be a financial asset and thus subject to the indirect holding system rules of part 5 only to the extent that the intermediary and the person entitled under the document agree to do so. This is to prevent

the inadvertent application of the part 5 rules to intermediaries who may hold either electronic or tangible documents of title.

Definitional Cross References:

- "Clearing corporation". Section 8-102(a)(5).
- "Commodity contract". Section 9-102(a)(15).
- "Financial asset". Section 8-102(a)(9).
- "Security". Section 8-102(a)(15).
- "Security certificate". Section 8-102(a)(16).

ARTICLE 9

SECURED TRANSACTIONS

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Part 1

GENERAL PROVISIONS

Subpart 1

SHORT TITLE, DEFINITIONS, AND GENERAL CONCEPTS

9-102 Definitions and index of definitions.

(a) In this article:

(1) "Accession" means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

(2) "Account", except as used in "account for", means a right to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv) for a secondary obligation incurred or to be incurred, (v) for energy provided or to be provided, (vi) for the use or hire of a vessel under a charter or other contract, (vii) arising out of the use of a credit or charge card or information contained on or for use with the card, or (viii) as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state. The term includes health-care-insurance receivables. The term does not include (i) rights to payment evidenced by chattel paper or an instrument, (ii) commercial tort claims, (iii) deposit accounts, (iv) investment property, (v) letter-of-credit rights or letters of credit, or (vi) rights to payment for money or funds advanced or sold, other

than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

(3) "Account debtor" means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

(4) "Accounting", except as used in "accounting for", means a record:

(A) authenticated by a secured party;

(B) indicating the aggregate unpaid secured obligations as of a date not more than thirty-five days earlier or thirty-five days later than the date of the record; and

(C) identifying the components of the obligations in reasonable detail.

(5) "Agricultural lien" means an interest, other than a security interest, in farm products:

(A) which secures payment or performance of an obligation for:

(i) goods or services furnished in connection with a debtor's farming operation; or

(ii) rent on real property leased by a debtor in connection with its farming operation;

(B) which is created by statute in favor of a person that:

(i) in the ordinary course of its business furnished goods or services to a debtor in connection with a debtor's farming operation; or

(ii) leased real property to a debtor in connection with the debtor's farming operation; and

(C) whose effectiveness does not depend on the person's possession of the personal property.

The term also includes every lien created under sections 52-202, 52-501, 52-701, 52-901, 52-1101, 52-1201, 54-201, and 54-208, Reissue Revised Statutes of Nebraska, and Chapter 52, article 14, Reissue Revised Statutes of Nebraska.

(6) "As-extracted collateral" means:

(A) oil, gas, or other minerals that are subject to a security interest that:

(i) is created by a debtor having an interest in the minerals before extraction; and

(ii) attaches to the minerals as extracted; or

(B) accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.

(7) "Authenticate" means:

(A) to sign; or

(B) to execute or otherwise adopt a symbol, or encrypt or similarly process a record in whole or in part, with the present intent of the authenticating person to identify the person and adopt or accept a record.

(8) "Bank" means an organization that is engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions, and trust companies.

(9) "Cash proceeds" means proceeds that are money, checks, deposit accounts, or the like.

(10) “Certificate of title” means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest’s obtaining priority over the rights of a lien creditor with respect to the collateral.

(11) “Chattel paper” means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this subdivision, “monetary obligation” means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term does not include (i) charters or other contracts involving the use or hire of a vessel or (ii) records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.

(12) “Collateral” means the property subject to a security interest or agricultural lien. The term includes:

(A) proceeds to which a security interest attaches;

(B) accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and

(C) goods that are the subject of a consignment.

(13) “Commercial tort claim” means a claim arising in tort with respect to which:

(A) the claimant is an organization; or

(B) the claimant is an individual and the claim:

(i) arose in the course of the claimant’s business or profession; and

(ii) does not include damages arising out of personal injury to or the death of an individual.

(14) “Commodity account” means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

(15) “Commodity contract” means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is:

(A) traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or

(B) traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.

(16) “Commodity customer” means a person for which a commodity intermediary carries a commodity contract on its books.

(17) “Commodity intermediary” means a person that:

(A) is registered as a futures commission merchant under federal commodities law; or

(B) in the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.

(18) “Communicate” means:

(A) to send a written or other tangible record;

(B) to transmit a record by any means agreed upon by the persons sending and receiving the record; or

(C) in the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.

(19) “Consignee” means a merchant to which goods are delivered in a consignment.

(20) “Consignment” means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:

(A) the merchant:

(i) deals in goods of that kind under a name other than the name of the person making delivery;

(ii) is not an auctioneer; and

(iii) is not generally known by its creditors to be substantially engaged in selling the goods of others;

(B) with respect to each delivery, the aggregate value of the goods is one thousand dollars or more at the time of delivery;

(C) the goods are not consumer goods immediately before delivery; and

(D) the transaction does not create a security interest that secures an obligation.

(21) “Consignor” means a person that delivers goods to a consignee in a consignment.

(22) “Consumer debtor” means a debtor in a consumer transaction.

(23) “Consumer goods” means goods that are used or bought for use primarily for personal, family, or household purposes.

(24) “Consumer-goods transaction” means a consumer transaction in which:

(A) an individual incurs an obligation primarily for personal, family, or household purposes; and

(B) a security interest in consumer goods secures the obligation.

(25) “Consumer obligor” means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family, or household purposes.

(26) “Consumer transaction” means a transaction in which (i) an individual incurs an obligation primarily for personal, family, or household purposes, (ii) a security interest secures the obligation, and (iii) the collateral is held or acquired primarily for personal, family, or household purposes. The term includes consumer-goods transactions.

(27) “Continuation statement” means an amendment of a financing statement which:

(A) identifies, by its file number, the initial financing statement to which it relates; and

(B) indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

(28) “Debtor” means:

(A) a person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;

(B) a seller of accounts, chattel paper, payment intangibles, or promissory notes; or

(C) a consignee.

(29) “Deposit account” means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument.

(30) “Document” means a document of title or a receipt of the type described in section 7-201(b).

(31) “Electronic chattel paper” means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.

(32) “Encumbrance” means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.

(33) “Equipment” means goods other than inventory, farm products, or consumer goods.

(34) “Farm products” means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are:

(A) crops grown, growing, or to be grown, including:

(i) crops produced on trees, vines, and bushes; and

(ii) aquatic goods produced in aquacultural operations;

(B) livestock, born or unborn, including aquatic goods produced in aquacultural operations;

(C) supplies used or produced in a farming operation; or

(D) products of crops or livestock in their unmanufactured states.

(35) “Farming operation” means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.

(36) “File number” means the number assigned to an initial financing statement pursuant to section 9-519(a).

(37) “Filing office” means an office designated in section 9-501 as the place to file a financing statement.

(38) “Filing-office rule” means a rule adopted pursuant to section 9-526.

(39) “Financing statement” means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

(40) “Fixture filing” means the filing of a financing statement covering goods that are or are to become fixtures and satisfying section 9-502(a) and (b). The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.

(41) “Fixtures” means goods that have become so related to particular real property that an interest in them arises under real property law.

(42) “General intangible” means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit

accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.

(43) “Good faith” means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(44) “Goods” means all things that are movable when a security interest attaches. The term includes (i) fixtures, (ii) standing timber that is to be cut and removed under a conveyance or contract for sale, (iii) the unborn young of animals, (iv) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes, and (v) manufactured homes. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if (i) the program is associated with the goods in such a manner that it customarily is considered part of the goods, or (ii) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

(45) “Governmental unit” means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a state, or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.

(46) “Health-care-insurance receivable” means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health-care goods or services provided.

(47) “Instrument” means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment including, but not limited to, a writing that would otherwise qualify as a certificate of deposit (defined in section 3-104(j)) but for the fact that the writing contains a limitation on transfer. The term does not include (i) investment property, (ii) letters of credit, or (iii) writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

(48) “Inventory” means goods, other than farm products, which:

- (A) are leased by a person as lessor;
- (B) are held by a person for sale or lease or to be furnished under a contract of service;
- (C) are furnished by a person under a contract of service; or
- (D) consist of raw materials, work in process, or materials used or consumed in a business.

(49) “Investment property” means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.

(50) “Jurisdiction of organization”, with respect to a registered organization, means the jurisdiction under whose law the organization is organized.

(51) “Letter-of-credit right” means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

(52) “Lien creditor” means:

(A) a creditor that has acquired a lien on the property involved by attachment, levy, or the like;

(B) an assignee for benefit of creditors from the time of assignment;

(C) a trustee in bankruptcy from the date of the filing of the petition; or

(D) a receiver in equity from the time of appointment.

(53) “Manufactured home” means a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. The term includes any structure that meets all of the requirements of this subdivision except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States Secretary of Housing and Urban Development and complies with the standards established under Title 42 of the United States Code.

(54) “Manufactured-home transaction” means a secured transaction:

(A) that creates a purchase-money security interest in a manufactured home, other than a manufactured home held as inventory; or

(B) in which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.

(55) “Mortgage” means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation.

(56) “New debtor” means a person that becomes bound as debtor under section 9-203(d) by a security agreement previously entered into by another person.

(57) “New value” means (i) money, (ii) money’s worth in property, services, or new credit, or (iii) release by a transferee of an interest in property previously transferred to the transferee. The term does not include an obligation substituted for another obligation.

(58) “Noncash proceeds” means proceeds other than cash proceeds.

(59) “Obligor” means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral, (i) owes payment or other performance of the obligation, (ii) has provided property other than the collateral to secure payment or other performance of the obligation, or (iii) is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.

(60) "Original debtor", except as used in section 9-310(c), means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under section 9-203(d).

(61) "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation.

(62) "Person related to", with respect to an individual, means:

(A) the spouse of the individual;

(B) a brother, brother-in-law, sister, or sister-in-law of the individual;

(C) an ancestor or lineal descendant of the individual or the individual's spouse; or

(D) any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

(63) "Person related to", with respect to an organization, means:

(A) a person directly or indirectly controlling, controlled by, or under common control with the organization;

(B) an officer or director of, or a person performing similar functions with respect to, the organization;

(C) an officer or director of, or a person performing similar functions with respect to, a person described in subdivision (A);

(D) the spouse of an individual described in subdivision (A), (B), or (C); or

(E) an individual who is related by blood or marriage to an individual described in subdivision (A), (B), (C), or (D) and shares the same home with the individual.

(64) "Proceeds", except as used in section 9-609(b), means the following property:

(A) whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;

(B) whatever is collected on, or distributed on account of, collateral;

(C) rights arising out of collateral;

(D) to the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or

(E) to the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.

(65) "Promissory note" means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

(66) "Proposal" means a record authenticated by a secured party which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to sections 9-620, 9-621, and 9-622.

(67) "Public-finance transaction" means a secured transaction in connection with which:

(A) debt securities are issued;

(B) all or a portion of the securities issued have an initial stated maturity of at least twenty years; and

(C) the debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is a state or a governmental unit of a state.

(68) "Pursuant to commitment", with respect to an advance made or other value given by a secured party, means pursuant to the secured party's obligation, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from its obligation.

(69) "Record", except as used in "for record", "of record", "record or legal title", and "record owner", means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

(70) "Registered organization" means an organization organized solely under the law of a single state or the United States and as to which the state or the United States must maintain a public record showing the organization to have been organized.

(71) "Secondary obligor" means an obligor to the extent that:

(A) the obligor's obligation is secondary; or

(B) the obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

(72) "Secured party" means:

(A) a person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;

(B) a person that holds an agricultural lien;

(C) a consignor;

(D) a person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;

(E) a trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or

(F) a person that holds a security interest arising under section 2-401, 2-505, 2-711(3), 2A-508(5), 4-210, or 5-118.

(73) "Security agreement" means an agreement that creates or provides for a security interest.

(74) "Send", in connection with a record or notification, means:

(A) to deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or

(B) to cause the record or notification to be received within the time that it would have been received if properly sent under subdivision (A).

(75) "Software" means a computer program and any supporting information provided in connection with a transaction relating to the program. The term

does not include a computer program that is included in the definition of goods.

(76) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(77) "Supporting obligation" means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument, or investment property.

(78) "Tangible chattel paper" means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.

(79) "Termination statement" means an amendment of a financing statement which:

(A) identifies, by its file number, the initial financing statement to which it relates; and

(B) indicates either that it is a termination statement or that the identified financing statement is no longer effective.

(80) "Transmitting utility" means a person primarily engaged in the business of:

(A) operating a railroad, subway, street railway, or trolley bus;

(B) transmitting communications electrically, electromagnetically, or by light;

(C) transmitting goods by pipeline or sewer; or

(D) transmitting or producing and transmitting electricity, steam, gas, or water.

(b) "Control" as provided in section 7-106 and the following definitions in other articles apply to this article:

"Applicant".	Section 5-102.
"Beneficiary".	Section 5-102.
"Broker".	Section 8-102.
"Certificated security".	Section 8-102.
"Check".	Section 3-104.
"Clearing corporation".	Section 8-102.
"Contract for sale".	Section 2-106.
"Customer".	Section 4-104.
"Entitlement holder".	Section 8-102.
"Financial asset".	Section 8-102.
"Holder in due course".	Section 3-302.
"Issuer" (with respect to a letter of credit or letter-of-credit right).	Section 5-102.
"Issuer" (with respect to a security).	Section 8-201.
"Issuer" (with respect to documents of title).	Section 7-102.
"Lease".	Section 2A-103.
"Lease agreement".	Section 2A-103.
"Lease contract".	Section 2A-103.
"Leasehold interest".	Section 2A-103.
"Lessee".	Section 2A-103.
"Lessee in ordinary course of business".	Section 2A-103.
"Lessor".	Section 2A-103.
"Lessor's residual interest".	Section 2A-103.
"Letter of credit".	Section 5-102.
"Merchant".	Section 2-104.

“Negotiable instrument”.	Section 3-104.
“Nominated person”.	Section 5-102.
“Note”.	Section 3-104.
“Proceeds of a letter of credit”.	Section 5-114.
“Prove”.	Section 3-103.
“Sale”.	Section 2-106.
“Securities account”.	Section 8-501.
“Securities intermediary”.	Section 8-102.
“Security”.	Section 8-102.
“Security certificate”.	Section 8-102.
“Security entitlement”.	Section 8-102.
“Uncertificated security”.	Section 8-102.

(c) Article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

Source: Laws 1999, LB 550, § 75; Laws 2000, LB 929, § 25; Laws 2001, LB 54, § 28; Laws 2005, LB 570, § 101.

COMMENT

1. **Source.** All terms that are defined in article 9 and used in more than one section are consolidated in this section. Note that the definition of “security interest” is found in section 1-201, not in this article, and has been revised. See appendix I. Many of the definitions in this section are new; many others derive from those in former section 9-105. The following comments also indicate other sections of former article 9 that defined (or explained) terms.

2. Parties to Secured Transactions.

a. **“Debtor”; “Obligor”; “Secondary Obligor”.** Determining whether a person was a “debtor” under former section 9-105(1)(d) required a close examination of the context in which the term was used. To reduce the need for this examination, this article redefines “debtor” and adds new defined terms, “secondary obligor” and “obligor”. In the context of part 6 (default and enforcement), these definitions distinguish among three classes of persons: (i) Those persons who may have a stake in the proper enforcement of a security interest by virtue of their nonlien property interest (typically, an ownership interest) in the collateral; (ii) those persons who may have a stake in the proper enforcement of the security interest because of their obligation to pay the secured debt; and (iii) those persons who have an obligation to pay the secured debt but have no stake in the proper enforcement of the security interest. Persons in the first class are debtors. Persons in the second class are secondary obligors if any portion of the obligation is secondary or if the obligor has a right of recourse against the debtor or another obligor with respect to an obligation secured by collateral. One must consult the law of suretyship to determine whether an obligation is secondary. The Restatement (3d), Suretyship and Guaranty section 1 (1996), contains a useful explanation of the concept. Obligor in the third class are neither debtors nor secondary obligors. With one exception (section 9-616, as it relates to a consumer obligor), the rights and duties provided by part 6 affect nondebtor obligors only if they are “secondary obligors”.

By including in the definition of “debtor” all persons with a property interest (other than a security interest in or other lien on collateral), the definition includes transferees of collateral, whether or not the secured party knows of the transfer or the transferee’s identity. Exculpatory provisions in part 6 protect the secured party in that circumstance. See sections 9-605 and 9-628. The definition renders unnecessary former section 9-112, which governed situations in which collateral was not owned by the debtor. The definition also includes a “consignee”, as defined in this section, as well as a seller of accounts, chattel paper, payment intangibles, or promissory notes.

Secured parties and other lienholders are excluded from the definition of “debtor” because the interests of those parties

normally derive from and encumber a debtor’s interest. However, if in a separate secured transaction a secured party grants, as debtor, a security interest in its own interest (i.e., its security interest and any obligation that it secures), the secured party is a debtor in that transaction. This typically occurs when a secured party with a security interest in specific goods assigns chattel paper.

Consider the following examples:

Example 1: Behnfeldt borrows money and grants a security interest in her Miata to secure the debt. Behnfeldt is a debtor and an obligor.

Example 2: Behnfeldt borrows money and grants a security interest in her Miata to secure the debt. Bruno cosigns a negotiable note as maker. As before, Behnfeldt is the debtor and an obligor. As an accommodation party (see section 3-419), Bruno is a secondary obligor. Bruno has this status even if the note states that her obligation is a primary obligation and that she waives all suretyship defenses.

Example 3: Behnfeldt borrows money on an unsecured basis. Bruno cosigns the note and grants a security interest in her Honda to secure her obligation. Inasmuch as Behnfeldt does not have a property interest in the Honda, Behnfeldt is not a debtor. Having granted the security interest, Bruno is the debtor. Because Behnfeldt is a principal obligor, she is not a secondary obligor. Whatever the outcome of enforcement of the security interest against the Honda or Bruno’s secondary obligation, Bruno will look to Behnfeldt for her losses. The enforcement will not affect Behnfeldt’s aggregate obligations.

When the principal obligor (borrower) and the secondary obligor (surety) each has granted a security interest in different collateral, the status of each is determined by the collateral involved.

Example 4: Behnfeldt borrows money and grants a security interest in her Miata to secure the debt. Bruno cosigns the note and grants a security interest in her Honda to secure her obligation. When the secured party enforces the security interest in Behnfeldt’s Miata, Behnfeldt is the debtor, and Bruno is a secondary obligor. When the secured party enforces the security interest in the Honda, Bruno is the “debtor”. As in example 3, Behnfeldt is an obligor, but not a secondary obligor.

b. **“Secured Party”.** The secured party is the person in whose favor the security interest has been created, as determined by reference to the security agreement. This definition controls, among other things, which person has the duties and potential liability that part 6 imposes upon a secured party. The definition of “secured party” also includes a “consignor”, a person to

which accounts, chattel paper, payment intangibles, or promissory notes have been sold, and the holder of an agricultural lien.

The definition of “secured party” clarifies the status of various types of representatives. Consider, for example, a multi-bank facility under which Bank A, Bank B, and Bank C are lenders and Bank A serves as the collateral agent. If the security interest is granted to the banks, then they are the secured parties. If the security interest is granted to Bank A as collateral agent, then Bank A is the secured party.

c. **Other Parties.** A “consumer obligor” is defined as the obligor in a consumer transaction. Definitions of “new debtor” and “original debtor” are used in the special rules found in sections 9-326 and 9-508.

3. Definitions Relating to Creation of a Security Interest.

a. **“Collateral”.** As under former section 9-105, “collateral” is the property subject to a security interest and includes accounts and chattel paper that have been sold. It has been expanded in this article. The term now explicitly includes proceeds subject to a security interest. It also reflects the broadened scope of the article. It includes property subject to an agricultural lien as well as payment intangibles and promissory notes that have been sold.

b. **“Security Agreement”.** The definition of “security agreement” is substantially the same as under former section 9-105—an agreement that creates or provides for a security interest. However, the term frequently was used colloquially in former article 9 to refer to the document or writing that contained a debtor’s security agreement. This article eliminates that usage, reserving the term for the more precise meaning specified in the definition.

Whether an agreement creates a security interest depends not on whether the parties intend that the law characterize the transaction as a security interest but rather on whether the transaction falls within the definition of “security interest” in section 1-201. Thus, an agreement that the parties characterize as a “lease” of goods may be a “security agreement”, notwithstanding the parties’ stated intention that the law treat the transaction as a lease and not as a secured transaction. See section 1-203.

4. Goods—Related Definitions.

a. **“Goods”; “Consumer Goods”; “Equipment”; “Farm Products”; “Farming Operation”; “Inventory”.** The definition of “goods” is substantially the same as the definition in former section 9-105. This article also retains the four mutually-exclusive “types” of collateral that consist of goods: “Consumer goods”; “equipment”; “farm products”; and “inventory”. The revisions are primarily for clarification.

The classes of goods are mutually exclusive. For example, the same property cannot simultaneously be both equipment and inventory. In borderline cases—a physician’s car or a farmer’s truck that might be either consumer goods or equipment—the principal use to which the property is put is determinative. Goods can fall into different classes at different times. For example, a radio may be inventory in the hands of a dealer and consumer goods in the hands of a consumer. As under former article 9, goods are “equipment” if they do not fall into another category.

The definition of “consumer goods” follows former section 9-109. The classification turns on whether the debtor uses or bought the goods for use “primarily for personal, family, or household purposes”.

Goods are inventory if they are leased by a lessor or held by a person for sale or lease. The revised definition of “inventory” makes clear that the term includes goods leased by the debtor to others as well as goods held for lease. (The same result should have been obtained under the former definition.) Goods to be furnished or furnished under a service contract, raw materials, and work in process also are inventory. Implicit in the definition is the criterion that the sales or leases are or will be in the ordinary course of business. For example, machinery used in manufacturing is equipment, not inventory, even though it is the policy of the debtor to sell machinery when it becomes obsolete or worn. Inventory also includes goods that are consumed in a

business (e.g., fuel used in operations). In general, goods used in a business are equipment if they are fixed assets or have, as identifiable units, a relatively long period of use, but are inventory, even though not held for sale or lease, if they are used up or consumed in a short period of time in producing a product or providing a service.

Goods are “farm products” if the debtor is engaged in farming operations with respect to the goods. Animals in a herd of livestock are covered whether the debtor acquires them by purchase or as a result of natural increase. Products of crops or livestock remain farm products as long as they have not been subjected to a manufacturing process. The terms “crops” and “livestock” are not defined. The new definition of “farming operations” is for clarification only.

Crops, livestock, and their products cease to be “farm products” when the debtor ceases to be engaged in farming operations with respect to them. If, for example, they come into the possession of a marketing agency for sale or distribution or of a manufacturer or processor as raw materials, they become inventory. Products of crops or livestock, even though they remain in the possession of a person engaged in farming operations, lose their status as farm products if they are subjected to a manufacturing process. What is and what is not a manufacturing operation is not specified in this article. At one end of the spectrum, some processes are so closely connected with farming—such as pasteurizing milk or boiling sap to produce maple syrup or sugar—that they would not constitute manufacturing. On the other hand an extensive canning operation would be manufacturing. Once farm products have been subjected to a manufacturing operation, they normally become inventory.

The revised definition of “farm products” clarifies the distinction between crops and standing timber and makes clear that aquatic goods produced in aquacultural operations may be either crops or livestock. Although aquatic goods that are vegetable in nature often would be crops and those that are animal would be livestock, this article leaves the courts free to classify the goods on a case-by-case basis. See section 9-324, comment 11.

The definitions of “goods” and “software” are also mutually exclusive. Computer programs usually constitute “software”, and, as such, are not “goods” as this article uses the terms. However, under the circumstances specified in the definition of “goods”, computer programs embedded in goods are part of the “goods” and are not “software”.

b. **“Accession”; “Manufactured Home”; “Manufactured-Home Transaction”.** Other specialized definitions of goods include “accession” (see the special priority and enforcement rules in section 9-335), and “manufactured home” (see section 9-515, permitting a financing statement in a “manufactured-home transaction” to be effective for 30 years). The definition of “manufactured home” borrows from the federal Manufactured Housing Act, 42 U.S.C. section 5401 et seq., and is intended to have the same meaning.

c. **“As-Extracted Collateral”.** Under this article, oil, gas, and other minerals that have not been extracted from the ground are treated as real property, to which this article does not apply. Upon extraction, minerals become personal property (goods) and eligible to be collateral under this article. See the definition of “goods”, which excludes “oil, gas, and other minerals before extraction”. To take account of financing practices reflecting the shift from real to personal property, this article contains special rules for perfecting security interests in minerals which attach upon extraction and in accounts resulting from the sale of minerals at the wellhead or minehead. See, e.g., sections 9-301(4) (law governing perfection and priority), 9-501 (place of filing), 9-502 (contents of financing statement), and 9-519 (indexing of records). The new term, “as-extracted collateral”, refers to the minerals and related accounts to which the special rules apply. The term “at the wellhead” encompasses arrangements based on a sale of the produce at the moment that it issues from the ground and is measured, without technical distinctions as to whether title passes at the “Christmas tree” of a well, the far side of a gathering tank, or at some other point. The term “at ... the minehead” is comparable.

The following examples explain the operation of these provisions.

Example 5: Debtor owns an interest in oil that is to be extracted. To secure Debtor's obligations to Lender, Debtor enters into an authenticated agreement granting Lender an interest in the oil. Although Lender may acquire an interest in the oil under real property law, Lender does not acquire a security interest under this article until the oil becomes personal property, i.e., until it is extracted and becomes "goods" to which this article applies. Because Debtor had an interest in the oil before extraction and Lender's security interest attached to the oil as extracted, the oil is "as-extracted collateral".

Example 6: Debtor owns an interest in oil that is to be extracted and contracts to sell the oil to Buyer at the wellhead. In an authenticated agreement, Debtor agrees to sell to Lender the right to payment from Buyer. This right to payment is an account that constitutes "as-extracted collateral". If Lender then resells the account to Financier, Financier acquires a security interest. However, inasmuch as the debtor-seller in that transaction, Lender, had no interest in the oil before extraction, Financier's collateral (the account it owns) is not "as-extracted collateral".

Example 7: Under the facts of example 6, before extraction, Buyer grants a security interest in the oil to Bank. Although Bank's security interest attaches when the oil is extracted, Bank's security interest is not in "as-extracted collateral", inasmuch as its debtor, Buyer, did not have an interest in the oil before extraction.

5. Receivables—Related Definitions.

a. **"Account"; "Health-Care-Insurance Receivable"; "As-Extracted Collateral".** The definition of "account" has been expanded and reformulated. It is no longer limited to rights to payment relating to goods or services. Many categories of rights to payment that were classified as general intangibles under former article 9 are accounts under this article. Thus, if they are sold, a financing statement must be filed to perfect the buyer's interest in them. Among the types of property that are expressly excluded from the definition is "a right to payment for money or funds advanced or sold". As defined in section 1-201, "money" is limited essentially to currency. As used in the exclusion from the definition of "account", however, "funds" is a broader concept (although the term is not defined). For example, when a bank-lender credits a borrower's deposit account for the amount of a loan, the bank's advance of funds is not a transaction giving rise to an account.

The definition of "health-care-insurance receivable" is new. It is a subset of the definition of "account". However, the rules generally applicable to account debtors on accounts do not apply to insurers obligated on health-care-insurance receivables. See sections 9-404(e), 9-405(d), and 9-406(i).

Note that certain accounts also are "as-extracted collateral". See comment 4(c), examples 6 and 7.

b. **"Chattel Paper"; "Electronic Chattel Paper"; "Tangible Chattel Paper".** "Chattel paper" consists of a monetary obligation together with a security interest in or a lease of specific goods if the obligation and security interest or lease are evidenced by "a record or records". The definition has been expanded from that found in former article 9 to include records that evidence a monetary obligation and a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, or a lease of specific goods and license of software used in the goods. The expanded definition covers transactions in which the debtor's or lessee's monetary obligation includes amounts owed with respect to software used in the goods. The monetary obligation with respect to the software need not be owed under a license from the secured party or lessor, and the secured party or lessor need not be a party to the license transaction itself. Among the types of monetary obligations that are included in "chattel paper" are amounts that have been advanced by the secured party or lessor to enable the debtor or lessee to acquire or obtain financing for a license of the software used in the goods. The definition also makes clear that rights to payment arising out of credit card transactions are not chattel paper.

Charters of vessels are expressly excluded from the definition of chattel paper; they are accounts. The term "charter" as used in this section includes bareboat charters, time charters, successive voyage charters, contracts of affreightment, contracts of carriage, and all other arrangements for the use of vessels.

Under former section 9-105, only if the evidence of an obligation consisted of "a writing or writings" could an obligation qualify as chattel paper. In this article, traditional, written chattel paper is included in the definition of "tangible chattel paper". "Electronic chattel paper" is chattel paper that is stored in an electronic medium instead of in tangible form. The concept of an electronic medium should be construed liberally to include electrical, digital, magnetic, optical, electromagnetic, or any other current or similar emerging technologies.

The definition of electronic chattel paper does not dictate that it be created in any particular fashion. For example, a record consisting of a tangible writing may be converted to electronic form (e.g., by creating electronic images of a signed writing). Or, records may be initially created and executed in electronic form (e.g., a lessee might authenticate an electronic record of a lease that is then stored in electronic form). In either case the resulting records are electronic chattel paper.

c. **"Instrument"; "Promissory Note".** The definition of "instrument" includes a negotiable instrument. As under former section 9-105, it also includes any other right to payment of a monetary obligation that is evidenced by a writing of a type that in ordinary course of business is transferred by delivery (and, if necessary, an indorsement or assignment). Except in the case of chattel paper, the fact that an instrument is secured by a security interest or encumbrance on property does not change the character of the instrument as such or convert the combination of the instrument and collateral into a separate classification of personal property. The definition makes clear that rights to payment arising out of credit card transactions are not instruments. The definition of "promissory note" is new, necessitated by the inclusion of sales of promissory notes within the scope of article 9. It explicitly excludes obligations arising out of "orders" to pay (e.g., checks) as opposed to "promises" to pay. See section 3-104.

d. **"General Intangible"; "Payment Intangible".** "General intangible" is the residual category of personal property, including things in action, that is not included in the other defined types of collateral. Examples are various categories of intellectual property and the right to payment of a loan of funds that is not evidenced by chattel paper or an instrument. As used in the definition of "general intangible", "things in action" includes rights that arise under a license of intellectual property, including the right to exploit the intellectual property without liability for infringement. The definition has been revised to exclude commercial tort claims, deposit accounts, and letter-of-credit rights. Each of the three is a separate type of collateral. One important consequence of this exclusion is that tortfeasors (commercial tort claims), banks (deposit accounts), and persons obligated on letters of credit (letter-of-credit rights) are not "account debtors" having the rights and obligations set forth in sections 9-404, 9-405, and 9-406. In particular, tortfeasors, banks, and persons obligated on letters of credit are not obligated to pay an assignee (secured party) upon receipt of the notification described in section 9-404(a). See comment 5(h). Another important consequence relates to the adequacy of the description in the security agreement. See section 9-108.

"Payment intangible" is a subset of the definition of "general intangible". The sale of a payment intangible is subject to this article. See section 9-109(a)(3). Virtually any intangible right could give rise to a right to payment of money once one hypothesizes, for example, that the account debtor is in breach of its obligation. The term "payment intangible", however, embraces only those general intangibles "under which the account debtor's principal obligation is a monetary obligation".

In classifying intangible collateral, a court should begin by identifying the particular rights that have been assigned. The account debtor (promisor) under a particular contract may owe several types of monetary obligations as well as other, nonmonetary obligations. If the promisee's right to payment of money is assigned separately, the right is an account or payment intangi-

ble, depending on how the account debtor's obligation arose. When all the promisee's rights are assigned together, an account, a payment intangible, and a general intangible all may be involved, depending on the nature of the rights.

A right to the payment of money is frequently buttressed by ancillary covenants, such as covenants in a purchase agreement, note, or mortgage requiring insurance on the collateral or forbidding removal of the collateral, or covenants to preserve the creditworthiness of the promisor, such as covenants restricting dividends and the like. This article does not treat these ancillary rights separately from the rights to payment to which they relate. For example, attachment and perfection of an assignment of a right to payment of a monetary obligation, whether it be an account or payment intangible, also carries these ancillary rights.

Every "payment intangible" is also a "general intangible". Likewise, "software" is a "general intangible" for purposes of this article. See comment 25. Accordingly, except as otherwise provided, statutory provisions applicable to general intangibles apply to payment intangibles and software.

e. **"Letter-of-Credit Right"**. The term "letter-of-credit right" embraces the rights to payment and performance under a letter of credit (defined in section 5-102). However, it does not include a beneficiary's right to demand payment or performance. Transfer of those rights to a transferee beneficiary is governed by article 5. See sections 9-107, comment 4, and 9-329, comments 3 and 4.

f. **"Supporting Obligation"**. This new term covers the most common types of credit enhancements - suretyship obligations (including guarantees) and letter-of-credit rights that support one of the types of collateral specified in the definition. As explained in comment 2(a), suretyship law determines whether an obligation is "secondary" for purposes of this definition. Section 9-109 generally excludes from this article transfers of interests in insurance policies. However, the regulation of a secondary obligation as an insurance product does not necessarily mean that it is a "policy of insurance" for purposes of the exclusion in section 9-109. Thus, this article may cover a secondary obligation (as a supporting obligation), even if the obligation is issued by a regulated insurance company and the obligation is subject to regulation as an "insurance" product.

This article contains rules explicitly governing attachment, perfection, and priority of security interests in supporting obligations. See sections 9-203, 9-308, 9-310, and 9-322. These provisions reflect the principle that a supporting obligation is an incident of the collateral it supports.

Collections of or other distributions under a supporting obligation are "proceeds" of the supported collateral as well as "proceeds" of the supporting obligation itself. See section 9-102 (defining "proceeds") and comment 13(b). As such, the collections and distributions are subject to the priority rules applicable to proceeds generally. See section 9-322. However, under the special rule governing security interests in a letter-of-credit right, a secured party's failure to obtain control (section 9-107) of a letter-of-credit right supporting collateral may leave its security interest exposed to a priming interest of a party who does take control. See section 9-329 (security interest in a letter-of-credit right perfected by control has priority over a conflicting security interest).

g. **"Commercial Tort Claim"**. This term is new. A tort claim may serve as original collateral under this article only if it is a "commercial tort claim". See section 9-109(d). Although security interests in commercial tort claims are within its scope, this article does not override other applicable law restricting the assignability of a tort claim. See section 9-401. A security interest in a tort claim also may exist under this article if the claim is proceeds of other collateral.

h. **"Account Debtor"**. An "account debtor" is a person obligated on an account, chattel paper, or general intangible. The account debtor's obligation often is a monetary obligation; however, this is not always the case. For example, if a franchisee uses its rights under a franchise agreement (a general intangible) as collateral, then the franchisor is an "account debtor". As a general matter, article 3, and not article 9, governs obligations

on negotiable instruments. Accordingly, the definition of "account debtor" excludes obligors on negotiable instruments constituting part of chattel paper. The principal effect of this change from the definition in former article 9 is that the rules in sections 9-403, 9-404, 9-405, and 9-406, dealing with the rights of an assignee and duties of an account debtor, do not apply to an assignment of chattel paper in which the obligation to pay is evidenced by a negotiable instrument. (Section 9-406(d), however, does apply to promissory notes, including negotiable promissory notes.) Rather, the assignee's rights are governed by article 3. Similarly, the duties of an obligor on a nonnegotiable instrument are governed by nonarticle 9 law unless the nonnegotiable instrument is a part of chattel paper, in which case the obligor is an account debtor.

i. **Receivables Under Government Entitlement Programs**. This article does not contain a defined term that encompasses specifically rights to payment or performance under the many and varied government entitlement programs. Depending on the nature of a right under a program, it could be an account, a payment intangible, a general intangible other than a payment intangible, or another type of collateral. The right also might be proceeds of collateral (e.g., crops).

6. **Investment-Property—Related Definitions: "Commodity Account"; "Commodity Contract"; "Commodity Customer"; "Commodity Intermediary"; "Investment Property"**. These definitions are substantially the same as the corresponding definitions in former section 9-115. "Investment property" includes securities, both certificated and uncertificated, securities accounts, security entitlements, commodity accounts, and commodity contracts. The term investment property includes a "securities account" in order to facilitate transactions in which a debtor wishes to create a security interest in all of the investment positions held through a particular account rather than in particular positions carried in the account. Former section 9-115 was added in conjunction with revised article 8 and contained a variety of rules applicable to security interests in investment property. These rules have been relocated to the appropriate sections of article 9. See, e.g., sections 9-203 (attachment), 9-314 (perfection by control), and 9-328 (priority).

The terms "security", "security entitlement", and related terms are defined in section 8-102, and the term "securities account" is defined in section 8-501. The terms "commodity account", "commodity contract", "commodity customer", and "commodity intermediary" are defined in this section. Commodity contracts are not "securities" or "financial assets" under article 8. See section 8-103(f). Thus, the relationship between commodity intermediaries and commodity customers is not governed by the indirect-holding-system rules of part 5 of article 8. For securities, article 9 contains rules on security interests, and article 8 contains rules on the rights of transferees, including secured parties, on such matters as the rights of a transferee if the transfer was itself wrongful and gives rise to an adverse claim. For commodity contracts, article 9 establishes rules on security interests, but questions of the sort dealt with in article 8 for securities are left to other law.

The indirect-holding-system rules of article 8 are sufficiently flexible to be applied to new developments in the securities and financial markets, where that is appropriate. Accordingly, the definition of "commodity contract" is narrowly drafted to ensure that it does not operate as an obstacle to the application of the article 8 indirect-holding-system rules to new products. The term "commodity contract" covers those contracts that are traded on or subject to the rules of a designated contract market and foreign commodity contracts that are carried on the books of American commodity intermediaries. The effect of this definition is that the category of commodity contracts that is excluded from article 8 but governed by article 9 is essentially the same as the category of contracts that falls within the exclusive regulatory jurisdiction of the federal Commodity Futures Trading Commission.

Commodity contracts are different from securities or other financial assets. A person who enters into a commodity futures contract is not buying an asset having a certain value and holding it in anticipation of increase in value. Rather the person is entering into a contract to buy or sell a commodity at set

price for delivery at a future time. That contract may become advantageous or disadvantageous as the price of the commodity fluctuates during the term of the contract. The rules of the commodity exchanges require that the contracts be marked to market on a daily basis; that is, the customer pays or receives any increment attributable to that day's price change. Because commodity customers may incur obligations on their contracts, they are required to provide collateral at the outset, known as "original margin", and may be required to provide additional amounts, known as "variation margin", during the term of the contract.

The most likely setting in which a person would want to take a security interest in a commodity contract is where a lender who is advancing funds to finance an inventory of a physical commodity requires the borrower to enter into a commodity contract as a hedge against the risk of decline in the value of the commodity. The lender will want to take a security interest in both the commodity itself and the hedging commodity contract. Typically, such arrangements are structured as security interests in the entire commodity account in which the borrower carries the hedging contracts, rather than in individual contracts.

One important effect of including commodity contracts and commodity accounts in article 9 is to provide a clearer legal structure for the analysis of the rights of commodity clearing organizations against their participants and futures commission merchants against their customers. The rules and agreements of commodity clearing organizations generally provide that the clearing organization has the right to liquidate any participant's positions in order to satisfy obligations of the participant to the clearing corporation. Similarly, agreements between futures commission merchants and their customers generally provide that the futures commission merchant has the right to liquidate a customer's positions in order to satisfy obligations of the customer to the futures commission merchant.

The main property that a commodity intermediary holds as collateral for the obligations that the commodity customer may incur under its commodity contracts is not other commodity contracts carried by the customer but the other property that the customer has posted as margin. Typically, this property will be securities. The commodity intermediary's security interest in such securities is governed by the rules of this article on security interests in securities, not the rules on security interests in commodity contracts or commodity accounts.

Although there are significant analytic and regulatory differences between commodities and securities, the development of commodity contracts on financial products in the past few decades has resulted in a system in which the commodity markets and securities markets are closely linked. The rules on security interests in commodity contracts and commodity accounts provide a structure that may be essential in times of stress in the financial markets. Suppose, for example that a firm has a position in a securities market that is hedged by a position in a commodity market, so that payments that the firm is obligated to make with respect to the securities position will be covered by the receipt of funds from the commodity position. Depending upon the settlement cycles of the different markets, it is possible that the firm could find itself in a position where it is obligated to make the payment with respect to the securities position before it receives the matching funds from the commodity position. If cross-margining arrangements have not been developed between the two markets, the firm may need to borrow funds temporarily to make the earlier payment. The rules on security interests in investment property would facilitate the use of positions in one market as collateral for loans needed to cover obligations in the other market.

7. Consumer—Related Definitions: "Consumer Debtor"; "Consumer Goods"; "Consumer-goods transaction"; "Consumer Obligor"; "Consumer Transaction". The definition of "consumer goods" (discussed above) is substantially the same as the definition in former section 9-109. The definitions of "consumer debtor", "consumer obligor", "consumer-goods transaction", and "consumer transaction" have been added in connection with various new (and old) consumer-related provisions and to designate certain provisions that are inapplicable in consumer transactions.

"Consumer-goods transaction" is a subset of "consumer transaction". Under each definition, both the obligation secured and the collateral must have a personal, family, or household purpose. However, "mixed" business and personal transactions also may be characterized as a consumer-goods transaction or consumer transaction. Subparagraph (A) of the definition of consumer-goods transactions and clause (i) of the definition of consumer transaction are primary purposes tests. Under these tests, it is necessary to determine the primary purpose of the obligation or obligations secured. Subparagraph (B) and clause (iii) of these definitions are satisfied if any of the collateral is consumer goods, in the case of a consumer-goods transaction, or "is held or acquired primarily for personal, family, or household purposes", in the case of a consumer transaction. The fact that some of the obligations secured or some of the collateral for the obligation does not satisfy the tests (e.g., some of the collateral is acquired for a business purpose) does not prevent a transaction from being a "consumer transaction" or "consumer-goods transaction".

8. Filing—Related Definitions: "Continuation Statement"; "File Number"; "Filing Office"; "Filing-Office Rule"; "Financing Statement"; "Fixture Filing"; "Manufactured-Home Transaction"; "New Debtor"; "Original Debtor"; "Public-Finance Transaction"; "Termination Statement"; "Transmitting Utility". These definitions are used exclusively or primarily in the filing-related provisions in part 5. Most are self-explanatory and are discussed in the comments to part 5. A financing statement filed in a manufactured-home transaction or a public-finance transaction may remain effective for 30 years instead of the 5 years applicable to other financing statements. See section 9-515(b). The definitions relating to medium neutrality also are significant for the filing provisions. See comment 9.

The definition of "transmitting utility" has been revised to embrace the business of transmitting communications generally to take account of new and future types of communications technology. The term designates a special class of debtors for whom separate filing rules are provided in part 5, thereby obviating the many local fixture filings that would be necessary under the rules of section 9-501 for a far-flung public-utility debtor. A transmitting utility will not necessarily be regulated by or operating as such in a jurisdiction where fixtures are located. For example, a utility might own transmission lines in a jurisdiction, although the utility generates no power and has no customers in the jurisdiction.

9. Definitions Relating to Medium Neutrality.

a. **"Record".** In many, but not all, instances, the term "record" replaces the term "writing" and "written". A "record" includes information that is in intangible form (e.g., electronically stored) as well as tangible form (e.g., written on paper). Given the rapid development and commercial adoption of modern communication and storage technologies, requirements that documents or communications be "written", "in writing", or otherwise in tangible form do not necessarily reflect or aid commercial practices.

A "record" need not be permanent or indestructible, but the term does not include any oral or other communication that is not stored or preserved by any means. The information must be stored on paper or in some other medium. Information that has not been retained other than through human memory does not qualify as a record. Examples of current technologies commercially used to communicate or store information include, but are not limited to, magnetic media, optical discs, digital voice messaging systems, electronic mail, audio tapes, and photographic media, as well as paper. "Record" is an inclusive term that includes all of these methods of storing or communicating information. Any "writing" is a record. A record may be authenticated. See comment 9(b). A record may be created without the knowledge or intent of a particular person.

Like the terms "written" or "in writing", the term "record" does not establish the purposes, permitted uses, or legal effect that a record may have under any particular provision of law. Whatever is filed in the article 9 filing system, including financing statements, continuation statements, and termination statements, whether transmitted in tangible or intangible form, would fall within the definition. However, in some instances,

statutes or filing-office rules may require that a paper record be filed. In such cases, even if this article permits the filing of an electronic record, compliance with those statutes or rules is necessary. Similarly, a filer must comply with a statute or rule that requires a particular type of encoding or formatting for an electronic record.

This article sometimes uses the terms “for record”, “of record”, “record or legal title”, and “record owner”. Some of these are terms traditionally used in real property law. The definition of “record” in this article now explicitly excepts these usages from the defined term. Also, this article refers to a record that is filed or recorded in real property recording systems to record a mortgage as a “record of a mortgage”. This usage recognizes that the defined term “mortgage” means an interest in real property; it does not mean the record that evidences, or is filed or recorded with respect to, the mortgage.

b. **“Authenticate”; “Communicate”; “Send”.** The terms “authenticate” and “authenticated” generally replace “sign” and “signed”. “Authenticated” replaces and broadens the definition of “signed”, in section 1-201, to encompass authentication of all records, not just writings. (References to authentication of, e.g., an agreement, demand, or notification mean, of course, authentication of a record containing an agreement, demand, or notification.) The terms “communicate” and “send” also contemplate the possibility of communication by nonwritten media. These definitions include the act of transmitting both tangible and intangible records. The definition of “send” replaces, for purposes of this article, the corresponding term in section 1-201. The reference to “usual means of communication” in that definition contemplates an inquiry into the appropriateness of the method of transmission used in the particular circumstances involved.

10. Scope—Related Definitions.

a. **Expanded Scope of Article: “Agricultural Lien”; “Consignment”; “Payment Intangible”; “Promissory Note”.** These new definitions reflect the expanded scope of article 9, as provided in section 9-109(a).

b. **Reduced Scope of Exclusions: “Governmental Unit”; “Health-Care-Insurance Receivable”; “Commercial Tort Claims”.** These new definitions reflect the reduced scope of the exclusions, provided in section 9-109(c) and (d), of transfers by governmental debtors and assignments of interests in insurance policies and commercial tort claims.

11. **Choice-of-Law—Related Definitions: “Certificate of Title”; “Governmental Unit”; “Jurisdiction of Organization”; “Registered Organization”; “State”.** These new definitions reflect the changes in the law governing perfection and priority of security interests and agricultural liens provided in part 3, subpart 1.

Not every organization that may provide information about itself in the public records is a “registered organization”. For example, a general partnership is not a “registered organization”, even if it files a statement of partnership authority under section 303 of the Uniform Partnership Act (1994) or an assumed name (“dba”) certificate. This is because the state under whose law the partnership is organized is not required to maintain a public record showing that the partnership has been organized. In contrast, corporations, limited liability companies, and limited partnerships are “registered organizations”.

12. **Deposit-Account—Related Definitions: “Deposit Account”; “Bank”.** The revised definition of “deposit account” incorporates the definition of “bank”, which is new. The definition derives from the definitions of “bank” in sections 4-105(1) and 4A-105(a)(2), which focus on whether the organization is “engaged in the business of banking”.

Deposit accounts evidenced by article 9 “instruments” are excluded from the term “deposit account”. In contrast, former section 9-105 excluded from the former definition “an account evidenced by a certificate of deposit”. The revised definition clarifies the proper treatment of nonnegotiable or uncertificated certificates of deposit. Under the definition, an uncertificated certificate of deposit would be a deposit account (assuming there is no writing evidencing the bank’s obligation to pay) whereas a nonnegotiable certificate of deposit would be a depos-

it account only if it is not an “instrument” as defined in this section (a question that turns on whether the nonnegotiable certificate of deposit is “of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment”).

A deposit account evidenced by an instrument is subject to the rules applicable to instruments generally. As a consequence, a security interest in such an instrument cannot be perfected by “control” (see section 9-104), and the special priority rules applicable to deposit accounts (see sections 9-327 and 9-340) do not apply.

The term “deposit account” does not include “investment property”, such as securities and security entitlements. Thus, the term also does not include shares in a money-market mutual fund, even if the shares are redeemable by check.

13. **Proceeds—Related Definitions: “Cash Proceeds”; “Non-cash Proceeds”; “Proceeds”.** The revised definition of “proceeds” expands the definition beyond that contained in former section 9-306 and resolves ambiguities in the former section.

a. **Distributions on Account of Collateral.** The phrase “whatever is collected on, or distributed on account of, collateral”, in subparagraph (B), is broad enough to cover cash or stock dividends distributed on account of securities or other investment property that is original collateral. Compare former section 9-306 (“Any payments or distributions made with respect to investment property collateral are proceeds”). This section rejects the holding of *Hastie v. FDIC*, 2 F.3d 1042 (10th Cir. 1993) (postpetition cash dividends on stock subject to a prepetition pledge are not “proceeds” under Bankruptcy Code section 552(b)), to the extent the holding relies on the article 9 definition of “proceeds”.

b. **Distributions on Account of Supporting Obligations.** Under subparagraph (B), collections on and distributions on account of collateral consisting of various credit-support arrangements (“supporting obligations”, as defined in section 9-102) also are proceeds. Consequently, they are afforded treatment identical to proceeds collected from or distributed by the obligor on the underlying (supported) right to payment or other collateral. Proceeds of supporting obligations also are proceeds of the underlying rights to payment or other collateral.

c. **Proceeds of Proceeds.** The definition of “proceeds” no longer provides that proceeds of proceeds are themselves proceeds. That idea is expressed in the revised definition of “collateral” in section 9-102. No change in meaning is intended.

d. **Proceeds Received by Person Who Did Not Create Security Interest.** When collateral is sold subject to a security interest and the buyer then resells the collateral, a question arose under former article 9 concerning whether the “debtor” had “received” what the buyer received on resale and, therefore, whether those receipts were “proceeds” under former section 9-306(2). This article contains no requirement that property be “received” by the debtor for the property to qualify as proceeds. It is necessary only that the property be traceable, directly or indirectly, to the original collateral.

e. **Cash Proceeds and Noncash Proceeds.** The definition of “cash proceeds” is substantially the same as the corresponding definition in former section 9-306. The phrase “and the like” covers property that is functionally equivalent to “money, checks, or deposit accounts”, such as some money market accounts that are securities or part of securities entitlements. Proceeds other than cash proceeds are noncash proceeds.

14. **Consignment—Related Definitions: “Consignee”; “Consignment”; “Consignor”.** The definition of “consignment” excludes, in subparagraphs (B) and (C), transactions for which filing would be inappropriate or of insufficient benefit to justify the costs. A consignment excluded from the application of this article by one of those subparagraphs may still be a true consignment; however, it is governed by nonarticle 9 law. The definition also excludes, in subparagraph (D), what have been called “consignments intended for security”. These “consignments” are not bailments but secured transactions. Accordingly, all of article 9 applies to them. See sections 1-201(b)(35) and 9-109(a)(1). The “consignor” is the person who delivers goods to the “consignee” in a consignment.

The definition of “consignment” requires that the goods be delivered “to a merchant for the purpose of sale”. If the goods are delivered for another purpose as well, such as milling or processing, the transaction is a consignment nonetheless because a purpose of the delivery is “sale”. On the other hand, if a merchant-processor-bailee will not be selling the goods itself but will be delivering to buyers to which the owner-bailor agreed to sell the goods, the transaction would not be a consignment.

15. “**Accounting**”. This definition describes the record and information that a debtor is entitled to request under section 9-210.

16. “**Document**”. The definition of “document” incorporates both tangible and electronic documents of title. See section 1-201(b)(16) and comment 16.

17. “**Encumbrance**”; “**Mortgage**”. The definitions of “encumbrance” and “mortgage” are unchanged in substance from the corresponding definitions in former section 9-105. They are used primarily in the special real-property-related priority and other provisions relating to crops, fixtures, and accessions.

18. “**Fixtures**”. This definition is unchanged in substance from the corresponding definition in former section 9-313. See section 9-334 (priority of security interests in fixtures and crops).

19. “**Good Faith**”. This article expands the definition of “good faith” to include “the observance of reasonable commercial standards of fair dealing”. The definition in this section applies when the term is used in this article, and the same concept applies in the context of this article for purposes of the obligation of good faith imposed by section 1-203. See subsection (c).

20. “**Lien Creditor**”. This definition is unchanged in substance from the corresponding definition in former section 9-301.

21. “**New Value**”. This article deletes former section 9-108. Its broad formulation of new value, which embraced the taking of after-acquired collateral for a pre-existing claim, was unnecessary, counterintuitive, and ineffective for its original purpose of sheltering after-acquired collateral from attack as a voidable preference in bankruptcy. The new definition derives from Bankruptcy Code section 547(a). The term is used with respect to temporary perfection of security interests in instruments,

certificated securities, or negotiable documents under section 9-312(e) and with respect to chattel paper priority in section 9-330.

22. “**Person Related To**”. Section 9-615 provides a special method for calculating a deficiency or surplus when “the secured party, a person related to the secured party, or a secondary obligor” acquires the collateral at a foreclosure disposition. Separate definitions of the term are provided with respect to an individual secured party and with respect to a secured party that is an organization. The definitions are patterned on the corresponding definition in section 1.301(32) of the Uniform Consumer Credit Code (1974).

23. “**Proposal**”. This definition describes a record that is sufficient to propose to retain collateral in full or partial satisfaction of a secured obligation. See sections 9-620, 9-621, and 9-622.

24. “**Pursuant to Commitment**”. This definition is unchanged in substance from the corresponding definition in former section 9-105. It is used in connection with special priority rules applicable to future advances. See section 9-323.

25. “**Software**”. The definition of “software” is used in connection with the priority rules applicable to purchase-money security interests. See sections 9-103 and 9-324. Software, like a payment intangible, is a type of general intangible for purposes of this article. See comment 4(a), above, regarding the distinction between “goods” and “software”.

26. **Terminology: “Assignment” and “Transfer”**. In numerous provisions, this article refers to the “assignment” or the “transfer” of property interests. These terms and their derivatives are not defined. This article generally follows common usage by using the terms “assignment” and “assign” to refer to transfers of rights to payment, claims, and liens and other security interests. It generally uses the term “transfer” to refer to other transfers of interests in property. Except when used in connection with a letter-of-credit transaction (see section 9-107, comment 4), no significance should be placed on the use of one term or the other. Depending on the context, each term may refer to the assignment or transfer of an outright ownership interest or to the assignment or transfer of a limited interest, such as a security interest.

Part 2

EFFECTIVENESS OF SECURITY AGREEMENT; ATTACHMENT OF SECURITY INTEREST; RIGHTS OF PARTIES TO SECURITY AGREEMENT

Subpart 1

EFFECTIVENESS AND ATTACHMENT

9-203 Attachment and enforceability of security interest; proceeds; supporting obligations; formal requisites.

(a) A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment.

(b) Except as otherwise provided in subsections (c) through (i), a security interest is enforceable against the debtor and third parties with respect to the collateral only if:

- (1) value has been given;
- (2) the debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and
- (3) one of the following conditions is met:

(A) the debtor has authenticated a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;

(B) the collateral is not a certificated security and is in the possession of the secured party under section 9-313 pursuant to the debtor's security agreement;

(C) the collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under section 8-301 pursuant to the debtor's security agreement; or

(D) the collateral is deposit accounts, electronic chattel paper, investment property, letter-of-credit rights, or electronic documents, and the secured party has control under section 7-106, 9-104, 9-105, 9-106, or 9-107 pursuant to the debtor's security agreement.

(c) Subsection (b) is subject to section 4-210 on the security interest of a collecting bank, section 5-118 on the security interest of a letter-of-credit issuer or nominated person, section 9-110 on a security interest arising under article 2 or 2A, and section 9-206 on security interests in investment property.

(d) A person becomes bound as debtor by a security agreement entered into by another person if, by operation of law other than this article or by contract:

(1) the security agreement becomes effective to create a security interest in the person's property; or

(2) the person becomes generally obligated for the obligations of the other person, including the obligation secured under the security agreement, and acquires or succeeds to all or substantially all of the assets of the other person.

(e) If a new debtor becomes bound as debtor by a security agreement entered into by another person:

(1) the agreement satisfies subdivision (b)(3) with respect to existing or after-acquired property of the new debtor to the extent the property is described in the agreement; and

(2) another agreement is not necessary to make a security interest in the property enforceable.

(f) The attachment of a security interest in collateral gives the secured party the rights to proceeds provided by section 9-315 and is also attachment of a security interest in a supporting obligation for the collateral.

(g) The attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage, or other lien.

(h) The attachment of a security interest in a securities account is also attachment of a security interest in the security entitlements carried in the securities account.

(i) The attachment of a security interest in a commodity account is also attachment of a security interest in the commodity contracts carried in the commodity account.

Source: Laws 1999, LB 550, § 86; Laws 2005, LB 570, § 102.

COMMENT

1. **Source.** Former sections 9-115(2) and (6) and 9-203.

2. **Creation, Attachment, and Enforceability.** Subsection (a) states the general rule that a security interest attaches to collat-

eral only when it becomes enforceable against the debtor. Subsection (b) specifies the circumstances under which a security interest becomes enforceable. Subsection (b) states three basic prerequisites to the existence of a security interest: Value (paragraph (1)), rights or power to transfer rights in collateral (paragraph (2)), and agreement plus satisfaction of an evidentiary requirement (paragraph (3)). When all of these elements exist, a security interest becomes enforceable between the parties and attaches under subsection (a). Subsection (c) identifies certain exceptions to the general rule of subsection (b).

3. Security Agreement; Authentication. Under subsection (b)(3), enforceability requires the debtor's security agreement and compliance with an evidentiary requirement in the nature of a statute of frauds. Paragraph (3)(A) represents the most basic of the evidentiary alternatives, under which the debtor must authenticate a security agreement that provides a description of the collateral. Under section 9-102, a "security agreement" is "an agreement that creates or provides for a security interest". Neither that definition nor the requirement of paragraph (3)(A) rejects the deeply rooted doctrine that a bill of sale, although absolute in form, may be shown in fact to have been given as security. Under this article, as under prior law, a debtor may show by parol evidence that a transfer purporting to be absolute was in fact for security. Similarly, a self-styled "lease" may serve as a security agreement if the agreement creates a security interest. See section 1-201(37) (distinguishing security interest from lease).

4. Possession, Delivery, or Control Pursuant to Security Agreement. The other alternatives in subsection (b)(3) dispense with the requirement of an authenticated security agreement and provide alternative evidentiary tests. Under paragraph (3)(B), the secured party's possession substitutes for the debtor's authentication under paragraph (3)(A) if the secured party's possession is "pursuant to the debtor's security agreement". That phrase refers to the debtor's agreement to the secured party's possession for the purpose of creating a security interest. The phrase should not be confused with the phrase "debtor has authenticated a security agreement", used in paragraph (3)(A), which contemplates the debtor's authentication of a record. In the unlikely event that possession is obtained without the debtor's agreement, possession would not suffice as a substitute for an authenticated security agreement. However, once the security interest has become enforceable and has attached, it is not impaired by the fact that the secured party's possession is maintained without the agreement of a subsequent debtor (e.g., a transferee). Possession as contemplated by section 9-313 is possession for purposes of subsection (b)(3)(B), even though it may not constitute possession "pursuant to the debtor's agreement" and consequently might not serve as a substitute for an authenticated security agreement under subsection (b)(3)(A). Subsection (b)(3)(C) provides that delivery of a certificated security to the secured party under section 8-301 pursuant to the debtor's security agreement is sufficient as a substitute for an authenticated security agreement. Similarly, under subsection (b)(3)(D), control of investment property, a deposit account, electronic chattel paper, a letter-of-credit right, or electronic documents satisfies the evidentiary test if control is pursuant to the debtor's security agreement.

5. Collateral Covered by Other Statute or Treaty. One evidentiary purpose of the formal requisites stated in subsection (b) is to minimize the possibility of future disputes as to the terms of a security agreement (e.g., as to the property that stands as collateral for the obligation secured). One should distinguish the evidentiary functions of the formal requisites of attachment and enforceability (such as the requirement that a security agreement contain a description of the collateral) from the more limited goals of "notice filing" for financing statements under part 5, explained in section 9-502, comment 2. When perfection is achieved by compliance with the requirements of a statute or treaty described in section 9-311(a), such as a federal recording act or a certificate-of-title statute, the manner of describing the collateral in a registry imposed by the statute or treaty may or

may not be adequate for purposes of this section and section 9-108. However, the description contained in the security agreement, not the description in a public registry or on a certificate of title, controls for purposes of this section.

6. Debtor's Rights; Debtor's Power to Transfer Rights. Subsection (b)(2) conditions attachment on the debtor's having "rights in the collateral or the power to transfer rights in the collateral to a secured party". A debtor's limited rights in collateral, short of full ownership, are sufficient for a security interest to attach. However, in accordance with basic personal property conveyancing principles, the baseline rule is that a security interest attaches only to whatever rights a debtor may have, broad or limited as those rights may be.

Certain exceptions to the baseline rule enable a debtor to transfer, and a security interest to attach to, greater rights than the debtor has. See part 3, subpart 3 (priority rules). The phrase, "or the power to transfer rights in the collateral to a secured party", accommodates those exceptions. In some cases, a debtor may have power to transfer another person's rights only to a class of transferees that excludes secured parties. See, e.g., section 2-403(2) (giving certain merchants power to transfer an entruster's rights to a buyer in ordinary course of business). Under those circumstances, the debtor would not have the power to create a security interest in the other person's rights, and the condition in subsection (b)(2) would not be satisfied.

7. New Debtors. Subsection (e) makes clear that the enforceability requirements of subsection (b)(3) are met when a new debtor becomes bound under an original debtor's security agreement. If a new debtor becomes bound as debtor by a security agreement entered into by another person, the security agreement satisfies the requirement of subsection (b)(3) as to the existing and after-acquired property of the new debtor to the extent the property is described in the agreement.

Subsection (d) explains when a new debtor becomes bound. Persons who become bound under paragraph (2) are limited to those who both become primarily liable for the original debtor's obligations and succeed to (or acquire) its assets. Thus, the paragraph excludes sureties and other secondary obligors as well as persons who become obligated through veil piercing and other nonsuccessorship doctrines. In many cases, paragraph (2) will exclude successors to the assets and liabilities of a division of a debtor. See also section 9-508, comment 3.

8. Supporting Obligations. Under subsection (f), a security interest in a "supporting obligation" (defined in section 9-102) automatically follows from a security interest in the underlying, supported collateral. This result was implicit under former article 9. Implicit in subsection (f) is the principle that the secured party's interest in a supporting obligation extends to the supporting obligation only to the extent that it supports the collateral in which the secured party has a security interest. Complex issues may arise, however, if a supporting obligation supports many separate obligations of a particular account debtor and if the supported obligations are separately assigned as security to several secured parties. The problems may be exacerbated if a supporting obligation is limited to an aggregate amount that is less than the aggregate amount of the obligations it supports. This article does not contain provisions dealing with competing claims to a limited supporting obligation. As under former article 9, the law of suretyship and the agreements of the parties will control.

9. Collateral Follows Right to Payment or Performance. Subsection (g) codifies the common-law rule that a transfer of an obligation secured by a security interest or other lien on personal or real property also transfers the security interest or lien. See Restatement (3d), Property (Mortgages) section 5.4(a) (1997). See also section 9-308(e) (analogous rule for perfection).

10. Investment Property. Subsections (h) and (i) make clear that attachment of a security interest in a securities account or commodity account is also attachment in security entitlements or commodity contracts carried in the accounts.

Subpart 2

RIGHTS AND DUTIES

9-207 Rights and duties of secured party having possession or control of collateral.

(a) Except as otherwise provided in subsection (d), a secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession. In the case of chattel paper or an instrument, reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

(b) Except as otherwise provided in subsection (d), if a secured party has possession of collateral:

(1) reasonable expenses, including the cost of insurance and payment of taxes or other charges, incurred in the custody, preservation, use, or operation of the collateral are chargeable to the debtor and are secured by the collateral;

(2) the risk of accidental loss or damage is on the debtor to the extent of a deficiency in any effective insurance coverage;

(3) the secured party shall keep the collateral identifiable, but fungible collateral may be commingled; and

(4) the secured party may use or operate the collateral:

(A) for the purpose of preserving the collateral or its value;

(B) as permitted by an order of a court having competent jurisdiction; or

(C) except in the case of consumer goods, in the manner and to the extent agreed by the debtor.

(c) Except as otherwise provided in subsection (d), a secured party having possession of collateral or control of collateral under section 7-106, 9-104, 9-105, 9-106, or 9-107:

(1) may hold as additional security any proceeds, except money or funds, received from the collateral;

(2) shall apply money or funds received from the collateral to reduce the secured obligation, unless remitted to the debtor; and

(3) may create a security interest in the collateral.

(d) If the secured party is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor:

(1) subsection (a) does not apply unless the secured party is entitled under an agreement:

(A) to charge back uncollected collateral; or

(B) otherwise to full or limited recourse against the debtor or a secondary obligor based on the nonpayment or other default of an account debtor or other obligor on the collateral; and

(2) subsections (b) and (c) do not apply.

Source: Laws 1999, LB 550, § 90; Laws 2005, LB 570, § 103.

9-208 Additional duties of secured party having control of collateral.

(a) This section applies to cases in which there is no outstanding secured obligation and the secured party is not committed to make advances, incur obligations, or otherwise give value.

(b) Within ten days after receiving an authenticated demand by the debtor:

(1) a secured party having control of a deposit account under section 9-104(a)(2) shall send to the bank with which the deposit account is maintained an authenticated statement that releases the bank from any further obligation to comply with instructions originated by the secured party;

(2) a secured party having control of a deposit account under section 9-104(a)(3) shall:

(A) pay the debtor the balance on deposit in the deposit account; or

(B) transfer the balance on deposit into a deposit account in the debtor's name;

(3) a secured party, other than a buyer, having control of electronic chattel paper under section 9-105 shall:

(A) communicate the authoritative copy of the electronic chattel paper to the debtor or its designated custodian;

(B) if the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic chattel paper is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

(C) take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party;

(4) a secured party having control of investment property under section 8-106(d)(2) or 9-106(b) shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is maintained an authenticated record that releases the securities intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party;

(5) a secured party having control of a letter-of-credit right under section 9-107 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party an authenticated release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party; and

(6) a secured party having control of an electronic document shall:

(A) give control of the electronic document to the debtor or its designated custodian;

(B) if the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic document is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

(C) take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an

identified assignee of the authoritative copy without the consent of the secured party.

Source: Laws 1999, LB 550, § 91; Laws 2005, LB 570, § 104.

COMMENT

1. **Source.** New.

2. **Scope and Purpose.** This section imposes duties on a secured party who has control of a deposit account, electronic chattel paper, investment property, a letter-of-credit right, or electronic documents of title. The duty to terminate the secured party's control is analogous to the duty to file a termination statement, imposed by section 9-513. Under subsection (a), it applies only when there is no outstanding secured obligation and the secured party is not committed to give value. The requirements of this section can be varied by agreement under section 1-102(3). For example, a debtor could by contract agree that the secured party may comply with subsection (b) by releasing control more than 10 days after demand. Also, duties under this section should not be read to conflict with the terms of the collateral itself. For example, if the collateral is a time deposit account, subsection (b)(2) should not require a secured party with control to make an early withdrawal of the funds

(assuming that were possible) in order to pay them over to the debtor or put them in an account in the debtor's name.

3. **Remedy for Failure to Relinquish Control.** If a secured party fails to comply with the requirements of subsection (b), the debtor has the remedy set forth in section 9-625(e). This remedy is identical to that applicable to failure to provide or file a termination statement under section 9-513.

4. **Duty to Relinquish Possession.** Although section 9-207 addresses directly the duties of a secured party in possession of collateral, that section does not require the secured party to relinquish possession when the secured party ceases to hold a security interest. Under common law, absent agreement to the contrary, the failure to relinquish possession of collateral upon satisfaction of the secured obligation would constitute a conversion. Inasmuch as problems apparently have not surfaced in the absence of statutory duties under former article 9 and the common-law duty appears to have been sufficient, this article does not impose a statutory duty to relinquish possession.

Part 3

PERFECTION AND PRIORITY

Subpart 1

LAW GOVERNING PERFECTION AND PRIORITY

9-301 Law governing perfection and priority of security interests.

Except as otherwise provided in sections 9-303 to 9-306, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

(1) Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral.

(2) While collateral is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a possessory security interest in that collateral.

(3) Except as otherwise provided in subdivision (4), while tangible negotiable documents, goods, instruments, money, or tangible chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:

(A) perfection of a security interest in the goods by filing a fixture filing;

(B) perfection of a security interest in timber to be cut; and

(C) the effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral.

(4) The local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-extracted collateral.

Source: Laws 1999, LB 550, § 94; Laws 2005, LB 570, § 105.

COMMENT

1. **Source.** Former sections 9-103(1)(a) and (b), 9-103(3)(a) and (b), and 9-103(5), substantially modified.

2. **Scope of this Subpart.** Part 3, subpart 1 (sections 9-301 through 9-307) contains choice of law rules similar to those of former section 9-103. Former section 9-103 generally addresses which state's law governs "perfection and the effect of perfection or nonperfection of" security interests. See, e.g., former section 9-103(1)(b). This article follows the broader and more precise formulation in former section 9-103(6)(b), which was revised in connection with the promulgation of revised article 8 in 1994: "Perfection, the effect of perfection or nonperfection, and the priority of" security interests. Priority, in this context, subsumes all of the rules in part 3, including "cut off" or "take free" rules such as sections 9-317(b), (c), and (d), 9-320(a), (b), and (d), and 9-332. This subpart does not address choice of law for other purposes. For example, the law applicable to issues such as attachment, validity, characterization (e.g., true lease or security interest), and enforcement is governed by the rules in section 1-105; that governing law typically is specified in the same agreement that contains the security agreement. And, another jurisdiction's law may govern other third-party matters addressed in this article. See section 9-401, comment 3.

3. **Scope of Referral.** In designating the jurisdiction whose law governs, this article directs the court to apply only the substantive ("local") law of a particular jurisdiction and not its choice of law rules.

Example 1: Litigation over the priority of a security interest in accounts arises in State X. State X has adopted the official text of this article, which provides that priority is determined by the local law of the jurisdiction in which the debtor is located. See section 9-301(1). The debtor is located in State Y. Even if State Y has retained former article 9 or enacted a nonuniform choice of law rule (e.g., one that provides that perfection is governed by the law of State Z), a State X court should look only to the substantive law of State Y and disregard State Y's choice of law rule. State Y's substantive law (e.g., its section 9-501) provides that financing statements should be filed in a filing office in State Y. Note, however, that if the identical perfection issue were to be litigated in State Y, the court would look to State Y's former section 9-103 or nonuniform section 9-301 and conclude that a filing in State Y is ineffective.

Example 2: In the preceding example, assume that State X has adopted the official text of this article, and State Y has adopted a nonuniform section 9-301(1) under which perfection is governed by the whole law of State X, including its choice of law rules. If litigation occurs in State X, the court should look to the substantive law of State Y, which provides that financing statements are to be filed in a filing office in State Y. If litigation occurs in State Y, the court should look to the law of State X, whose choice of law rule requires that the court apply the substantive law of State Y. Thus, regardless of the jurisdiction in which the litigation arises, the financing statement should be filed in State Y.

4. **Law Governing Perfection: General Rule.** Paragraph (1) contains the general rule: The law governing perfection of security interests in both tangible and intangible collateral, whether perfected by filing or automatically, is the law of the jurisdiction of the debtor's location, as determined under section 9-307.

Paragraph (1) substantially simplifies the choice of law rules. Former section 9-103 contained different choice of law rules for different types of collateral. Under section 9-301(1), the law of a single jurisdiction governs perfection with respect to most types of collateral, both tangible and intangible. Paragraph (1) eliminates the need for former section 9-103(1)(c), which concerned purchase-money security interests in tangible collateral that is intended to move from one jurisdiction to the other. It is likely to reduce the frequency of cases in which the governing law changes after a financing statement is properly filed. (Presumably, debtors change their own location less frequently than they change the location of their collateral.) The approach taken in paragraph (1) also eliminates some difficult priority issues and the need to distinguish between "mobile" and "ordinary" goods,

and it reduces the number of filing offices in which secured parties must file or search when collateral is located in several jurisdictions.

5. **Law Governing Perfection: Exceptions.** The general rule is subject to several exceptions. It does not apply to goods covered by a certificate of title (see section 9-303), deposit accounts (see section 9-304), investment property (see section 9-305), or letter-of-credit rights (see section 9-306). Nor does it apply to possessory security interests, i.e., security interests that the secured party has perfected by taking possession of the collateral (see paragraph (2)), security interests perfected by filing a fixture filing (see subparagraph (3)(A)), security interests in timber to be cut (subparagraph (3)(B)), or security interests in as-extracted collateral (see paragraph (4)).

a. **Possessory Security Interests.** Paragraph (2) applies to possessory security interests and provides that perfection is governed by the local law of the jurisdiction in which the collateral is located. This is the rule of former section 9-103(1)(b), except paragraph (2) eliminates the troublesome "last event" test of former law.

The distinction between nonpossessory and possessory security interests creates the potential for the same jurisdiction to apply two different choice of law rules to determine perfection in the same collateral. For example, were a secured party in possession of an instrument or a tangible document to relinquish possession in reliance on temporary perfection, the applicable law immediately would change from that of the location of the collateral to that of the location of the debtor. The applicability of two different choice of law rules for perfection is unlikely to lead to any material practical problems. The perfection rules of one article 9 jurisdiction are likely to be identical to those of another. Moreover, under paragraph (3), the relative priority of competing security interests in tangible collateral is resolved by reference to the law of the jurisdiction in which the collateral is located, regardless of how the security interests are perfected.

b. **Fixtures.** Application of the general rule in paragraph (1) to perfection of a security interest in fixtures would yield strange results. For example, perfection of a security interest in fixtures located in Arizona and owned by a Delaware corporation would be governed by the law of Delaware. Although Delaware law would send one to a filing office in Arizona for the place to file a financing statement as a fixture filing, see section 9-501, Delaware law would not take account of local, nonuniform, real property filing and recording requirements that Arizona law might impose. For this reason, paragraph (3)(A) contains a special rule for security interests perfected by a fixture filing; the law of the jurisdiction in which the fixtures are located governs perfection, including the formal requisites of a fixture filing. Under paragraph (3)(C), the same law governs priority. Fixtures are "goods" as defined in section 9-102.

c. **Timber to Be Cut.** Application of the general rule in paragraph (1) to perfection of a security interest in timber to be cut would yield undesirable results analogous to those described with respect to fixtures. Paragraph (3)(B) adopts a similar solution: Perfection is governed by the law of the jurisdiction in which the timber is located. As with fixtures, under paragraph (3)(C), the same law governs priority. Timber to be cut also is "goods" as defined in section 9-102.

Paragraph (3)(B) applies only to "timber to be cut", not to timber that has been cut. Consequently, once the timber is cut, the general choice of law rule in paragraph (1) becomes applicable. To ensure continued perfection, a secured party should file in both the jurisdiction in which the timber to be cut is located and in the state where the debtor is located. The former filing would be with the office in which a real property mortgage would be filed, and the latter would be a central filing. See section 9-501.

d. **As-Extracted Collateral.** Paragraph (4) adopts the rule of former section 9-103(5) with respect to certain security interests in minerals and related accounts. Like security interests in fixtures perfected by filing a fixture filing, security interests in

minerals that are as-extracted collateral are perfected by filing in the office designated for the filing or recording of a mortgage on the real property. For the same reasons, the law governing perfection and priority is the law of the jurisdiction in which the wellhead or minehead is located.

6. **Change in Law Governing Perfection.** When the debtor changes its location to another jurisdiction, the jurisdiction whose law governs perfection under paragraph (1) changes, as well. Similarly, the law governing perfection of a possessory security interest in collateral under paragraph (2) changes when the collateral is removed to another jurisdiction. Nevertheless, these changes will not result in an immediate loss of perfection. See section 9-316(a) and (b).

7. **Law Governing Effect of Perfection and Priority: Goods, Documents, Instruments, Money, Negotiable Documents, and Tangible Chattel Paper.** Under former section 9-103, the law of a single jurisdiction governed both questions of perfection and those of priority. This article generally adopts that approach. See paragraph (1). But the approach may create problems if the debtor and collateral are located in different jurisdictions. For example, assume a security interest in equipment located in Pennsylvania is perfected by filing in Illinois, where the debtor is located. If the law of the jurisdiction in which the debtor is located were to govern priority, then the priority of an execution lien on goods located in Pennsylvania would be governed by rules enacted by the Illinois legislature.

To address this problem, paragraph (3)(C) divorces questions of perfection from questions of “the effect of perfection or nonperfection and the priority of a security interest”. Under paragraph (3)(C), the rights of competing claimants to tangible collateral are resolved by reference to the law of the jurisdiction in which the collateral is located. A similar bifurcation applied to security interests in investment property under former section 9-103(6). See section 9-305.

Paragraph (3)(C) applies the law of the situs to determine priority only with respect to goods (including fixtures), instruments, money, tangible negotiable documents, and tangible chattel paper. Compare former section 9-103(1), which applied

the law of the location of the collateral to documents, instruments, and “ordinary” (as opposed to “mobile”) goods. This article does not distinguish among types of goods. The ordinary/mobile goods distinction appears to address concerns about where to file and search, rather than concerns about priority. There is no reason to preserve this distinction under the bifurcated approach.

Particularly serious confusion may arise when the choice of law rules of a given jurisdiction result in each of two competing security interests in the same collateral being governed by a different priority rule. The potential for this confusion existed under former section 9-103(4) with respect to chattel paper: Perfection by possession was governed by the law of the location of the paper, whereas perfection by filing was governed by the law of the location of the debtor. Consider the mess that would have been created if the language or interpretation of former section 9-308 were to differ in the two relevant states, or if one of the relevant jurisdictions (e.g., a foreign country) had not adopted article 9. The potential for confusion could have been exacerbated when a secured party perfected both by taking possession in the state where the collateral is located (State A) and by filing in the state where the debtor is located (State B)—a common practice for some chattel paper financiers. By providing that the law of the jurisdiction in which the collateral is located governs priority, paragraph (3) substantially diminishes this problem.

8. **Non-U.S. Debtors.** This article applies the same choice of law rules to all debtors, foreign and domestic. For example, it adopts the bifurcated approach for determining the law applicable to security interests in goods and other tangible collateral. See comment 5(a), above. The article contains a new rule specifying the location of non-U.S. debtors for purposes of this part. The rule appears in section 9-307 and is explained in the Reporters’ Comments following that section. Former section 9-103(3)(c), which contained a special choice of law rule governing security interests created by debtors located in a non-U.S. jurisdiction, proved unsatisfactory and was deleted.

Subpart 2

PERFECTION

9-310 When filing required to perfect security interest or agricultural lien; security interests and agricultural liens to which filing provisions do not apply.

(a) Except as otherwise provided in subsection (b) and section 9-312(b), a financing statement must be filed to perfect all security interests and agricultural liens.

(b) The filing of a financing statement is not necessary to perfect a security interest:

- (1) that is perfected under section 9-308(d), (e), (f), or (g);
- (2) that is perfected under section 9-309 when it attaches;
- (3) in property subject to a statute, regulation, or treaty described in section 9-311(a);
- (4) in goods in possession of a bailee which is perfected under section 9-312(d)(1) or (2);
- (5) in certificated securities, documents, goods, or instruments which is perfected without filing, control, or possession under section 9-312(e), (f), or (g);
- (6) in collateral in the secured party’s possession under section 9-313;
- (7) in a certificated security which is perfected by delivery of the security certificate to the secured party under section 9-313;

(8) in deposit accounts, electronic chattel paper, electronic documents, investment property, or letter-of-credit rights which is perfected by control under section 9-314;

(9) in proceeds which is perfected under section 9-315; or

(10) that is perfected under section 9-316.

(c) If a secured party assigns a perfected security interest or agricultural lien, a filing under this article is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

Source: Laws 1999, LB 550, § 103; Laws 2005, LB 570, § 106.

9-311 Perfection of security interests in property subject to certain statutes, regulations, and treaties.

(a) Except as otherwise provided in subsection (d), the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:

(1) a statute, regulation, or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt section 9-310(a);

(2) the following statutes of this state: (i) section 60-164, Reissue Revised Statutes of Nebraska, but during any period in which collateral is inventory held for sale by a person who is in the business of selling goods of that kind, the filing provisions of part 5 apply to a security interest in that collateral created by him or her as debtor; and (ii) section 37-1282, Reissue Revised Statutes of Nebraska, but during any period in which collateral is inventory held for sale by a person who is in the business of selling goods of that kind, the filing provisions of part 5 apply to a security interest in that collateral created by him or her as debtor; or

(3) a certificate-of-title statute of another jurisdiction which provides for a security interest to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property.

(b) Compliance with the requirements of a statute, regulation, or treaty described in subsection (a) for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this article. Except as otherwise provided in subsection (d) and sections 9-313 and 9-316(d) and (e) for goods covered by a certificate of title, a security interest in property subject to a statute, regulation, or treaty described in subsection (a) may be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral.

(c) Except as otherwise provided in subsection (d) and section 9-316(d) and (e), duration and renewal of perfection of a security interest perfected by compliance with the requirements prescribed by a statute, regulation, or treaty described in subsection (a) are governed by the statute, regulation, or treaty. In other respects, the security interest is subject to this article.

(d) During any period in which collateral subject to a statute specified in subdivision (a)(2) is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling goods of that

kind, this section does not apply to a security interest in that collateral created by that person.

Source: Laws 1999, LB 550, § 104; Laws 2000, LB 929, § 28; Laws 2005, LB 276, § 114.

9-312 Perfection of security interests in chattel paper, deposit accounts, documents, goods covered by documents, instruments, investment property, letter-of-credit rights, and money; perfection by permissive filing; temporary perfection without filing or transfer of possession.

(a) A security interest in chattel paper, negotiable documents, instruments, or investment property may be perfected by filing.

(b) Except as otherwise provided in section 9-315(c) and (d) for proceeds:

(1) a security interest in a deposit account may be perfected only by control under section 9-314;

(2) and except as otherwise provided in section 9-308(d), a security interest in a letter-of-credit right may be perfected only by control under section 9-314; and

(3) a security interest in money may be perfected only by the secured party's taking possession under section 9-313.

(c) While goods are in the possession of a bailee that has issued a negotiable document covering the goods:

(1) a security interest in the goods may be perfected by perfecting a security interest in the document; and

(2) a security interest perfected in the document has priority over any security interest that becomes perfected in the goods by another method during that time.

(d) While goods are in the possession of a bailee that has issued a nonnegotiable document covering the goods, a security interest in the goods may be perfected by:

(1) issuance of a document in the name of the secured party;

(2) the bailee's receipt of notification of the secured party's interest; or

(3) filing as to the goods.

(e) A security interest in certificated securities, negotiable documents, or instruments is perfected without filing or the taking of possession or control for a period of twenty days from the time it attaches to the extent that it arises for new value given under an authenticated security agreement.

(f) A perfected security interest in a negotiable document or goods in possession of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for twenty days without filing if the secured party makes available to the debtor the goods or documents representing the goods for the purpose of:

(1) ultimate sale or exchange; or

(2) loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange.

(g) A perfected security interest in a certificated security or instrument remains perfected for twenty days without filing if the secured party delivers the security certificate or instrument to the debtor for the purpose of:

- (1) ultimate sale or exchange; or
- (2) presentation, collection, enforcement, renewal, or registration of transfer.

(h) After the twenty-day period specified in subsection (e), (f), or (g) expires, perfection depends upon compliance with this article.

Source: Laws 1999, LB 550, § 105; Laws 2005, LB 570, § 107.

COMMENT

1. **Source.** Former section 9-304, with additions and some changes.

2. **Instruments.** Under subsection (a), a security interest in instruments may be perfected by filing. This rule represents an important change from former article 9, under which the secured party's taking possession of an instrument was the only method of achieving long-term perfection. The rule is likely to be particularly useful in transactions involving a large number of notes that a debtor uses as collateral but continues to collect from the makers. A security interest perfected by filing is subject to defeat by certain subsequent purchasers (including secured parties). Under section 9-330(d), purchasers for value who take possession of an instrument without knowledge that the purchase violates the rights of the secured party generally would achieve priority over a security interest in the instrument perfected by filing. In addition, section 9-331 provides that filing a financing statement does not constitute notice that would preclude a subsequent purchaser from becoming a holder in due course and taking free of all claims under section 3-306.

3. **Chattel Paper; Negotiable Documents.** Subsection (a) further provides that filing is available as a method of perfection for security interests in chattel paper and negotiable documents. Tangible chattel paper is sometimes delivered to the assignee, and sometimes left in the hands of the assignor for collection. Subsection (a) allows the assignee to perfect its security interest by filing in the latter case. Alternatively, the assignee may perfect by taking possession. See section 9-313(a). An assignee of electronic chattel paper may perfect by taking control. See sections 9-105 and 9-314(a). The security interest of an assignee who takes possession or control may qualify for priority over a competing security interest perfected by filing. See section 9-330.

Negotiable documents may be, and usually are, delivered to the secured party. See article 1, section 1-201 (definition of "delivery"). The secured party's taking possession of a tangible document or control of an electronic document will suffice as a perfection step. See sections 7-106, 9-313(a), and 9-314. However, as is the case with chattel paper, a security interest in a negotiable document may be perfected by filing.

4. **Investment Property.** A security interest in investment property, including certificated securities, uncertificated securities, security entitlements, and securities accounts, may be perfected by filing. However, security interests created by brokers, securities intermediaries, or commodity intermediaries are automatically perfected; filing is of no effect. See section 9-309(10) and (11). A security interest in all kinds of investment property also may be perfected by control, see sections 9-106 and 9-314, and a security interest in a certificated security also may be perfected by the secured party's taking delivery under section 8-301. See section 9-313(a). A security interest perfected only by filing is subordinate to a conflicting security interest perfected by control or delivery. See section 9-328(1) and (5). Thus, although filing is a permissible method of perfection, a secured party who perfects by filing takes the risk that the debtor has granted or will grant a security interest in the same collateral to another party who obtains control. Also, perfection by filing would not give the secured party protection against other types of adverse claims, since the article 8 adverse claim cut-off rules require control. See section 8-510.

5. **Deposit Accounts.** Under new subsection (b)(1), the only method of perfecting a security interest in a deposit account as original collateral is by control. Filing is ineffective, except as provided in section 9-315 with respect to proceeds. As explained in section 9-104, "control" can arise as a result of an agreement among the secured party, debtor, and bank, whereby the bank agrees to comply with instructions of the secured party with respect to disposition of the funds on deposit, even though the debtor retains the right to direct disposition of the funds. Thus, subsection (b)(1) takes an intermediate position between certain non-UCC law, which conditions the effectiveness of a security interest on the secured party's enjoyment of such dominion and control over the deposit account that the debtor is unable to dispose of the funds, and the approach this article takes to securities accounts, under which a secured party who is unable to reach the collateral without resort to judicial process may perfect by filing. By conditioning perfection on "control", rather than requiring the secured party to enjoy absolute dominion to the exclusion of the debtor, subsection (b)(1) permits perfection in a wide variety of transactions, including those in which the secured party actually relies on the deposit account in extending credit and maintains some meaningful dominion over it, but does not wish to deprive the debtor of access to the funds altogether.

6. **Letter-of-Credit Rights.** Letter-of-credit rights commonly are "supporting obligations", as defined in section 9-102. Perfection as to the related account, chattel paper, document, general intangible, instrument, or investment property will perfect as to the letter-of-credit rights. See section 9-308(d). Subsection (b)(2) provides that, in other cases, a security interest in a letter-of-credit right may be perfected only by control. "Control", for these purposes, is explained in section 9-107.

7. **Goods Covered by Document of Title.** Subsection (c) applies to goods in the possession of a bailee who has issued a negotiable document covering the goods. Subsection (d) applies to goods in the possession of a bailee who has issued a nonnegotiable document of title, including a document of title that is "nonnegotiable" under section 7-104. Section 9-313 governs perfection of a security interest in goods in the possession of a bailee who has not issued a document of title.

Subsection (c) clarifies the perfection and priority rules in former section 9-304(2). Consistently with the provisions of article 7, subsection (c) takes the position that, as long as a negotiable document covering goods is outstanding, title to the goods is, so to say, locked up in the document. Accordingly, a security interest in goods covered by a negotiable document may be perfected by perfecting a security interest in the document. The security interest also may be perfected by another method, e.g., by filing. The priority rule in subsection (c) governs only priority between (i) a security interest in goods which is perfected by perfecting in the document and (ii) a security interest in the goods which becomes perfected by another method while the goods are covered by the document.

Example 1: While wheat is in a grain elevator and covered by a negotiable warehouse receipt, Debtor creates a security interest in the wheat in favor of SP-1 and SP-2. SP-1 perfects by filing a financing statement covering "wheat". Thereafter, SP-2 perfects by filing a financing statement describing the warehouse receipt. Subsection (c)(1) provides that SP-2's security

interest is perfected. Subsection (c)(2) provides that SP-2's security interest is senior to SP-1's.

Example 2: The facts are as in example 1, but SP-1's security interest attached and was perfected before the goods were delivered to the grain elevator. Subsection (c)(2) does not apply, because SP-1's security interest did not become perfected during the time that the wheat was in the possession of a bailee. Rather, the first-to-file-or-perfect priority rule applies. See sections 7-503 and 9-322.

A secured party may become "a holder to whom a negotiable document of title has been duly negotiated" under section 7-501. If so, the secured party acquires the rights specified by article 7. Article 9 does not limit those rights, which may include the right to priority over an earlier-perfected security interest. See section 9-331(a).

Subsection (d) takes a different approach to the problem of goods covered by a nonnegotiable document. Here, title to the goods is not looked on as being locked up in the document, and the secured party may perfect its security interest directly in the goods by filing as to them. The subsection provides two other methods of perfection: Issuance of the document in the secured party's name (as consignee of a straight bill of lading or the person to whom delivery would be made under a nonnegotiable warehouse receipt) and receipt of notification of the secured party's interest by the bailee. Perfection under subsection (d) occurs when the bailee receives notification of the secured party's interest in the goods, regardless of who sends the notification. Receipt of notification is effective to perfect, regardless of whether the bailee responds. Unlike former section 9-304(3), from which it derives, subsection (d) does not apply to goods in the possession of a bailee who has not issued a document of title. Section 9-313(c) covers that case and provides that perfection by possession as to goods not covered by a document requires the bailee's acknowledgment.

8. Temporary Perfection Without Having First Otherwise Perfected. Subsection (e) follows former section 9-304(4) in giving perfected status to security interests in certificated securities, instruments, and negotiable documents for a short period (reduced from 21 to 20 days, which is the time period generally applicable in this article), although there has been no filing and the collateral is in the debtor's possession or control. The 20-day temporary perfection runs from the date of attachment. There is

no limitation on the purpose for which the debtor is in possession, but the secured party must have given "new value" (defined in section 9-102) under an authenticated security agreement.

9. Maintaining Perfection After Surrendering Possession. There are a variety of legitimate reasons—many of them are described in subsections (f) and (g)—why certain types of collateral must be released temporarily to a debtor. No useful purpose would be served by cluttering the files with records of such exceedingly short-term transactions.

Subsection (f) affords the possibility of 20-day perfection in negotiable documents and goods in the possession of a bailee but not covered by a negotiable document. Subsection (g) provides for 20-day perfection in certificated securities and instruments. These subsections derive from former section 9-305(5). However, the period of temporary perfection has been reduced from 21 to 20 days, which is the time period generally applicable in this article, and "enforcement" has been added in subsection (g) as one of the special and limited purposes for which a secured party can release an instrument or certificated security to the debtor and still remain perfected. The period of temporary perfection runs from the date a secured party who already has a perfected security interest turns over the collateral to the debtor. There is no new value requirement, but the turnover must be for one or more of the purposes stated in subsection (f) or (g). The 20-day period may be extended by perfecting as to the collateral by another method before the period expires. However, if the security interest is not perfected by another method until after the 20-day period expires, there will be a gap during which the security interest is unperfected.

Temporary perfection extends only to the negotiable document or goods under subsection (f) and only to the certificated security or instrument under subsection (g). It does not extend to proceeds. If the collateral is sold, the security interest will continue in the proceeds for the period specified in section 9-315.

Subsections (f) and (g) deal only with perfection. Other sections of this article govern the priority of a security interest in goods after surrender of possession or control of the document covering them. In the case of a purchase-money security interest in inventory, priority may be conditioned upon giving notification to a prior inventory financier. See section 9-324.

9-313 When possession by or delivery to secured party perfects security interest without filing.

(a) Except as otherwise provided in subsection (b), a secured party may perfect a security interest in tangible negotiable documents, goods, instruments, money, or tangible chattel paper by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under section 8-301.

(b) With respect to goods covered by a certificate of title issued by this state, a secured party may perfect a security interest in the goods by taking possession of the goods only in the circumstances described in section 9-316(d).

(c) With respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary course of the debtor's business, when:

(1) the person in possession authenticates a record acknowledging that it holds possession of the collateral for the secured party's benefit; or

(2) the person takes possession of the collateral after having authenticated a record acknowledging that it will hold possession of collateral for the secured party's benefit.

(d) If perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs no earlier than the time the secured party takes possession and continues only while the secured party retains possession.

(e) A security interest in a certificated security in registered form is perfected by delivery when delivery of the certificated security occurs under section 8-301 and remains perfected by delivery until the debtor obtains possession of the security certificate.

(f) A person in possession of collateral is not required to acknowledge that it holds possession for a secured party's benefit.

(g) If a person acknowledges that it holds possession for the secured party's benefit:

(1) the acknowledgment is effective under subsection (c) or section 8-301(a), even if the acknowledgment violates the rights of a debtor; and

(2) unless the person otherwise agrees or law other than this article otherwise provides, the person does not owe any duty to the secured party and is not required to confirm the acknowledgment to another person.

(h) A secured party having possession of collateral does not relinquish possession by delivering the collateral to a person other than the debtor or a lessee of the collateral from the debtor in the ordinary course of the debtor's business if the person was instructed before the delivery or is instructed contemporaneously with the delivery:

(1) to hold possession of the collateral for the secured party's benefit; or

(2) to redeliver the collateral to the secured party.

(i) A secured party does not relinquish possession, even if a delivery under subsection (h) violates the rights of a debtor. A person to which collateral is delivered under subsection (h) does not owe any duty to the secured party and is not required to confirm the delivery to another person unless the person otherwise agrees or law other than this article otherwise provides.

Source: Laws 1999, LB 550, § 106; Laws 2005, LB 570, § 108.

COMMENT

1. **Source.** Former sections 9-115(6) and 9-305.

2. **Perfection by Possession.** As under the common law of pledge, no filing is required by this article to perfect a security interest if the secured party takes possession of the collateral. See section 9-310(b)(6).

This section permits a security interest to be perfected by the taking of possession only when the collateral is goods, instruments, tangible negotiable documents, money, or tangible chattel paper. Accounts, commercial tort claims, deposit accounts, investment property, letter-of-credit rights, letters of credit, and oil, gas, or other minerals before extraction are excluded. (But see comment 6, below, regarding certificated securities.) A security interest in accounts and payment intangibles—property not ordinarily represented by any writing whose delivery operates to transfer the right to payment—may under this article be perfected only by filing. This rule would not be affected by the fact that a security agreement or other record described the assignment of such collateral as a “pledge”. Section 9-309(2) exempts from filing certain assignments of accounts or payment intangibles which are out of the ordinary course of financing. These exempted assignments are perfected when they attach. Similarly, under section 9-309(3), sales of payment intangibles are automatically perfected.

3. **“Possession”.** This section does not define “possession”. It adopts the general concept as it developed under former article

9. As under former article 9, in determining whether a particular person has possession, the principles of agency apply. For example, if the collateral is in possession of an agent of the secured party for the purposes of possessing on behalf of the secured party, and if the agent is not also an agent of the debtor, the secured party has taken actual possession, and subsection (c) does not apply. Sometimes a person holds collateral both as an agent of the secured party and as an agent of the debtor. The fact of dual agency is not of itself inconsistent with the secured party's having taken possession (and thereby having rendered subsection (c) inapplicable). The debtor cannot qualify as an agent for the secured party for purposes of the secured party's taking possession. And, under appropriate circumstances, a court may determine that a person in possession is so closely connected to or controlled by the debtor that the debtor has retained effective possession, even though the person may have agreed to take possession on behalf of the secured party. If so, the person's taking possession would not constitute the secured party's taking possession and would not be sufficient for perfection. See also section 9-205(b). In a typical escrow arrangement, where the escrowee has possession of collateral as agent for both the secured party and the debtor, the debtor's relationship to the escrowee is not such as to constitute retention of possession by the debtor.

4. **Goods in Possession of Third Party: Perfection.** Former section 9-305 permitted perfection of a security interest by notification to a bailee in possession of collateral. This article distinguishes between goods in the possession of a bailee who has issued a document of title covering the goods and goods in the possession of a third party who has not issued a document. Section 9-312(c) or (d) applies to the former, depending on whether the document is negotiable. Section 9-313(c) applies to the latter. It provides a method of perfection by possession when the collateral is possessed by a third person who is not the secured party's agent.

Notification of a third person does not suffice to perfect under section 9-313(c). Rather, perfection does not occur unless the third person authenticates an acknowledgment that it holds possession of the collateral for the secured party's benefit. Compare section 9-312(d), under which receipt of notification of the secured party's interest by a bailee holding goods covered by a nonnegotiable document is sufficient to perfect, even if the bailee does not acknowledge receipt of the notification. A third person may acknowledge that it will hold for the secured party's benefit goods to be received in the future. Under these circumstances, perfection by possession occurs when the third person obtains possession of the goods.

Under subsection (c), acknowledgment of notification by a "lessee ... in ... ordinary course of ... business" (defined in section 2A-103) does not suffice for possession. The section thus rejects the reasoning of *In re Atlantic Systems, Inc.*, 135 B.R. 463 (Bankr. S.D.N.Y. 1992) (holding that notification to debtor-lessee's lessee sufficed to perfect security interest in leased goods). See Steven O. Weise, *Perfection by Possession: The Need for an Objective Test*, 29 Idaho Law Rev. 705 (1992-93) (arguing that lessee's possession in ordinary course of debtor-lessee's business does not provide adequate public notice of possible security interest in leased goods). Inclusion of a per se rule concerning lessees is not meant to preclude a court, under appropriate circumstances, from determining that a third person is so closely connected to or controlled by the debtor that the debtor has retained effective possession. If so, the third person's acknowledgment would not be sufficient for perfection.

In some cases, it may be uncertain whether a person who has possession of collateral is an agent of the secured party or a nonagent bailee. Under those circumstances, prudence might suggest that the secured party obtain the person's acknowledgment to avoid litigation and ensure perfection by possession regardless of how the relationship between the secured party and the person is characterized.

5. **No Relation Back.** Former section 9-305 provided that a security interest is perfected by possession from the time possession is taken "without a relation back". As the comment to former section 9-305 observed, the relation-back theory, under which the taking of possession was deemed to relate back to the date of the original security agreement, has had little vitality since the 1938 revision of the Federal Bankruptcy Act. The theory is inconsistent with former article 9 and with this article. See section 9-313(d). Accordingly, this article deletes the quoted phrase as unnecessary. Where a pledge transaction is contemplated, perfection dates only from the time possession is taken, although a security interest may attach, unperfected. The only exceptions to this rule are the short, 20-day periods of perfection provided in section 9-312(e), (f), and (g), during which a debtor may have possession of specified collateral in which there is a perfected security interest.

6. **Certificated Securities.** The second sentence of subsection (a) reflects the traditional rule for perfection of a security interest in certificated securities. Compare sections 8-313(1)(a) and 8-321 (1978 Official Text); section 9-115(6) (1994 Official Text); and section 9-305 (1972 Official Text). It has been modi-

fied to refer to "delivery" under section 8-301. Corresponding changes appear in section 9-203(b).

Subsections (e), (f), and (g), which are new, apply to a person in possession of security certificates or holding security certificates for the secured party's benefit under section 8-301. For delivery to occur when a person other than a secured party holds possession for the secured party, the person may not be a securities intermediary.

Under subsection (e), a possessory security interest in a certificated security remains perfected until the debtor obtains possession of the security certificate. This rule is analogous to that of section 9-314(c), which deals with perfection of security interests in investment property by control. See section 9-314, comment 3.

7. **Goods Covered by Certificate of Title.** Subsection (b) is necessary to effect changes to the choice-of-law rules governing goods covered by a certificate of title. These changes are described in the comments to section 9-311. Subsection (b), like subsection (a), does not create a right to take possession. Rather, it indicates the circumstances under which the secured party's taking possession of goods covered by a certificate of title is effective to perfect a security interest in the goods: The goods become covered by a certificate of title issued by this state at a time when the security interest is perfected by any method under the law of another jurisdiction.

8. **Goods in Possession of Third Party: No Duty to Acknowledge; Consequences of Acknowledgment.** Subsections (f) and (g) are new and address matters as to which former article 9 was silent. They derive in part from section 8-106(g). Subsection (f) provides that a person in possession of collateral is not required to acknowledge that it holds for a secured party. Subsection (g)(1) provides that an acknowledgment is effective even if wrongful as to the debtor. Subsection (g)(2) makes clear that an acknowledgment does not give rise to any duties or responsibilities under this article. Arrangements involving the possession of goods are hardly standardized. They include bailments for services to be performed on the goods (such as repair or processing), for use (leases), as security (pledges), for carriage, and for storage. This article leaves to the agreement of the parties and to any other applicable law the imposition of duties and responsibilities upon a person who acknowledges under subsection (c). For example, by acknowledging, a third party does not become obliged to act on the secured party's direction or to remain in possession of the collateral unless it agrees to do so or other law so provides.

9. **Delivery to Third Party by Secured Party.** New subsections (h) and (i) address the practice of mortgage warehouse lenders. These lenders typically send mortgage notes to prospective purchasers under cover of letters advising the prospective purchasers that the lenders hold security interests in the notes. These lenders relied on notification to maintain perfection under former section 9-305. Requiring them to obtain authenticated acknowledgments from each prospective purchaser under subsection (c) could be unduly burdensome and disruptive of established practices. Under subsection (h), when a secured party in possession itself delivers the collateral to a third party, instructions to the third party would be sufficient to maintain perfection by possession; an acknowledgment would not be necessary. Under subsection (i), the secured party does not relinquish possession by making a delivery under subsection (h), even if the delivery violates the rights of the debtor. That subsection also makes clear that a person to whom collateral is delivered under subsection (h) does not owe any duty to the secured party and is not required to confirm the delivery to another person unless the person otherwise agrees or law other than this article provides otherwise.

9-314 Perfection by control.

(a) A security interest in investment property, deposit accounts, letter-of-credit rights, electronic chattel paper, or electronic documents may be perfected by control of the collateral under section 7-106, 9-104, 9-105, 9-106, or 9-107.

(b) A security interest in deposit accounts, electronic chattel paper, letter-of-credit rights, or electronic documents is perfected by control under section 7-106, 9-104, 9-105, or 9-107 when the secured party obtains control and remains perfected by control only while the secured party retains control.

(c) A security interest in investment property is perfected by control under section 9-106 from the time the secured party obtains control and remains perfected by control until:

- (1) the secured party does not have control; and
- (2) one of the following occurs:

(A) if the collateral is a certificated security, the debtor has or acquires possession of the security certificate;

(B) if the collateral is an uncertificated security, the issuer has registered or registers the debtor as the registered owner; or

(C) if the collateral is a security entitlement, the debtor is or becomes the entitlement holder.

Source: Laws 1999, LB 550, § 107; Laws 2005, LB 570, § 109.

COMMENT

1. **Source.** Substantially new; derived in part from former section 9-115(4).

2. **Control.** This section provides for perfection by control with respect to investment property, deposit accounts, letter-of-credit rights, electronic chattel paper, and electronic documents. For explanations of how a secured party takes control of these types of collateral, see section 7-106 and sections 9-104 through 9-107. Subsection (b) explains when a security interest is perfected by control and how long a security interest remains perfected by control. Like section 9-313(d) and for the same reasons, subsection (b) makes no reference to the doctrine of "relation back". See section 9-313, comment 5. As to an electronic document that is reissued in a tangible medium, section 7-105, a secured party that is perfected by control in the electronic document should file as to the document before relinquishing control in order to maintain continuous perfection in the document. See section 9-308.

3. **Investment Property.** Subsection (c) provides a special rule for investment property. Once a secured party has control, its security interest remains perfected by control until the secured party ceases to have control and the debtor receives possession of collateral that is a certificated security, becomes the registered owner of collateral that is an uncertificated security, or becomes the entitlement holder of collateral that is a security

entitlement. The result is particularly important in the "re-pledge" context. See section 9-207, comment 5.

In a transaction in which a secured party who has control grants a security interest in investment property or sells outright the investment property, by virtue of the debtor's consent or applicable legal rules, a purchaser from the secured party typically will cut off the debtor's rights in the investment property or be immune from the debtor's claims. See section 9-207, comments 5 and 6. If the investment property is a security, the debtor normally would retain no interest in the security following the purchase from the secured party, and a claim of the debtor against the secured party for redemption (section 9-623) or otherwise with respect to the security would be a purely personal claim. If the investment property transferred by the secured party is a financial asset in which the debtor had a security entitlement credited to a securities account maintained with the secured party as a securities intermediary, the debtor's claim against the secured party could arise as a part of its securities account notwithstanding its personal nature. (This claim would be analogous to a "credit balance" in the securities account, which is a component of the securities account even though it is a personal claim against the intermediary.) In the case in which the debtor may retain an interest in investment property notwithstanding a repledge or sale by the secured party, subsection (c) makes clear that the security interest will remain perfected by control.

9-315 Secured party's rights on disposition of collateral and in proceeds.

(a)(1) Except as otherwise provided in this article and in section 2-403(2):

(A) a security interest or agricultural lien continues in collateral notwithstanding sale, lease, license, exchange, or other disposition thereof unless the secured party authorized the disposition free of the security interest or agricultural lien; and

(B) a security interest attaches to any identifiable proceeds of collateral.

(2) Authorization to sell, lease, license, exchange, or otherwise dispose of farm products shall not be implied or otherwise result, nor shall a security interest in farm products be considered to be waived, modified, released, or terminated if such disposition is conditioned upon the secured party's receipt of proceeds or from any course of conduct, course of performance, or course of dealing between the parties or by any usage of trade in any case in which (A)

the secured party has filed an effective financing statement in accordance with the provisions of sections 52-1301 to 52-1322, Reissue Revised Statutes of Nebraska, or (B) the buyer of farm products has received notice from the secured party or the seller of farm products in accordance with the provisions of 7 U.S.C. 1631(e)(1)(A), unless the buyer has secured a waiver or release of the security interest specified in such effective financing statement or notice from the secured party.

(b) Proceeds that are commingled with other property are identifiable proceeds:

- (1) if the proceeds are goods, to the extent provided by section 9-336; and
- (2) if the proceeds are not goods, to the extent that the secured party identifies the proceeds by a method of tracing, including application of equitable principles, that is permitted under law other than this article with respect to commingled property of the type involved.

(c) A security interest in proceeds is a perfected security interest if the security interest in the original collateral was perfected.

(d) A perfected security interest in proceeds becomes unperfected on the twenty-first day after the security interest attaches to the proceeds unless:

- (1) the following conditions are satisfied:
 - (A) a filed financing statement covers the original collateral;
 - (B) the proceeds are collateral in which a security interest may be perfected by filing in the office in which the financing statement has been filed; and
 - (C) the proceeds are not acquired with cash proceeds;
- (2) the proceeds are identifiable cash proceeds; or
- (3) the security interest in the proceeds is perfected other than under subsection (c) when the security interest attaches to the proceeds or within twenty days thereafter.

(e) If a filed financing statement covers the original collateral, a security interest in proceeds which remains perfected under subdivision (d)(1) becomes unperfected at the later of:

- (1) when the effectiveness of the filed financing statement lapses under section 9-515 or is terminated under section 9-513; or
- (2) the twenty-first day after the security interest attaches to the proceeds.

Source: Laws 1999, LB 550, § 108; Laws 2003, LB 4, § 6; Laws 2007, LB124, § 70.

COMMENT

1. **Source.** Former section 9-306.

2. **Continuation of Security Interest or Agricultural Lien Following Disposition of Collateral.** Subsection (a)(1)(A), which derives from former section 9-306(2), contains the general rule that a security interest survives disposition of the collateral. In these cases, the secured party may repossess the collateral from the transferee or, in an appropriate case, maintain an action for conversion. The secured party may claim both any proceeds and the original collateral but, of course, may have only one satisfaction.

In many cases, a purchaser or other transferee of collateral will take free of a security interest, and the secured party's only right will be to proceeds. For example, the general rule does not apply, and a security interest does not continue in collateral, if the secured party authorized the disposition, in the agreement that contains the security agreement or otherwise. Subsection

(a)(1)(A) adopts the view of PEB Commentary No. 3 and makes explicit that the authorized disposition to which it refers is an authorized disposition "free of" the security interest or agricultural lien. The secured party's right to proceeds under this section or under the express terms of an agreement does not in itself constitute an authorization of disposition. The change in language from former section 9-306(2) is not intended to address the frequently litigated situation in which the effectiveness of the secured party's consent to a disposition is conditioned upon the secured party's receipt of the proceeds. In that situation, subsection (a) leaves the determination of authorization to the courts, as under former article 9.

This article contains several provisions under which a transferee takes free of a security interest or agricultural lien. For example, section 9-317 states when transferees take free of unperfected security interests; sections 9-320 and 9-321 on

goods, 9-321 on general intangibles, 9-330 on chattel paper and instruments, and 9-331 on negotiable instruments, negotiable documents, and securities state when purchasers of such collateral take free of a security interest, even though perfected and even though the disposition was not authorized. Section 9-332 enables most transferees (including nonpurchasers) of funds from a deposit account and most transferees of money to take free of a perfected security interest in the deposit account or money.

Likewise, the general rule that a security interest survives disposition does not apply if the secured party entrusts goods collateral to a merchant who deals in goods of that kind and the merchant sells the collateral to a buyer in ordinary course of business. Section 2-403(2) gives the merchant the power to transfer all the secured party's rights to the buyer, even if the sale is wrongful as against the secured party. Thus, under subsection (a)(1)(A), an entrusting secured party runs the same risk as any other entruster.

3. Secured Party's Right to Identifiable Proceeds. Under subsection (a)(1)(B), which derives from former section 9-306(2), a security interest attaches to any identifiable "proceeds", as defined in section 9-102. See also section 9-203(f). Subsection (b) is new. It indicates when proceeds commingled with other property are identifiable proceeds and permits the use of whatever methods of tracing other law permits with respect to the type of property involved. Among the "equitable principles" whose use other law may permit is the "lowest intermediate balance rule". See Restatement (2d), Trusts section 202.

4. Automatic Perfection in Proceeds: General Rule. Under subsection (c), a security interest in proceeds is a perfected security interest if the security interest in the original collateral was perfected. This article extends the period of automatic perfection in proceeds from 10 days to 20 days. Generally, a security interest in proceeds becomes unperfected on the 21st day after the security interest attaches to the proceeds. See subsection (d). The loss of perfected status under subsection (d) is prospective only. Compare, e.g., section 9-515(c) (deeming security interest unperfected retroactively).

5. Automatic Perfection in Proceeds: Proceeds Acquired with Cash Proceeds. Subsection (d)(1) derives from former section 9-306(3)(a). It carries forward the basic rule that a security interest in proceeds remains perfected beyond the period of automatic perfection if a filed financing statement covers the original collateral (e.g., inventory) and the proceeds are collateral in which a security interest may be perfected by filing in the office where the financing statement has been filed (e.g., equipment). A different rule applies if the proceeds are acquired with cash proceeds, as is the case if the original collateral (inventory) is sold for cash (cash proceeds) that is used to purchase equipment (proceeds). Under these circumstances, the security interest in the equipment proceeds remains perfected only if the description in the filed financing statement indicates the type of property constituting the proceeds (e.g., "equipment").

This section reaches the same result but takes a different approach. It recognizes that the treatment of proceeds acquired with cash proceeds under former section 9-306(3)(a) essentially was superfluous. In the example, had the filing covered "equipment" as well as "inventory", the security interest in the proceeds would have been perfected under the usual rules governing after-acquired equipment (see former sections 9-302 and 9-303); paragraph (3)(a) added only an exception to the general rule. Subsection (d)(1)(C) of this section takes a more direct approach. It makes the general rule of continued perfection inapplicable to proceeds acquired with cash proceeds, leaving perfection of a security interest in those proceeds to the generally applicable perfection rules under subsection (d)(3).

Example 1: Lender perfects a security interest in Debtor's inventory by filing a financing statement covering "inventory". Debtor sells the inventory and deposits the buyer's check into a deposit account. Debtor draws a check on the deposit account and uses it to pay for equipment. Under the "lowest intermediate balance rule", which is a permitted method of tracing in the

relevant jurisdiction, see comment 3, the funds used to pay for the equipment were identifiable proceeds of the inventory. Because the proceeds (equipment) were acquired with cash proceeds (deposit account), subsection (d)(1) does not extend perfection beyond the 20-day automatic period.

Example 2: Lender perfects a security interest in Debtor's inventory by filing a financing statement covering "all debtor's property". As in example 1, Debtor sells the inventory, deposits the buyer's check into a deposit account, draws a check on the deposit account, and uses the check to pay for equipment. Under the "lowest intermediate balance rule", which is a permitted method of tracing in the relevant jurisdiction, see comment 3, the funds used to pay for the equipment were identifiable proceeds of the inventory. Because the proceeds (equipment) were acquired with cash proceeds (deposit account), subsection (d)(1) does not extend perfection beyond the 20-day automatic period. However, because the financing statement is sufficient to perfect a security interest in Debtor's equipment, under subsection (d)(3) the security interest in the equipment proceeds remains perfected beyond the 20-day period.

6. Automatic Perfection in Proceeds: Lapse or Termination of Financing Statement During 20-Day Period; Perfection Under Other Statute or Treaty. Subsection (e) provides that a security interest in proceeds perfected under subsection (d)(1) ceases to be perfected when the financing statement covering the original collateral lapses or is terminated. If the lapse or termination occurs before the 21st day after the security interest attaches, however, the security interest in the proceeds remains perfected until the 21st day. Section 9-311(b) provides that compliance with the perfection requirements of a statute or treaty described in section 9-311(a) "is equivalent to the filing of a financing statement". It follows that collateral subject to a security interest perfected by such compliance under section 9-311(b) is covered by a "filed financing statement" within the meaning of section 9-315(d) and (e).

7. Automatic Perfection in Proceeds: Continuation of Perfection in Cash Proceeds. Former section 9-306(3)(b) provided that if a filed financing statement covered original collateral, a security interest in identifiable cash proceeds of the collateral remained perfected beyond the ten-day period of automatic perfection. Former section 9-306(3)(c) contained a similar rule with respect to identifiable cash proceeds of investment property. Subsection (d)(2) extends the benefits of former sections 9-306(3)(b) and (3)(c) to identifiable cash proceeds of all types of original collateral in which a security interest is perfected by any method. Under subsection (d)(2), if the security interest in the original collateral was perfected, a security interest in identifiable cash proceeds will remain perfected indefinitely, regardless of whether the security interest in the original collateral remains perfected. In many cases, however, a purchaser or other transferee of the cash proceeds will take free of the perfected security interest. See, e.g., sections 9-330(d) (purchaser of check), 9-331 (holder in due course of check), and 9-332 (transferee of money or funds from a deposit account).

8. Insolvency Proceedings; Returned and Repossessed Goods. This article deletes former section 9-306(4), which dealt with proceeds in insolvency proceedings. Except as otherwise provided by the Bankruptcy Code, the debtor's entering into bankruptcy does not affect a secured party's right to proceeds.

This article also deletes former section 9-306(5), which dealt with returned and repossessed goods. Section 9-330, comments 9 to 11, explain and clarify the application of priority rules to returned and repossessed goods as proceeds of chattel paper.

9. Proceeds of Collateral Subject to Agricultural Lien. This article does not determine whether a lien extends to proceeds of farm products encumbered by an agricultural lien. If, however, the proceeds are themselves farm products on which an "agricultural lien" (defined in section 9-102) arises under other law, then the agricultural lien provisions of this article apply to the agricultural lien on the proceeds in the same way in which they would apply had the farm products not been proceeds.

Subpart 3

PRIORITY

9-317 Interests that take priority over or take free of security interest or agricultural lien.

- (a) A security interest or agricultural lien is subordinate to the rights of:
- (1) a person entitled to priority under section 9-322; and
 - (2) except as otherwise provided in subsection (e), a person that becomes a lien creditor before the earlier of the time:
 - (A) the security interest or agricultural lien is perfected; or
 - (B) one of the conditions specified in section 9-203(b)(3) is met and a financing statement covering the collateral is filed.
- (b) Except as otherwise provided in subsection (e), a buyer, other than a secured party, of tangible chattel paper, tangible documents, goods, instruments, or a security certificate takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.
- (c) Except as otherwise provided in subsection (e), a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.
- (d) A licensee of a general intangible or a buyer, other than a secured party, of accounts, electronic chattel paper, electronic documents, general intangibles, or investment property other than a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.
- (e) Except as otherwise provided in sections 9-320 and 9-321, if a person files a financing statement with respect to a purchase-money security interest before or within thirty days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between the time the security interest attaches and the time of filing.

Source: Laws 1999, LB 550, § 110; Laws 2000, LB 929, § 29; Laws 2005, LB 82, § 8; Laws 2005, LB 570, § 110.

COMMENT

1. **Source.** Former sections 2A-307(2) and 9-301.
 2. **Scope of This Section.** As did former section 9-301, this section lists the classes of persons who take priority over, or take free of, an unperfected security interest. Section 9-308 explains when a security interest or agricultural lien is "perfected". A security interest that has attached (see section 9-203) but as to which a required perfection step has not been taken is "unperfected". Certain provisions have been moved from former section 9-301. The definition of "lien creditor" now appears in section 9-102, and the rules governing priority in future advances are found in section 9-323.
 3. **Competing Security Interests.** Section 9-322 states general rules for determining priority among conflicting security interests and refers to other sections that state special rules of priority in a variety of situations. The security interests given priority under section 9-322 and the other sections to which it refers take priority in general even over a perfected security interest. A fortiori they take priority over an unperfected security interest.
 4. **Filed but Unattached Security Interest vs. Lien Creditor.** Under former section 9-301(1)(b), a lien creditor's rights had priority over an unperfected security interest. Perfection required attachment (former section 9-303) and attachment required the giving of value (former section 9-203). It followed that, if a secured party had filed a financing statement, but the debtor had not entered into a security agreement and value had not yet been given, an intervening lien creditor whose lien arose after filing but before attachment of the security interest acquired rights that are senior to those of the secured party who later gives value. This result comported with the *nemo dat* concept: When the security interest attached, the collateral was already subject to the judicial lien.
- On the other hand, this approach treated the first secured advance differently from all other advances, even in circumstances in which a security agreement covering the collateral

had been entered into before the judicial lien attached. The special rule for future advances in former section 9-301(4) (substantially reproduced in section 9-323(b)) afforded priority to a discretionary advance made by a secured party within 45 days after the lien creditor's rights arose as long as the secured party was "perfected" when the lien creditor's lien arose—i.e., as long as the advance was not the first one and an earlier advance had been made.

Subsection (a)(2) revises former section 9-301(1)(b) and, in appropriate cases, treats the first advance the same as subsequent advances. More specifically, a judicial lien that arises after the security-agreement condition of section 9-203(b)(3) is satisfied and a financing statement is filed, but before the security interest attaches and becomes perfected, is subordinate to all advances secured by the security interest, even the first advance, except as otherwise provided in section 9-323(b). However, if the security interest becomes unperfected (e.g., because the effectiveness of the filed financing statement lapses) before the judicial lien arises, the security interest is subordinate. If a financing statement is filed but a security interest does not attach, then no priority contest arises. The lien creditor has the only enforceable claim to the property.

5. Security Interest of Consignor or Receivables Buyer vs. Lien Creditor. Section 1-201(37) defines "security interest" to include the interest of most true consignors of goods and the interest of most buyers of certain receivables (accounts, chattel paper, payment intangibles, and promissory notes). A consignee of goods or a seller of accounts or chattel paper each is deemed to have rights in the collateral which a lien creditor may reach, as long as the competing security interest of the consignor or buyer is unperfected. This is so even though, as between the consignor and the debtor-consignee, the latter has only limited rights, and, as between the buyer and debtor-seller, the latter does not have any rights in the collateral. See sections 9-318 (seller) and 9-319 (consignee). Security interests arising from sales of payment intangibles and promissory notes are automatically perfected. See section 9-309. Accordingly, a subsequent judicial lien always would be subordinate to the rights of a buyer of those types of receivables.

6. Purchasers Other Than Secured Parties. Subsections (b), (c), and (d) afford priority over an unperfected security interest to certain purchasers (other than secured parties) of collateral. They derive from former sections 2A-307(2), 9-301(1)(c), and 9-301(1)(d). Former section 9-301(1)(c) and (1)(d) provided that unperfected security interests are "subordinate" to the rights of certain purchasers. But, as former comment 9 suggested, the practical effect of subordination in this context is that the purchaser takes free of the security interest. To avoid any possible misinterpretation, subsections (b) and (d) of this section use the phrase "takes free".

Subsection (b) governs goods, as well as intangibles of the type whose transfer is effected by physical delivery of the representative piece of paper (tangible chattel paper, tangible documents, instruments, and security certificates). To obtain priority, a buyer must both give value and receive delivery of the collateral without knowledge of the existing security interest and before perfection. Even if the buyer gave value without knowledge and before perfection, the buyer would take subject to the security interest if perfection occurred before physical delivery of the collateral to the buyer. Subsection (c) contains a

similar rule with respect to lessees of goods. Note that a lessee of goods in ordinary course of business takes free of all security interests created by the lessor, even if perfected. See section 9-321.

Normally, there will be no question when a buyer of tangible chattel paper, tangible documents, instruments, or security certificates "receives delivery" of the property. See section 1-201 (defining "delivery"). However, sometimes a buyer or lessee of goods, such as complex machinery, takes delivery of the goods in stages and completes assembly at its own location. Under those circumstances, the buyer or lessee "receives delivery" within the meaning of subsections (b) and (c) when, after an inspection of the portion of the goods remaining with the seller or lessor, it would be apparent to a potential lender to the seller or lessor that another person might have an interest in the goods.

The rule of subsection (b) obviously is not appropriate where the collateral consists of intangibles and there is no representative piece of paper whose physical delivery is the only or the customary method of transfer. Therefore, with respect to such intangibles (accounts, electronic chattel paper, electronic documents, general intangibles, and investment property other than certificated securities), subsection (d) gives priority to any buyer who gives value without knowledge, and before perfection, of the security interest. A licensee of a general intangible takes free of an unperfected security interest in the general intangible under the same circumstances. Note that a licensee of a general intangible in ordinary course of business takes rights under a nonexclusive license free of security interests created by the licensor, even if perfected. See section 9-321.

Unless section 9-109 excludes the transaction from this article, a buyer of accounts, chattel paper, payment intangibles, or promissory notes is a "secured party" (defined in section 9-102), and subsections (b) and (d) do not determine priority of the security interest created by the sale. Rather, the priority rules generally applicable to competing security interests apply. See section 9-322.

7. Agricultural Liens. Subsections (a), (b), and (c) subordinate unperfected agricultural liens in the same manner in which they subordinate unperfected security interests.

8. Purchase-Money Security Interests. Subsection (e) derives from former section 9-301(2). It provides that, if a purchase-money security interest is perfected by filing no later than 20 days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of buyers, lessees, or lien creditors which arise between the time the security interest attaches and the time of filing. Subsection (e) differs from former section 9-301(2) in two significant respects. First, subsection (e) protects a purchase-money security interest against all buyers and lessees, not just against transferees in bulk. Second, subsection (e) conditions this protection on filing within 20, as opposed to ten, days after delivery.

Section 9-311(b) provides that compliance with the perfection requirements of a statute or treaty described in section 9-311(a) "is equivalent to the filing of a financing statement". It follows that a person who perfects a security interest in goods covered by a certificate of title by complying with the perfection requirements of an applicable certificate-of-title statute "files a financing statement" within the meaning of subsection (e).

9-320 Buyer of goods.

(a) Except as otherwise provided in subsection (e), a buyer in ordinary course of business, other than a person buying farm products from a person engaged in farming operations, takes free of a security interest created by the buyer's seller, even if the security interest is perfected and the buyer knows of its existence. A buyer of farm products may be subject to a security interest under sections 52-1301 to 52-1322, Reissue Revised Statutes of Nebraska.

(b) Except as otherwise provided in subsection (e), a buyer of goods from a person who used or bought the goods for use primarily for personal, family, or

household purposes takes free of a security interest, even if perfected, if the buyer buys:

- (1) without knowledge of the security interest;
- (2) for value;
- (3) primarily for the buyer's personal, family, or household purposes; and
- (4) before the filing of a financing statement covering the goods.

(c) To the extent that it affects the priority of a security interest over a buyer of goods under subsection (b), the period of effectiveness of a filing made in the jurisdiction in which the seller is located is governed by section 9-316(a) and (b).

(d) A buyer in ordinary course of business buying oil, gas, or other minerals at the wellhead or minehead or after extraction takes free of an interest arising out of an encumbrance.

(e) Subsections (a) and (b) do not affect a security interest in goods in the possession of the secured party under section 9-313.

(f) No buyer shall be allowed to take advantage of and apply the right of offset to defeat a priority established by any lien or security interest.

Source: Laws 1999, LB 550, § 113; Laws 2003, LB 4, § 7; Laws 2007, LB124, § 71.

COMMENT

1. **Source.** Former section 9-307.

2. **Scope of This Section.** This section states when buyers of goods take free of a security interest even though perfected. Of course, a buyer who takes free of a perfected security interest takes free of an unperfected one. Section 9-317 should be consulted to determine what purchasers, in addition to the buyers covered in this section, take free of an unperfected security interest. Article 2 states general rules on purchase of goods from a seller with defective or voidable title (section 2-403).

3. **Buyers in Ordinary Course.** Subsection (a) derives from former section 9-307(1). The definition of "buyer in ordinary course of business" in section 1-201 restricts its application to buyers "from a person, other than a pawnbroker, in the business of selling goods of that kind". Thus subsection (a) applies primarily to inventory collateral. The subsection further excludes from its operation buyers of "farm products" (defined in section 9-102) from a person engaged in farming operations. The buyer in ordinary course of business is defined as one who buys goods "in good faith, without knowledge that the sale violates the rights of another person and in the ordinary course". Subsection (a) provides that such a buyer takes free of a security interest, even though perfected, and even though the buyer knows the security interest exists. Reading the definition together with the rule of law results in the buyer's taking free if the buyer merely knows that a security interest covers the goods but taking subject to it if the buyer knows, in addition, that the sale violates a term in an agreement with the secured party.

As did former section 9-307(1), subsection (a) applies only to security interests created by the seller of the goods to the buyer in ordinary course. However, under certain circumstances a buyer in ordinary course who buys goods that were encumbered with a security interest created by a person other than the seller may take free of the security interest, as example 2 explains. See also comment 6, below.

Example 1: Manufacturer, who is in the business of manufacturing appliances, owns manufacturing equipment subject to a perfected security interest in favor of Lender. Manufacturer sells the equipment to Dealer, who is in the business of buying and selling used equipment. Buyer buys the equipment from Dealer. Even if Buyer qualifies as a buyer in the ordinary course of

business, Buyer does not take free of Lender's security interest under subsection (a), because Dealer did not create the security interest; Manufacturer did.

Example 2: Manufacturer, who is in the business of manufacturing appliances, owns manufacturing equipment subject to a perfected security interest in favor of Lender. Manufacturer sells the equipment to Dealer, who is in the business of buying and selling used equipment. Lender learns of the sale but does nothing to assert its security interest. Buyer buys the equipment from Dealer. Inasmuch as Lender's acquiescence constitutes an "entrusting" of the goods to Dealer within the meaning of section 2-403(3) Buyer takes free of Lender's security interest under section 2-403(2) if Buyer qualifies as a buyer in ordinary course of business.

4. **Buyers of Farm Products.** This section does not enable a buyer of farm products to take free of a security interest created by the seller, even if the buyer is a buyer in ordinary course of business. However, a buyer of farm products may take free of a security interest under section 1324 of the Food Security Act of 1985, 7 U.S.C. section 1631.

5. **Buyers of Consumer Goods.** Subsection (b), which derives from former section 9-307(2), deals with buyers of collateral that the debtor-seller holds as "consumer goods" (defined in section 9-102). Under section 9-309(1), a purchase-money security interest in consumer goods, except goods that are subject to a statute or treaty described in section 9-311(a) (such as automobiles that are subject to a certificate-of-title statute), is perfected automatically upon attachment. There is no need to file to perfect. Under subsection (b) a buyer of consumer goods takes free of a security interest, even though perfected, if the buyer buys (1) without knowledge of the security interest, (2) for value, (3) primarily for the buyer's own personal, family, or household purposes, and (4) before a financing statement is filed.

As to purchase-money security interests which are perfected without filing under section 9-309(1): A secured party may file a financing statement, although filing is not required for perfection. If the secured party does file, all buyers take subject to the security interest. If the secured party does not file, a buyer who meets the qualifications stated in the preceding paragraph takes free of the security interest.

As to security interests for which a perfection step is required: This category includes all non-purchase-money security interests, and all security interests, whether or not purchase-money, in goods subject to a statute or treaty described in section 9-311(a), such as automobiles covered by a certificate-of-title statute. As long as the required perfection step has not been taken and the security interest remains unperfected, not only the buyers described in subsection (b) but also the purchasers described in section 9-317 will take free of the security interest. After a financing statement has been filed or the perfection requirements of the applicable certificate-of-title statute have been complied with (compliance is the equivalent of filing a financing statement; see section 9-311(b)), all subsequent buyers, under the rule of subsection (b), are subject to the security interest.

The rights of a buyer under subsection (b) turn on whether a financing statement has been filed against consumer goods. Occasionally, a debtor changes his or her location after a filing is made. Subsection (c), which derives from former section 9-103(1)(d)(iii), deals with the continued effectiveness of the filing under those circumstances. It adopts the rules of section 9-316(a) and (b). These rules are explained in the comments to that section.

6. Authorized Dispositions. The limitations that subsections (a) and (b) impose on the persons who may take free of a security interest apply of course only to unauthorized sales by the debtor. If the secured party authorized the sale in an express agreement or otherwise, the buyer takes free under section 9-315(a)(1) without regard to the limitations of this section. (That section also states the right of a secured party to the proceeds of a sale, authorized or unauthorized.) Moreover, the buyer also takes free if the secured party waived or otherwise is precluded from asserting its security interest against the buyer. See section 1-103.

7. Oil, Gas, and Other Minerals. Under subsection (d), a buyer in ordinary course of business of minerals at the wellhead or

minehead or after extraction takes free of a security interest created by the seller. Specifically, it provides that qualified buyers take free not only of article 9 security interests but also of interests "arising out of an encumbrance". As defined in section 9-102, the term "encumbrance" means "a right, other than an ownership interest, in real property". Thus, to the extent that a mortgage encumbers minerals not only before but also after extraction, subsection (d) enables a buyer in ordinary course of the minerals to take free of the mortgage. This subsection does not, however, enable these buyers to take free of interests arising out of ownership interests in the real property. This issue is significant only in a minority of states. Several of them have adopted special statutes and nonuniform amendments to article 9 to provide special protections to mineral owners, whose interests often are highly fractionalized in the case of oil and gas. See Terry I. Cross, *Oil and Gas Product Liens—Statutory Security Interests for Producers and Royalty Owners Under the Statutes of Kansas, New Mexico, Oklahoma, Texas and Wyoming*, 50 *Consumer Fin. L. Q. Rep.* 418 (1996). Inasmuch as a complete resolution of the issue would require the addition of complex provisions to this article, and there are good reasons to believe that a uniform solution would not be feasible, this article leaves its resolution to other legislation.

8. Possessory Security Interests. Subsection (e) is new. It rejects the holding of *Tanbro Fabrics Corp. v. Deering Milliken, Inc.*, 350 N.E.2d 590 (N.Y. 1976) and, together with section 9-317(b), prevents a buyer of goods collateral from taking free of a security interest if the collateral is in the possession of the secured party. "The secured party" referred to in subsection (e) is the holder of the security interest referred to in subsection (a) or (b). Section 9-313 determines whether a secured party is in possession for purposes of this section. Under some circumstances, section 9-313 provides that a secured party is in possession of collateral even if the collateral is in the physical possession of a third party.

9-324 Priority of purchase-money security interests.

(a) Except as otherwise provided in subsection (g), a perfected purchase-money security interest in goods other than inventory or livestock has priority over a conflicting security interest in the same goods, and, except as otherwise provided in section 9-327, a perfected security interest in its identifiable proceeds also has priority, if the purchase-money security interest is perfected when the debtor receives possession of the collateral or within thirty days thereafter.

(b) Subject to subsection (c) and except as otherwise provided in subsection (g), a perfected purchase-money security interest in inventory has priority over a conflicting security interest in the same inventory, has priority over a conflicting security interest in chattel paper or an instrument constituting proceeds of the inventory and in proceeds of the chattel paper, if so provided in section 9-330, and, except as otherwise provided in section 9-327, also has priority in identifiable cash proceeds of the inventory to the extent the identifiable cash proceeds are received on or before the delivery of the inventory to a buyer, if:

- (1) the purchase-money security interest is perfected when the debtor receives possession of the inventory;
- (2) the purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;
- (3) the holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory; and

(4) the notification states that the person sending the notification has or expects to acquire a purchase-money security interest in inventory of the debtor and describes the inventory.

(c) Subdivisions (b)(2) through (4) apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of inventory:

(1) if the purchase-money security interest is perfected by filing, before the date of the filing; or

(2) if the purchase-money security interest is temporarily perfected without filing or possession under section 9-312(f), before the beginning of the twenty-day period thereunder.

(d)(1) Subject to subsection (e) and except as otherwise provided in subsection (g), a perfected purchase-money security interest in livestock that are farm products has priority over a conflicting security interest in the same livestock, and, except as otherwise provided in section 9-327, a perfected security interest in their identifiable proceeds and identifiable products in their unmanufactured states also has priority, if:

(A) the purchase-money security interest is perfected when the debtor receives possession of the livestock;

(B) the purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;

(C) the holder of the conflicting security interest receives the notification within six months before the debtor receives possession of the livestock; and

(D) the notification states that the person sending the notification has or expects to acquire a purchase-money security interest in livestock of the debtor and describes the livestock.

(2) For purposes of this subsection, possession means (A) possession by the debtor or (B) possession by a third party on behalf of or at the direction of the debtor, including, but not limited to, possession by a bailee or an agent of the debtor.

(e) Subdivisions (d)(1)(B) through (D) apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of livestock:

(1) if the purchase-money security interest is perfected by filing, before the date of the filing; or

(2) if the purchase-money security interest is temporarily perfected without filing or possession under section 9-312(f), before the beginning of the twenty-day period thereunder.

(f) Except as otherwise provided in subsection (g), a perfected purchase-money security interest in software has priority over a conflicting security interest in the same collateral, and, except as otherwise provided in section 9-327, a perfected security interest in its identifiable proceeds also has priority, to the extent that the purchase-money security interest in the goods in which the software was acquired for use has priority in the goods and proceeds of the goods under this section.

(g) If more than one security interest qualifies for priority in the same collateral under subsection (a), (b), (d), or (f):

(1) a security interest securing an obligation incurred as all or part of the price of the collateral has priority over a security interest securing an obligation incurred for value given to enable the debtor to acquire rights in or the use of collateral; and

(2) in all other cases, section 9-322(a) applies to the qualifying security interests.

Source: Laws 1986, LB 1027, § 90; Laws 1988, LB 1232, § 22; Laws 1991, LB 427, § 32; Laws 1994, LB 694, § 72; Laws 1995, LB 344, § 14; Laws 2005, LB 82, § 9; Laws 2008, LB851, § 27. Operative date March 20, 2008.

Cross References

Administrative Procedure Act, see section 84-920.

9-338 Priority of security interest or agricultural lien perfected by filed financing statement providing certain incorrect information.

If a security interest or agricultural lien is perfected by a filed financing statement providing information described in section 9-516(b)(5) which is incorrect at the time the financing statement is filed:

(1) the security interest or agricultural lien is subordinate to a conflicting perfected security interest in the collateral to the extent that the holder of the conflicting security interest gives value in reasonable reliance upon the incorrect information; and

(2) a purchaser, other than a secured party, of the collateral takes free of the security interest or agricultural lien to the extent that, in reasonable reliance upon the incorrect information, the purchaser gives value and, in the case of tangible chattel paper, tangible documents, goods, instruments, or a security certificate, receives delivery of the collateral.

Source: Laws 1999, LB 550, § 131; Laws 2005, LB 570, § 111.

Part 5

FILING

Subpart 1

FILING OFFICE; CONTENTS AND EFFECTIVENESS
OF FINANCING STATEMENT

9-506 Effect of errors or omissions.

(a)(i) This subsection applies until September 2, 2009. A financing statement substantially satisfying the requirements of this part is effective, even if it has minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading.

(ii) Except as otherwise provided in subdivision (iii) of this subsection, a financing statement that fails sufficiently to provide the name of the debtor in accordance with section 9-503(a) is seriously misleading.

(iii) If a search of the records of the filing office under the debtor's correct name, using the filing office's standard search logic, if any, would disclose a financing statement that fails sufficiently to provide the name of the debtor in

accordance with section 9-503(a), the name provided does not make the financing statement seriously misleading.

(iv) For purposes of section 9-508(b), the “debtor’s correct name” in subdivision (iii) of this subsection means the correct name of the new debtor.

(b)(i) This subsection applies beginning on September 2, 2009. A financing statement substantially satisfying the requirements of this part is effective, even if it has minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading.

(ii) Except as otherwise provided in subdivision (iii) of this subsection, a financing statement that fails sufficiently to provide the name of the debtor in accordance with section 9-503(a) is seriously misleading.

(iii) If a search of the records of the filing office under the debtor’s correct name, or, in the case of a debtor who is an individual, the debtor’s correct last name, using the filing office’s standard search logic, if any, would disclose a financing statement that fails sufficiently to provide the name of the debtor in accordance with section 9-503(a), the name provided does not make the financing statement seriously misleading.

(iv) For purposes of section 9-508(b), the “debtor’s correct name” in subdivision (iii) of this subsection means the correct name of the new debtor.

Source: Laws 1999, LB 550, § 150; Laws 2008, LB308A, § 1; Laws 2008, LB851, § 28.

Note: Changes made by LB851 became operative July 18, 2008. Changes made by LB308A became effective July 18, 2008.

9-516 What constitutes filing; effectiveness of filing.

(a) Except as otherwise provided in subsection (b), communication of a record to a filing office and tender of the filing fee or acceptance of the record by the filing office constitutes filing.

(b) Filing does not occur with respect to a record that a filing office refuses to accept because:

(1) the record is not communicated by a method or medium of communication authorized by the filing office;

(2) an amount equal to or greater than the applicable filing fee is not tendered;

(3) the filing office is unable to index the record because:

(A) in the case of an initial financing statement, the record does not provide a name for the debtor;

(B) in the case of an amendment or correction statement, the record:

(i) does not identify the initial financing statement as required by section 9-512 or 9-518, as applicable; or

(ii) identifies an initial financing statement whose effectiveness has lapsed under section 9-515;

(C) in the case of an initial financing statement that provides the name of a debtor identified as an individual or an amendment that provides a name of a debtor identified as an individual which was not previously provided in the financing statement to which the record relates, the record does not identify the debtor’s last name; or

(D) in the case of a record filed or recorded in the filing office described in section 9-501(a)(1), the record does not provide a sufficient description of the real property to which it relates;

(4) in the case of an initial financing statement or an amendment that adds a secured party of record, the record does not provide a name and mailing address for the secured party of record;

(5) in the case of an initial financing statement or an amendment that provides a name of a debtor which was not previously provided in the financing statement to which the amendment relates, the record does not:

(A) provide a mailing address for the debtor;

(B) indicate whether the debtor is an individual or an organization; or

(C) if the financing statement indicates that the debtor is an organization, provide:

(i) a type of organization for the debtor;

(ii) a jurisdiction of organization for the debtor; or

(iii) an organizational identification number for the debtor or indicate that the debtor has none;

(6) in the case of an assignment reflected in an initial financing statement under section 9-514(a) or an amendment filed under section 9-514(b), the record does not provide a name and mailing address for the assignee;

(7) in the case of a continuation statement, the record is not filed within the six-month period prescribed by section 9-515(d); or

(8) in the case of a financing statement or an amendment to a financing statement, the same person or entity is listed as both debtor and secured party.

(c) For purposes of subsection (b):

(1) a record does not provide information if the filing office is unable to read or decipher the information; and

(2) a record that does not indicate that it is an amendment or identify an initial financing statement to which it relates, as required by section 9-512, 9-514, or 9-518, is an initial financing statement.

(d) A record that is communicated to the filing office with tender of the filing fee, but which the filing office refuses to accept for a reason other than one set forth in subsection (b), is effective as a filed record except as against a purchaser of the collateral which gives value in reasonable reliance upon the absence of the record from the files.

Source: Laws 1999, LB 550, § 160; Laws 2003, LB 494, § 1.

Subpart 2

DUTIES AND OPERATION OF FILING OFFICE

9-522 Maintenance and destruction of records.

(a) The filing office shall maintain a record of the information provided in a filed financing statement for at least one year after the effectiveness of the financing statement has lapsed under section 9-515 with respect to all secured parties of record. The record must be retrievable by using the name of the debtor and by using the file number assigned to the initial financing statement to which the record relates.

(b) Except to the extent that a statute governing disposition of public records provides otherwise, the filing office immediately may destroy any written record evidencing a financing statement. However, if the filing office destroys a written record, it shall maintain another record of the financing statement which complies with subsection (a).

(c) Notwithstanding the provisions of this section, a record of a financing statement or amendment statement for which the place of filing was changed by Laws 1998, LB 1321, and which financing statement or amendment statement could have been continued or was continued by filing a new continuation statement pursuant to Laws 1998, LB 1321, section 110, does not have to be retained by the original filing office and may be disposed of or destroyed.

Source: Laws 1999, LB 550, § 166; Laws 2005, LB 451, § 2.

9-525 Fees.

(a) The fee for filing and indexing a record under this part is:

(1) Except as provided in subdivision (a)(4) of this section, ten dollars if the record is communicated in writing and consists of one page;

(2) Except as provided in subdivision (a)(4) of this section, ten dollars plus fifty cents per page for the second page and for each additional page if the record is communicated in writing and consists of more than one page;

(3) Except as provided in subdivision (a)(4) of this section, eight dollars if the record is communicated by another medium authorized by filing-office rule; and

(4) Seventy-five dollars, plus fifty cents per page for the second and each subsequent page of the filing, if the debtor is a transmitting utility and the filing so indicates.

(b) The number of names required to be indexed does not affect the amount of the fee in subsection (a).

(c) There is no fee for the filing of a termination statement.

(d)(1) The fee for responding to a request for information from the filing office, including for communicating whether there is on file any financing statement naming a particular debtor, is four dollars and fifty cents.

(2) Of the fees received pursuant to this subsection by the Secretary of State, one dollar of each fee shall be remitted to the State Treasurer for credit to the Records Management Cash Fund.

Source: Laws 1999, LB 550, § 169; Laws 2004, LB 1099, § 3.

9-529 Secretary of State; implementation of centralized computer system.

(a) The Secretary of State shall implement and maintain a centralized computer system for the accumulation and dissemination of information relative to financing statements for any type of collateral except collateral described in section 9-501(a)(1). Such a system shall include the entry of information into the computer system by the Secretary of State pursuant to section 9-530 and the dissemination of such information by a computer system or systems, telephone, mail, and such other means of communication as may be deemed appropriate. Such system shall be an interactive system.

(b) Computer access to information regarding obligations of debtors shall be made available twenty-four hours a day on every day of the year. The Secretary

of State shall provide information from the system by telephone during normal business hours.

(c) The centralized computer system implemented and maintained pursuant to this section shall include information relative to effective financing statements as provided in sections 52-1301 to 52-1322, Reissue Revised Statutes of Nebraska, and statutory liens as provided in sections 52-1601 to 52-1605, Reissue Revised Statutes of Nebraska.

Source: Laws 1999, LB 550, § 173; Laws 2003, LB 4, § 8; Laws 2007, LB124, § 72.

9-531 Uniform Commercial Code Cash Fund; created; use; Secretary of State; duties; fees.

(a) There is created the Uniform Commercial Code Cash Fund. Except as otherwise specifically provided, all funds received pursuant to this part and sections 52-1312, 52-1313, 52-1316, and 52-1602, Reissue Revised Statutes of Nebraska, shall be placed in the fund and used by the Secretary of State to carry out this part, sections 52-1301 to 52-1322, Reissue Revised Statutes of Nebraska, and sections 52-1601 to 52-1605, Reissue Revised Statutes of Nebraska, except that transfers from the Uniform Commercial Code Cash Fund to the General Fund and the Records Management Cash Fund may be made at the direction of the Legislature.

(b)(1) The Secretary of State shall furnish each county clerk with computer terminal hardware, including a printer, compatible with the centralized computer system implemented and maintained pursuant to section 9-529, for inquiries and searches of information in such centralized computer system. The terminals shall be readily and reasonably available and accessible to members of the public for such inquiries and searches.

(2) The fees charged by county clerks for inquiries and other services regarding information in the centralized computer system shall be the same as set forth for filing offices in this part.

Source: Laws 1999, LB 550, § 175; Laws 2001, LB 541, § 10; Laws 2003, LB 4, § 9; Laws 2007, LB124, § 73.

Part 6

DEFAULT

Subpart 1

DEFAULT AND ENFORCEMENT OF SECURITY INTEREST

9-601 Rights after default; judicial enforcement; consignor or buyer of accounts, chattel paper, payment intangibles, or promissory notes.

(a) After default, a secured party has the rights provided in this part and, except as otherwise provided in section 9-602, those provided by agreement of the parties. A secured party:

(1) may reduce a claim to judgment, foreclose, or otherwise enforce the claim, security interest, or agricultural lien by any available judicial procedure; and

(2) if the collateral is documents, may proceed either as to the documents or as to the goods they cover.

(b) A secured party in possession of collateral or control of collateral under section 7-106, 9-104, 9-105, 9-106, or 9-107 has the rights and duties provided in section 9-207.

(c) The rights under subsections (a) and (b) are cumulative and may be exercised simultaneously.

(d) Except as otherwise provided in subsection (g) and section 9-605, after default, a debtor and an obligor have the rights provided in this part and by agreement of the parties.

(e) If a secured party has reduced its claim to judgment, the lien of any levy that may be made upon the collateral by virtue of an execution based upon the judgment relates back to the earliest of:

(1) the date of perfection of the security interest or agricultural lien in the collateral;

(2) the date of filing a financing statement covering the collateral; or

(3) any date specified in a statute under which the agricultural lien was created.

(f) A sale pursuant to an execution is a foreclosure of the security interest or agricultural lien by judicial procedure within the meaning of this section. A secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this article.

(g) Except as otherwise provided in section 9-607(c), this part imposes no duties upon a secured party that is a consignor or is a buyer of accounts, chattel paper, payment intangibles, or promissory notes.

Source: Laws 1999, LB 550, § 176; Laws 2005, LB 570, § 112.

Part 7

TRANSITION

9-705 Effectiveness of action taken before July 1, 2001.

(a) If action, other than the filing of a financing statement, is taken before July 1, 2001, and the action would have resulted in priority of a security interest over the rights of a person that becomes a lien creditor had the security interest become enforceable before July 1, 2001, the action is effective to perfect a security interest that attaches under this article within one year after July 1, 2001. An attached security interest becomes unperfected one year after July 1, 2001, unless the security interest becomes a perfected security interest under this article before the expiration of that period.

(b) The filing of a financing statement before July 1, 2001, is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under this article.

(c) This article does not render ineffective an effective financing statement that, before July 1, 2001, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in section 9-103, as such section existed immediately before July 1, 2001. However, except as otherwise provided in subsections (d), (e), and (f) and section 9-706, the financing statement ceases to be effective at the earlier of:

(1) the time the financing statement would have ceased to be effective under the law of the jurisdiction in which it is filed; or

(2) June 30, 2006.

(d) The filing of a continuation statement on or after July 1, 2001, does not continue the effectiveness of the financing statement filed before July 1, 2001. However, upon the timely filing of a continuation statement on or after July 1, 2001, and in accordance with the law of the jurisdiction governing perfection as provided in part 3, the effectiveness of a financing statement filed in the same office in that jurisdiction before July 1, 2001, continues for the period provided by the law of that jurisdiction.

(e) Subdivision (c)(2) applies to a financing statement that, before July 1, 2001, is filed against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in section 9-103, as such section existed immediately before July 1, 2001, only to the extent that part 3 provides that the law of a jurisdiction other than the jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.

(f) Subdivision (c)(2) does not apply to a financing statement that was filed in the proper place in the state before July 1, 2001, pursuant to section 9-401, as such section existed immediately before July 1, 2001, and for which the proper place of filing in the state was not changed pursuant to section 9-501, as such section existed on July 1, 2001.

(g) A financing statement that includes a financing statement filed before July 1, 2001, and a continuation statement filed on or after July 1, 2001, is effective only to the extent that it satisfies the requirements of part 5 for an initial financing statement.

Source: Laws 1999, LB 550, § 208; Laws 2000, LB 929, § 46; Laws 2006, LB 876, § 56.

9-707 Amendment of pre-operative-date financing statement.

(a) In this section, “pre-operative-date financing statement” means a financing statement filed before July 1, 2001.

(b) On or after July 1, 2001, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in, a pre-operative-date financing statement only in accordance with the law of the jurisdiction governing perfection as provided in part 3. However, the effectiveness of a pre-operative-date financing statement also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.

(c) Except as otherwise provided in subsection (d), if the law of this state governs perfection of a security interest, the information in a pre-operative-date financing statement may be amended on or after July 1, 2001, only if:

(1) the pre-operative-date financing statement and an amendment are filed in the office specified in section 9-501;

(2) an amendment is filed in the office specified in section 9-501 concurrently with, or after the filing in that office of, an initial financing statement that satisfies section 9-706(c); or

(3) an initial financing statement that provides the information as amended and satisfies section 9-706(c) is filed in the office specified in section 9-501.

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(d) If the law of this state governs perfection of a security interest, the effectiveness of a pre-operative-date financing statement may be continued only under section 9-705(d) and (g) or 9-706.

(e) Whether or not the law of this state governs perfection of a security interest, the effectiveness of a pre-operative-date financing statement filed in this state may be terminated on or after July 1, 2001, by filing a termination statement in the office in which the pre-operative-date financing statement is filed, unless an initial financing statement that satisfies section 9-706(c) has been filed in the office specified by the law of the jurisdiction governing perfection as provided in part 3 as the office in which to file a financing statement.

Source: Laws 2000, LB 929, § 47; Laws 2006, LB 876, § 57.

ARTICLE 10

EFFECTIVE DATE AND REPEALER

Section

10-104. Repealed. Laws 2005, LB 570, § 116.

10-104 Repealed. Laws 2005, LB 570, § 116.

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Abstracters Act	76-535
Access College Early Scholarship Program Act	85-2101
Address Confidentiality Act	42-1201
Administrative Procedure Act	84-920
Adult Protective Services Act	28-348
Advanced Practice Registered Nurse Practice Act	38-201
Age Discrimination in Employment Act	48-1001
Agricultural Liming Materials Act	2-4301
Agricultural Opportunities and Value-Added Partnerships Act	2-5413
Agricultural Suppliers Lease Protection Act	2-5501
Air and Water Pollution Control Tax Refund Act	77-27,155
Airport Zoning Act	3-333
Alcohol and Drug Counseling Practice Act	38-301
Alternative Fuel Tax Act	66-684
Alzheimer's Special Care Disclosure Act	71-516.01
American Indian Arts and Crafts Sales Act	69-1801
Animal Importation Act	54-784.01
Arson Reporting Immunity Act	81-5,115
Asbestos Control Act	71-6317
Assault of an Unborn Child Act	28-395
Assisted-Living Facility Act	71-5901
Assistive Technology Regulation Act	69-2601
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Attracting Excellence to Teaching Program Act	79-8,132
Audiology and Speech-Language Pathology Practice Act	38-501
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Automatic Dialing-Announcing Devices Act	86-236
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Brain Injury Registry Act	81-653
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	8 54-1159		29 71-2807		14 49-1499.03		
	9 54-1160		30 71-2823		15 49-1499.01		
	10 54-1162		31 71-2815		16 49-1499.04		
	11 54-1165		32 71-2819		17 49-1499.05		
	12 54-1168		33 71-7614		18 49-14,101		
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	23	49-14,103.07	LB 278	§ 1	53-103	5	2-2635
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	2	Omitted		7	53-131	11	46-1304
	3	Omitted		8	53-134	12	46-1305
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	2	74-1514		2	Omitted	16	Omitted
	3	74-1602	LB 286	§ 1	85-505.01	17	Omitted
	4	74-1603		2	Omitted		Omitted
	5	Omitted	LB 295	§ 1	2-1247	LB 329A	
	6	Omitted		2	2-1203	LB 334	§ 1
LB 247	§ 1	71-1559		3	Omitted		71-4728.04
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	3	Omitted	LB 299	§ 1	29-417.01		71-4720.01
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	3	Omitted		4	29-421		71-4732
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	2	32-816		2	13-203	LB 335	§ 1
	3	32-1007		3	13-206		13-518
	4	Omitted		4	13-207		2
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	2	81-1121		10	Omitted		5
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	3	Omitted		3	85-9,185	LB 337	§ 1
	4	Omitted		4	85-9,186		81-1566
	5	Omitted		5	85-9,187		2
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	4	Omitted	LB 303A		Omitted		71-6113
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	2	71-102	LB 313	§ 1	79-1003		71-6115
	3	71-110		2	79-1010		4
	4	71-111		3	79-1072.02		Omitted
	5	71-112		4	Omitted		Omitted
	6	71-112.01		5	Omitted	LB 360	§ 1
	7	71-162		6	Omitted		44-417
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	9	71-1,345	LB 314	§ 1	79-808		44-516
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	13	71-1,349		5	Omitted		44-520
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	15	71-182		2	Omitted		44-522
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	21	44-4203	61	77-2352	5	60-4,118
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	23	Omitted	63	77-2353.01	7	60-4,122
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	3	2-4214	66	77-2357	10	66-1406
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	5	3-616	68	77-2361	12	Omitted
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	7	13-817	70	77-2363	2	86-808
	8	13-1305	71	77-2369	3	86-1403
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	16	15-847	79	77-2381	2	28-401.01
	17	15-848	80	77-2383	3	28-401.02
	18	15-849	81	77-2385	4	28-406
	19	16-712	82	77-2387	5	28-407
	20	16-713	83	77-2388	6	28-408
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	32	46-1,140	95	77-23,101	18	28-442
	33	46-1,141	96	77-23,102	19	71-101
	34	77-2312	97	77-23,103	20	71-147
	35	77-2313	98	77-23,104	21	71-155.01
	36	77-2314	99	77-23,105	22	71-161.12
	37	77-2317	100	77-23,106	23	71-161.13
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	49	77-2326.08		3 Omitted	35	71-1,146.01
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41	71-1,147.31	5	23-2315.01	24	31-342
42	71-1,147.32	6	24-701	25	31-531
43	71-1,147.33	7	24-701.01	26	31-759
44	71-1,147.34	8	24-702	27	39-841
45	71-1,147.35	9	24-703	28	39-1632
46	71-1,147.36	10	24-706	29	39-2207
47	71-1,147.62	11	24-706.01	30	46-1,106
48	71-1,147.63	12	30-3209	31	46-270
49	71-1,147.64	13	79-902	32	52-118
50	71-1,147.42	14	79-921	33	52-118.01
51	71-1,147.43	15	79-933.05	34	73-106
52	71-1,147.44	16	79-933.06	35	77-2387
53	71-1,147.45	17	79-958	36	85-1522
54	71-1,147.46	18	79-974	37	Omitted
55	71-1,147.47	19	81-2014	38	Omitted
56	71-1,147.48	20	81-2014.01	39	Omitted
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58	71-1,147.52	22	81-2018	2	44-7,100
59	71-1,147.53	23	81-2031	3	48-236
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63	71-1,147.59	27	84-1311.03	7	29-4105
64	71-1,151	28	84-1314	8	29-4115
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69	71-2407	33	Omitted	13	81-2010.03
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72	71-2417	2	Omitted	LB 433	§ 1 77-908
73	71-2419	LB 411	§ 1 71-5654	2	77-2701
74	71-2421	2	Omitted	3	77-27,222
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79	71-5407	3	Omitted	8	Omitted
80	71-6045	4	Omitted	9	Omitted
81	71-6721	LB 420	§ 1 10-144	LB 433A	Omitted
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83	71-7416	3	10-106	2	54-701.02
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88	69-303	8	10-126	7	54-742
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	7 43-260	LB 489	§ 1 25-224		10 60-4,114		
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	9 Omitted		3 25-1332		12 60-4,117		
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	3 66-1519		7 25-1709		16 60-4,122		
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	29	77-5529		3	29-4118	32	71-5304
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	32	77-5532		6	29-4121	35	71-5305
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	34	77-5534		8	29-4123	37	71-5306
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	36	77-5536		10	29-4125	39	71-5308
	37	77-5537		11	29-2101	40	71-5309
	38	77-5538		12	29-2102	41	71-5310
	39	77-5539		13	29-2103	42	71-5311
	40	77-5540		14	29-3921	43	71-5311.01
	41	77-5541		15	29-3922	44	71-5315
	42	77-5542		16	29-3929	45	71-5316
	43	77-5543		17	29-3930	46	71-5318
	44	77-5544		18	29-3931	47	71-5322
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	4	43-2403		8	Omitted		3
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	8	43-2405		4	Omitted	LB 671	§ 1
	9	43-2406		5	Omitted		2
	10	43-2408	LB 666A		Omitted		3
	11	43-2409	LB 667	§ 1	2-3254		4
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	8 71-1628.05	LB 768	§ 1 32-101	21	79-1008.02
	9 71-1628.06		2 32-619.01	22	79-1009
	10 71-1628.07		3 32-619	23	79-1010
	11 71-1628.08		4 32-627	24	79-1015.01
	12 71-6050		5 32-813	25	79-1018.01
	13 71-7605		6 32-1122	26	79-1024
	14 71-7606		7 32-1603	27	79-1026
	15 71-7607		8 32-1604	28	79-1027
	16 71-7608		9 32-1608	29	79-1028
	17 71-7609		10 32-1611	30	79-1032
	18 71-7611		11 49-1410	31	79-1035
	19 71-7614		12 Omitted	32	79-1036
	20 71-7611.01	LB 772	§ 1 50-301	33	79-1044
	21 71-7611.02		2 50-302	34	79-1047
	22 71-7611.03		3 50-303	35	79-1051
	23 71-7611.04		4 50-304	36	79-1072.01
	24 71-7611.05		5 50-305	37	79-1072.02
	25 71-7611.06		6 50-306	38	79-1072.03
	26 71-7611.07		7 50-307	39	79-1083.03
	27 Omitted		8 50-308	40	79-1089
	28 Omitted		9 50-309	41	79-1092
	29 Omitted		10 Omitted	42	79-10,110
	30 Omitted	LB 772A	Omitted	43	79-1125
LB 692A	Omitted	LB 773	§ 1 28-1465	44	79-1132
LB 706	§ 1 90-120		2 28-1466	45	79-1142
LB 711	§ 1 24-710.07		3 28-1470	46	79-1155
	2 79-934		4 28-1471	47	79-1162
	3 79-947.01		5 28-1473	48	79-1202
	4 79-956		6 28-1474	49	79-1217
	5 79-980		7 37-1254.01	50	79-1241.02
	6 79-981		8 37-1254.02	51	85-1641
	7 79-982		9 37-1254.03	52	85-1642
	8 79-984		10 37-1254.05	53	85-1657
	9 79-987		11 37-1254.08	54	Omitted
	10 79-990		12 60-4,163	55	Omitted
	11 79-992		13 60-4,168	56	Omitted
	12 79-998		14 60-4,182	LB 808	§ 1 13-303
	13 79-9,101		15 60-6,196	2	23-3547
	14 79-9,103		16 60-6,197	3	23-3594
	15 79-9,105		17 60-6,201	4	35-514.02
	16 79-9,106		18 81-1822	5	35-1301
	17 79-1075		19 Omitted	6	35-1303
	18 79-1082	LB 781	§ 1 25-21,274	7	35-1309
	19 81-2027.03	LB 797	§ 1 9-812	8	35-1309.01
	20 Omitted		2 13-511	9	35-1310
	21 Omitted		3 77-1601.02	10	35-1311.01
	22 Omitted		4 79-214	11	35-1312
LB 730	§ 1 16-302.01		5 79-215	12	35-1313
	2 32-534		6 79-237	13	35-1316
	3 32-538		7 79-238	14	35-1318
	4 32-554		8 79-313	15	35-1320

CROSS REFERENCE TABLE

2001 First Session	2001 Supplement	2001 First Session	2001 Supplement	2001 First Session	2001 Supplement
	16	35-1321		2	79-1328
	17	35-1324		3	79-1001
	18	35-1326		4	79-1003
	19	35-1327		5	79-1009
	20	35-1330		6	79-1018.01
	21	84-1503		7	79-1009.01
	22	Omitted		8	79-1310
	23	Omitted		9	Omitted
	24	Omitted		10	Omitted
LB 809	§ 1	18-1736	LB 849		Omitted
	2	18-1737	LB 851	§ 1	32-504
	3	18-1738		2	32-505
	4	18-1738.01		3	Omitted
	5	18-1738.02	LB 852	§ 1	50-1101
	6	18-1739		2	50-1102
	7	18-1740		3	50-1103
	8	18-1741		4	50-1104
	9	18-1741.01		5	50-1105
	10	81-1108.15		6	50-1106
	11	Omitted		7	50-1107
	12	Omitted		8	50-1108
LB 827	§ 1	86-2301		9	50-1109
	2	86-2302		10	50-1110
	3	86-2303		11	50-1111
	4	86-2304		12	50-1112
	5	86-2305		13	50-1113
	6	86-2306		14	50-1114
	7	86-2307		15	50-1115
	8	18-419		16	50-1116
	9	18-2701		17	50-1117
	10	18-2702		18	50-1118
	11	18-2703		19	50-1119.01
	12	18-2703.01		20	50-1120
	13	18-2705		21	50-1121
	14	18-2709		22	50-1122
	15	70-625		23	50-1123
	16	70-704		24	50-1124
	17	70-1409		25	50-1125
	18	75-132.01		26	50-1126
	19	75-604		27	50-1127
	20	Omitted		28	50-1128
	21	Omitted		29	50-1129
LB 827A		Omitted		30	50-1130
LB 833	§ 1	9-812		31	50-1131
				32	50-1132
				33	50-1133
				34	50-1134
				35	50-1135
				36	50-1136
				37	50-1137
				38	50-1138
				39	50-1139
				40	50-1140
				41	50-1141.01
				42	50-1142
				43	50-1143
				44	50-1144
				45	50-1145
				46	50-1146
				47	50-1147
				48	50-1148
				49	50-1149
				50	50-1150
				51	50-1152
				52	Omitted
				53	Omitted
				LB 853	§ 1 24-201.02
					2 24-201.04
					3 Omitted
					4 Omitted
				LB 854	§ 1 32-510
					2 85-103.01
					3 85-103.02
					4 Omitted
					5 Omitted
				LB 855	§ 1 32-509
					2 75-101.01
					3 75-101.02
					4 Omitted
					5 Omitted
					6 Omitted
				LB 856	§ 1 32-511
					2 79-311
					3 79-312
					4 Omitted
					5 Omitted

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CROSS REFERENCE TABLE

Legislative Bills, 97th Legislature
First Session, 2001

Showing the date each act went into effect.

The Ninety-seventh Session of the Legislature adjourned May 31, 2001.

LB No.	Effective Date	LB No.	Effective Date
1	September 1, 2001	67	February 14, 2001
2	September 1, 2001	68	September 1, 2001
3	September 1, 2001	71	Sections 2 and 6 of this act become operative on September 1, 2001. The other sections of this act become operative on May 16, 2001.
4	September 1, 2001		
5	September 1, 2001	75	September 1, 2001
6	September 1, 2001	83	September 1, 2001
7	September 1, 2001	83A	September 1, 2001
8	September 1, 2001	84	September 1, 2001
9	September 1, 2001	85	September 1, 2001
10	September 1, 2001	92	July 1, 2001 (operative date)
15	September 1, 2001	92A	May 26, 2001
23	May 26, 2001	96	Sections 2 to 4, 6, and 8 of this act become operative on July 1, 2001. The other sections of this act become operative on March 29, 2001.
23A	May 26, 2001		
24A	May 26, 2001	97	September 1, 2001
25	September 1, 2001	97A	September 1, 2001
25A	September 1, 2001	101	September 1, 2001
31	March 29, 2001	104	September 1, 2001
34	January 1, 2002 (operative date)	105	September 1, 2001
36	February 7, 2001	106	March 15, 2001
38	January 1, 2002 (operative date)	108	September 1, 2001
46	September 1, 2001	111	January 1, 2002 (operative date)
48	March 2, 2001	113	September 1, 2001
49	July 1, 2001 (operative date)	113A	September 1, 2001
51	September 1, 2001	114	September 1, 2001
52	Sections 26 to 42, 45, 47 to 57, and 61 of this act become operative on September 1, 2001. Sections 16 to 20 of this act become operative on January 1, 2003. The other sections of this act become operative on April 5, 2001.	118	February 14, 2001
53	Sections 4, 5, 7, 19 to 24, 27 to 86, 89 to 102, 108 to 111, 113, and 115 of this act become operative on September 1, 2001. The other sections of this act become operative on March 2, 2001.	122	February 7, 2001
54	July 1, 2001 (operative date)	126	September 1, 2001
55	July 1, 2001 (operative date)	128	September 1, 2001
56	September 1, 2001	128A	September 1, 2001
		129	September 1, 2001
		130	September 1, 2001
		131	September 1, 2001
		133	September 1, 2001
		134	September 1, 2001
		135	September 1, 2001
		136	September 1, 2001
		137	September 1, 2001
		138	February 14, 2001
		142	September 1, 2001

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LB No.	Effective Date	LB No.	Effective Date
146	September 1, 2001	254	September 1, 2001
151	September 1, 2001	257	March 2, 2001
152	May 26, 2001	257A	March 2, 2001
152A	September 1, 2001	268	July 1, 2001 (operative date)
154	September 1, 2001	269	September 1, 2001
154A	September 1, 2001	270	September 1, 2001
155	September 1, 2001	270A	September 1, 2001
156	September 1, 2001	275	September 1, 2001
162	September 1, 2001	278	September 1, 2001
163	September 1, 2001	278A	September 1, 2001
163A	September 1, 2001	280	September 1, 2001
165	September 1, 2001	286	September 1, 2001
166	September 1, 2001	295	September 1, 2001
166A	September 1, 2001	299	September 1, 2001
168	Sections 4 to 7, 14, and 15 of this act become operative on January 1, 2002. The other sections of this act become operative on February 14, 2001.	300	September 1, 2001
168A	February 14, 2001	302	February 14, 2001
169	September 1, 2001	303	May 26, 2001
170	April 5, 2001	303A	May 26, 2001
170A	April 5, 2001	308	September 1, 2001
172	September 1, 2001	313	May 26, 2001
173	September 1, 2001	313A	May 26, 2001
177	September 1, 2001	314	March 15, 2001
179	September 1, 2001	317	September 1, 2001
180	June 1, 2001	329	May 31, 2001
182	September 1, 2001	329A	May 31, 2001
186	January 1, 2003 (operative date)	334	September 1, 2001
186A	September 1, 2001	334A	September 1, 2001
191	September 1, 2001	335	September 1, 2001
191A	September 1, 2001	335A	September 1, 2001
192	March 2, 2001	337	September 1, 2001
193	March 2, 2001	346	September 1, 2001
194	September 1, 2001	346A	September 1, 2001
197	Sections 1 to 4 and 24 of this act become operative on January 1, 2002. The other sections of this act become operative on September 1, 2001.	357	June 1, 2001
198	September 1, 2001	357A	June 1, 2001
209	February 14, 2001	358	May 1, 2001
209A	September 1, 2001	360	September 1, 2001
210	September 1, 2001	362	September 1, 2001
213	September 1, 2001	365	September 1, 2001
214	September 1, 2001	366	September 1, 2001
222	February 7, 2001	368	September 1, 2001
225	January 1, 2002 (operative date)	375	September 1, 2001
225A	May 26, 2001	376	September 1, 2001
226	March 2, 2001	387	September 1, 2001
238	September 1, 2001	389	September 1, 2001
240	April 6, 2001	398	Sections 21, 27, 28, 30 to 32, 39 to 42, 44, 65, 67, 69, 70, 77 to 79, 82, 83, 85, 94, and 96 of this act become operative on January 1, 2002. The other sections of this act become operative on May 1, 2001.
242	September 1, 2001	398A	May 1, 2001
243	May 26, 2001	408	July 1, 2001 (operative date)
244	September 1, 2001	409	September 1, 2001
244A	September 1, 2001	411	September 1, 2001
245	September 1, 2001	418	September 1, 2001
247	September 1, 2001	419	March 15, 2001
250	September 1, 2001	420	May 8, 2001
252	September 1, 2001	432	September 1, 2001
253	September 1, 2001	432A	September 1, 2001
		433	January 1, 2001 (operative date)

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LB No.	Effective Date	LB No.	Effective Date
433A	September 1, 2001		
438	September 1, 2001		
444	September 1, 2001		
451	September 1, 2001		
451A	September 1, 2001		
461	May 31, 2001		
461A	September 1, 2001	667A	September 1, 2001
465	June 1, 2001	668	May 1, 2001
465A	June 1, 2001	668A	May 1, 2001
468	September 1, 2001	671	September 1, 2001
468A	September 1, 2001	671A	September 1, 2001
472	September 1, 2001	677	September 1, 2001
477	September 1, 2001	677A	September 1, 2001
483	September 1, 2001	678	May 1, 2001
484	September 1, 2001	692	May 17, 2001
489	Sections 4, 12, 13, and 16 of this act become operative on May 8, 2001. The other sections of this act become operative on September 1, 2001.	692A	May 17, 2001
505	March 29, 2001	706	September 1, 2001
516	Sections 5 and 8 of this act become operative on October 1, 2001. The other sections of this act become operative on September 1, 2001.	711	May 2, 2001
516A	September 1, 2001	730	September 1, 2001
536	September 1, 2001	750	April 18, 2001
536A	September 1, 2001	759	September 1, 2001
538	May 15, 2001	768	September 1, 2001
539	July 1, 2001 (operative date)	772	January 1, 2002 (operative date)
540	July 1, 2001 (operative date)	772A	September 1, 2001
541	May 15, 2001	773	September 1, 2001
542	July 1, 2001 (operative date)	781	September 1, 2001
543	July 1, 2001 (operative date)	797	May 8, 2001
574	September 1, 2001	808	April 18, 2001
574A	September 1, 2001	809	May 31, 2001
585	April 18, 2001	827	September 1, 2001
585A	April 18, 2001	827A	September 1, 2001
593	September 1, 2001	833	May 22, 2001
593A	September 1, 2001	849	May 15, 2001
598	September 1, 2001	851	September 1, 2001
620	May 26, 2001	852	September 1, 2001
640	Sections 1, 16, 17, and 19 of this act become operative on June 1, 2001. The other sections of this act become operative on July 1, 2001.	853	June 1, 2001
640A	June 1, 2001	854	June 1, 2001
641	September 1, 2001	855	June 1, 2001
657	July 1, 2001 (operative date)	856	June 1, 2001
657A	June 1, 2001		
659	September 1, 2001		
659A	September 1, 2001		
664	September 1, 2001		
666	July 1, 2001 (operative date)		
666A	May 15, 2001		
667	Sections 1, 7 to 10, 28 to 50, 52,		

and 53 of this act become operative on May 22, 2001. The other sections of this act become operative on July 1, 2001.

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2001 Session Laws of Nebraska, First Special Session

2001 First Special Session	2002 Cumulative Supplement	2001 First Special Session	2002 Cumulative Supplement	2001 First Special Session	2002 Cumulative Supplement
LB 1	Omitted	7	79-1010	LB 4	§ 1 77-27,222
LB 2	Omitted	8	79-1328		2 Omitted
LB 3	§ 1 9-812	9	Omitted		3 Omitted
	2 29-2259.01	10	Omitted		4 Omitted
	3 71-7607	11	Omitted		5 Omitted
	4 71-7609	12	Omitted		6 Omitted
	5 76-903	13	Omitted		
	6 79-8,136	14	Omitted		

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CROSS REFERENCE TABLE

Legislative Bills, 97th Legislature
First Special Session, 2001

Showing the date each act went into effect.
Convened October 25, 2001, and adjourned November 8, 2001.

LB No.	Effective Date	LB No.	Effective Date
1	November 9, 2001	4	Sections 1 and 4 of this act become operative for taxable years beginning or deemed to begin on or after January 1, 2003, under the Internal Revenue Code of 1986, as amended. The other sections of this act become operative on November 9, 2001.
2	November 9, 2001		
3	Sections 5 and 11 of this act become operative on January 1, 2002. The other sections of this act become operative on November 9, 2001.		

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CROSS REFERENCE TABLE

2002 Session Laws of Nebraska, Second Session

2002 Second Session	2002 Cumulative Supplement	2002 Second Session	2002 Cumulative Supplement	2002 Second Session	2002 Cumulative Supplement
LB 21	§ 1 68-1021.01		4 50-1302		4 71-343
	2 Omitted		5 60-2121		5 71-348
LB 22	§ 1 20-150		6 71-1405		6 71-351
	2 20-151		7 71-1901		7 71-352
	3 20-152		8 71-1902		8 71-357
	4 20-153		9 71-1903		9 71-357.01
	5 20-154		10 71-1904		10 71-357.02
	6 20-156		11 71-1905		11 71-357.03
	7 20-159		12 71-3503		12 71-362
	8 25-2401		13 71-3504		13 71-364
	9 25-2402		14 71-3505		14 71-365.02
	10 25-2404		15 71-3508.01		15 71-368
	11 25-2405		16 71-4609		16 71-369
	12 25-2407		17 71-4903		17 71-371
	13 55-424		18 75-366		18 71-374
	14 71-4720.01		19 77-27,187		19 71-377
	15 71-4727		20 79-1312		20 71-381
	16 71-4728		21 81-177		21 71-382
	17 71-4728.05		22 81-5,147		22 71-386
	18 71-4732		23 81-8,307		23 71-387
	19 Omitted		24 81-1417		24 71-394
LB 29	§ 1 48-838		25 83-4,124		25 71-397
	2 Omitted		26 Omitted		26 71-3,102
LB 57	§ 1 33-126.05		27 Omitted		27 71-3,103
	2 77-2701	LB 112	§ 1 83-183		28 71-3,105
	3 77-2704.42		2 Omitted		29 71-3,107
	4 Omitted	LB 123	§ 1 77-2704.15		30 71-3,109
	5 Omitted		2 Omitted		31 71-3,117
LB 58	§ 1 44-1540		3 Omitted		32 71-3,120
	2 Omitted	LB 176	§ 1 25-2501		33 71-3,136
LB 82	§ 1 29-430		2 31-740		34 71-3,138.02
	2 18-1741.03		3 31-741		35 71-3,137
	3 28-106		4 31-786		36 71-3,138
	4 28-519		5 31-787		37 71-3,139
	5 28-1006		6 31-788		38 71-3,140
	6 28-1009		7 31-789		39 71-3,141
	7 28-1012		8 31-791		40 71-3,145
	8 28-1204.04		9 Omitted		41 71-3,147
	9 28-1213	LB 188	§ 1 83-1025		42 71-3,150
	10 28-1221		2 Omitted		43 71-3,151
	11 29-423	LB 235	§ 1 71-519		44 71-3,154
	12 29-820		2 71-520		45 71-3,155
	13 29-1819.02		3 71-521		46 71-3,159
	14 29-1819.03		4 71-522		47 71-3,169
	15 29-3504		5 71-523		48 71-3,174
	16 32-1549		6 71-524		49 71-3,177
	17 42-924		7 Omitted		50 71-3,179
	18 Omitted	LB 235A	Omitted		51 Omitted
LB 93	§ 1 2-2626	LB 241	§ 1 71-340	LB 241A	Omitted
	2 20-139		2 71-341	LB 251	§ 1 32-560
	3 44-788		3 71-342		2 32-572

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2002 Second Session	2002 Cumulative Supplement	2002 Second Session	2002 Cumulative Supplement	2002 Second Session	2002 Cumulative Supplement
	3 32-605	LB 385	§ 1 76-2005		43 79-971
	4 32-615		2 Omitted		44 79-973
	5 32-616	LB 391	§ 1 79-2001		45 79-976
	6 32-625		2 79-2002		46 79-977
	7 85-1514		3 79-2003		47 79-998
	8 Omitted		4 79-2004		48 81-2014.01
	9 Omitted		5 79-2005		49 81-2016
LB 259	§ 1 77-27,223		6 79-2006		50 81-2017
	2 77-27,224		7 79-2007		51 81-2031.03
	3 77-27,225		8 79-2008		52 81-2031.04
	4 77-27,226		9 79-2009		53 81-2031.07
	5 77-27,227		10 79-2010		54 84-1301
	6 13-518		11 79-2011		55 84-1307
	7 13-519		12 79-2012		56 84-1310.01
	8 Omitted		13 79-2013		57 84-1311.03
LB 276	§ 1 28-101		14 79-2014		58 84-1312
	2 28-608		15 79-2015		59 84-1313
	3 28-620	LB 406	§ 1 81-1108		60 84-1322
	4 28-632		2 Omitted		61 84-1313.01
	5 28-633		3 Omitted		62 84-1331
	6 28-634	LB 407	§ 1 23-2301		63 84-1503
	7 84-712.05		2 23-2306		64 Omitted
	8 Omitted		3 23-2308		65 Omitted
LB 326	§ 1 79-1901		4 23-2309.01		66 Omitted
	2 79-1902		5 23-2310.05		67 Omitted
	3 79-1903		6 23-2320		68 Omitted
	4 79-1904		7 23-2323.02	LB 417	§ 1 48-106
	5 79-1905		8 23-2323.03		2 48-115
LB 326A	Omitted		9 23-2323.04		3 48-139
LB 384	§ 1 19-4624		10 23-2331		4 Omitted
	2 19-4625		11 24-701.01		5 Omitted
	3 19-4626		12 24-702		6 Omitted
	4 19-4627		13 24-703	LB 435	§ 1 2-5501
	5 19-4628		14 24-710.05		2 2-5502
	6 19-4629		15 24-710.06		3 2-5503
	7 19-4630		16 24-710.12		4 2-5504
	8 19-4631		17 72-1237		5 2-5505
	9 19-4632		18 72-1239.01		6 2-5506
	10 19-4633		19 72-1246		7 2-5507
	11 19-4634		20 72-1249.02		8 2-5508
	12 19-4635		21 79-901		9 75-109
	13 19-4636		22 79-902		10 Omitted
	14 19-4637		23 79-910	LB 435A	Omitted
	15 19-4638		24 79-916	LB 436	§ 1 2-2622
	16 19-4639		25 79-917		2 2-2623
	17 19-4640		26 79-910.01		3 2-2624
	18 19-4641		27 79-927		4 2-2625
	19 19-4642		28 79-933.01		5 2-2626
	20 19-4643		29 79-933.02		6 2-2629
	21 19-4644		30 79-933.06		7 2-2632
	22 19-4645		31 79-933.09		8 2-2635
	23 16-645		32 79-934		9 2-2636
	24 16-674		33 79-947		10 2-2637
	25 17-559		34 79-948		11 2-2638
	26 18-2520		35 79-958		12 2-2646.01
	27 18-2523		36 79-960		13 2-2639
	28 18-2528		37 79-963		14 2-2640
	29 19-701		38 79-966.01		15 2-2641
	30 19-709		39 79-966		16 2-2642
	31 76-703		40 79-967		17 2-2643
	32 Omitted		41 79-968		18 2-2643.01
	33 Omitted		42 79-972.01		19 2-2643.02

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2002 Second Session	2002 Cumulative Supplement	2002 Second Session	2002 Cumulative Supplement	2002 Second Session	2002 Cumulative Supplement			
	20	2-2643.03	5	60-302.08	43	9-425		
	21	2-2649.01	6	60-1515	44	9-601		
	22	2-2649.02	7	44-1545	45	9-603		
	23	2-2645	8	Omitted	46	9-603.02		
	24	2-2646	9	Omitted	47	9-605.01		
	25	2-2649		Omitted	48	9-606.02		
	26	81-2,173	LB 488A					
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	28	Omitted		2	60-680	50	9-606.01	
	29	Omitted		3	Omitted	51	9-620	
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	2	3-133		4	60-1306	55	9-631.01	
	3	3-157		5	75-363	56	9-642.01	
	4	3-239		6	75-364	57	9-653	
	5	3-501		7	75-369.03	58	Omitted	
	6	3-508		8	Omitted	59	Omitted	
	7	3-513		9	Omitted	60	Omitted	
	8	3-514	LB 500	§ 1	28-405	LB 547	§ 1	28-631
	9	Omitted		2	Omitted	2	44-6603	
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	2	46-602		2	9-201	4	44-6606	
	3	46-606		3	9-204.03	5	Omitted	
	4	46-656.28		4	9-211	LB 547A		Omitted
	5	46-677		5	9-213	LB 564	§ 1	29-2261
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	7	46-1237.03		7	9-225.02	3	29-4003	
	8	61-210		8	9-226	4	29-4004	
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	10	Omitted		10	9-230.01	6	29-4006	
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	8	81-2016		24	9-309	9	77-3442	
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	3 Omitted		4 55-161		3 Omitted
	4 Omitted		5 55-164	LB 848A	Omitted
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	6 Omitted		7 79-990		2 8-1401
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	19 84-1305.02		7 60-129		23 81-885.40
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	28	72-1266	21	77-1702	48	81-15,167
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71	71-3503		17	32-624	50	71-1787
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98	71-6302		15	71-193.16		3
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	7 8-602		46 86-147	108	86-246
	8 8-815		47 86-148	109	86-247
	9 8-1511		48 86-149	110	86-248
	10 21-1335		49 86-150	111	86-249
	11 21-1755		50 86-151	112	86-250
	12 21-17,131		51 86-152	113	86-251
	13 28-612		52 86-153	114	86-252
	14 62-301		53 86-154	115	86-253
	15 64-212		54 86-155	116	86-254
	16 64-213		55 86-156	117	86-255
	17 77-3801		56 86-157	118	86-256
	18 Omitted		57 86-158	119	86-257
	19 Omitted		58 86-159	120	86-258

CROSS REFERENCE TABLE

2002 Second Session	2002 Cumulative Supplement	2002 Second Session	2002 Cumulative Supplement	2002 Second Session	2002 Cumulative Supplement
121	86-259	183	86-305	245	86-444
122	86-260	184	86-306	246	86-445
123	86-261	185	86-307	247	86-446
124	86-262	186	86-308	248	86-447
125	86-263	187	86-309	249	86-448
126	86-264	188	86-310	250	86-449
127	86-265	189	86-311	251	86-450
128	86-266	190	86-312	252	86-451
129	86-267	191	86-313	253	86-452
130	86-268	192	86-314	254	86-453
131	86-269	193	86-315	255	86-454
132	86-270	194	86-316	256	86-455
133	86-271	195	86-317	257	86-456
134	86-272	196	86-318	258	86-457
135	86-273	197	86-319	259	86-458
136	86-274	198	86-320	260	86-459
137	86-275	199	86-321	261	86-460
138	86-276	200	86-322	262	86-461
139	86-277	201	86-323	263	86-462
140	86-278	202	86-324	264	86-463
141	86-279	203	86-325	265	86-464
142	86-280	204	86-326	266	86-465
143	86-281	205	86-327	267	86-466
144	86-282	206	86-328	268	86-467
145	86-283	207	86-329	269	86-468
146	86-284	208	86-401	270	86-469
147	86-285	209	86-402	271	86-501
148	86-286	210	86-403	272	86-502
149	86-287	211	86-406	273	86-503
150	86-288	212	86-407	274	86-504
151	86-289	213	86-408	275	86-505
152	86-290	214	86-409	276	86-506
153	86-291	215	86-414	277	86-507
154	86-292	216	86-1807	278	86-508
155	86-293	217	86-417	279	86-509
156	86-294	218	86-418	280	86-510
157	86-295	219	86-1810	281	86-511
158	86-296	220	86-419	282	86-512
159	86-297	221	86-420	283	86-513
160	86-298	222	86-421	284	86-514
161	86-299	223	86-422	285	86-515
162	86-2,100	224	86-423	286	86-516
163	86-2,101	225	86-424	287	86-517
164	86-2,102	226	86-425	288	86-518
165	86-2,103	227	86-426	289	86-519
166	86-2,104	228	86-427	290	86-520
167	86-2,105	229	86-428	291	86-521
168	86-2,106	230	86-429	292	86-522
169	86-2,107	231	86-430	293	86-523
170	86-2,108	232	86-431	294	86-524
171	86-2,109	233	86-432	295	86-525
172	86-2,110	234	86-433	296	86-526
173	86-2,111	235	86-434	297	86-527
174	86-2,112	236	86-435	298	86-528
175	86-2,113	237	86-436	299	86-529
176	86-2,114	238	86-437	300	86-530
177	86-2,115	239	86-438	301	86-531
178	86-2,116	240	86-439	302	86-532
179	86-301	241	86-440	303	86-533
180	86-302	242	86-441	304	86-534
181	86-303	243	86-442	305	86-535
182	86-304	244	86-443	306	86-536

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2002 Second Session	2002 Cumulative Supplement	2002 Second Session	2002 Cumulative Supplement	2002 Second Session	2002 Cumulative Supplement
307	86-537	369	86-607	431	28-515.02
308	86-538	370	86-608	432	28-711
309	86-539	371	86-609	433	28-1310
310	86-540	372	86-610	434	30-3219
311	86-541	373	86-611	435	30-3220
312	86-542	374	86-612	436	39-101
313	86-543	375	86-613	437	43-158
314	86-544	376	86-614	438	49-14,141
315	86-545	377	86-615	439	52-1307
316	86-546	378	86-616	440	52-1314
317	86-547	379	86-617	441	54-7,104
318	86-548	380	86-618	442	60-102
319	86-549	381	86-619	443	60-301
320	86-550	382	86-620	444	60-311.14
321	86-551	383	86-621	445	60-471
322	86-552	384	86-622	446	60-4,182
323	86-553	385	86-623	447	60-501
324	86-554	386	86-624	448	60-601
325	86-555	387	86-625	449	60-618.02
326	86-556	388	86-626	450	60-636
327	86-557	389	86-627	451	60-638
328	86-558	390	86-628	452	60-639
329	86-559	391	86-629	453	60-640
330	86-560	392	86-630	454	60-678
331	86-561	393	86-631	455	60-680
332	86-562	394	86-632	456	60-6,142
333	86-563	395	86-633	457	60-6,144
334	86-564	396	86-634	458	60-6,226
335	86-565	397	86-635	459	60-6,375
336	86-566	398	86-636	460	60-6,376
337	86-567	399	86-637	461	60-6,377
338	86-568	400	86-638	462	60-6,241
339	86-569	401	86-639	463	60-6,304
340	86-570	402	86-640	464	60-6,349
341	86-571	403	86-641	465	60-6,351
342	86-572	404	86-642	466	60-1417.01
343	86-573	405	86-643	467	70-301
344	86-574	406	86-701	468	70-305
345	86-575	407	86-702	469	70-306
346	86-576	408	86-703	470	70-307
347	86-577	409	86-704	471	70-308
348	86-578	410	86-705	472	70-309
349	86-579	411	86-706	473	70-310
350	86-580	412	86-707	474	70-311
351	86-581	413	86-708	475	70-312
352	86-582	414	86-709	476	70-313
353	86-583	415	86-710	477	70-625
354	86-584	416	2-1570	478	70-704
355	86-585	417	2-3917.02	479	70-1409
356	86-586	418	9-812	480	71-1,142
357	86-587	419	18-419	481	75-101
358	86-588	420	25-840.02	482	75-109.01
359	86-589	421	25-21,275	483	75-109
360	86-590	422	25-21,276	484	75-117
361	86-591	423	25-21,277	485	75-122.01
362	86-592	424	25-21,278	486	75-126
363	86-601	425	25-2503	487	75-128
364	86-602	426	25-2602.01	488	75-132.01
365	86-603	427	28-109	489	75-133
366	86-604	428	28-401	490	75-134
367	86-605	429	28-515	491	75-137
368	86-606	430	28-515.01	492	75-155

CROSS REFERENCE TABLE

2002 Second Session	2002 Cumulative Supplement	2002 Second Session	2002 Cumulative Supplement	2002 Second Session	2002 Cumulative Supplement			
	493	75-156	30	44-5225	12	86-804		
	494	76-2301	31	44-5227.01	13	86-1405		
	495	76-2325.01	32	44-5242.03	14	86-1803		
	496	76-2321	33	44-5260	15	86-1804		
	497	76-2501	34	44-5260.01	16	86-1805		
	498	76-2502	35	44-5261	16	86-404		
	499	76-2503	36	44-5503	16	86-405		
	500	76-2504	37	44-5504	17	86-410		
	501	76-2505	38	44-5601	18	86-411		
	502	76-2506	39	44-5603	19	86-412		
	503	79-215	40	44-5603.01	20	86-413		
	504	79-1241.02	41	44-5603.02	21	86-1806		
	505	79-1328	42	44-5814	22	86-415		
	506	81-1117	43	44-5815	23	86-416		
	507	81-1120.17	44	44-6901	24	86-1808		
	508	81-1120.19	45	44-6909.01	25	86-1811		
	509	81-1576	46	44-6916	26	86-2306		
	510	81-1849	47	44-6917.01	27	Omitted		
	511	Omitted	48	44-6918	28	Omitted		
	512	Omitted	49	44-7505	29	Omitted		
	513	Omitted	50	44-7509	30	Omitted		
	514	Omitted	51	44-7510	31	Omitted		
	515	Omitted	52	44-7511	32	Omitted		
LB 1110	§ 1	35-1303	53	44-7513	LB 1236	§ 1	2-101.01	
	2	35-1309	54	44-7515		2	2-101	
	3	Omitted	55	Omitted		3	2-103	
	4	Omitted	56	Omitted		4	2-104	
LB 1126	§ 1	9-226	57	Omitted		5	2-105	
	2	9-322	LB 1148	§ 1	71-7611.08	6	2-106	
	3	9-418		2	71-7605	7	2-219	
	4	9-620		3	Omitted	8	2-220	
	5	53-167.03		4	Omitted	9	2-220.01	
	6	Omitted	LB 1168	§ 1	74-922	10	2-220.02	
LB 1139	§ 1	44-7601		2	74-923	11	2-220.04	
	2	44-7602		3	74-924	12	2-1204	
	3	44-7603		4	74-925	13	2-1208.01	
	4	44-7604		5	Omitted	14	51-601	
	5	44-7605	LB 1172	§ 1	79-2,125	15	51-603	
	6	44-7606		2	79-2,126	16	51-604	
	7	44-7607		3	79-2,127	17	53-124.14	
	8	44-7608		4	79-2,128	18	77-2704.16	
	9	44-7609		5	79-2,129	19	81-1108.30	
	10	44-7610		6	79-2,130	20	83-136	
	11	44-7611		7	79-2,131	21	Omitted	
	12	44-7612		8	79-2,132	22	Omitted	
	13	44-7613		9	79-2,133	23	Omitted	
	14	44-7614		10	79-2,134	LB 1278	§ 1	59-806
	15	44-7615		11	79-2,135		2	59-808
	16	44-7616		12	79-715		3	59-809
	17	44-7617		13	Omitted		4	59-810
	18	44-787		14	Omitted		5	59-812
	19	44-1527	LB 1211	§ 1	13-808		6	59-815
	20	44-1984		2	13-2530		7	59-816
	21	44-19,116		3	58-201		8	59-819
	22	44-2127		4	58-202		9	59-820
	23	44-2845		5	58-203		10	59-821
	24	44-32,161		6	58-219		11	59-821.01
	25	44-4834		7	58-239.03		12	59-822
	26	44-4842		8	86-125		13	59-823
	27	44-4859		9	75-134		14	59-824
	28	44-5120		10	75-156		15	59-826
	29	44-5223		11	86-127		16	59-827

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2002 Second Session	2002 Cumulative Supplement	2002 Second Session	2002 Cumulative Supplement	2002 Second Session	2002 Cumulative Supplement	
	17	59-828	30	Omitted	92	Omitted
	18	59-829	31	Omitted	93	Omitted
	19	59-830	32	Omitted	94	Omitted
	20	59-831	33	Omitted	95	Omitted
	21	59-1606	34	Omitted	96	Omitted
	22	59-1607	35	Omitted	97	Omitted
	23	59-1608	36	Omitted	98	Omitted
	24	59-1608.01	37	Omitted	99	Omitted
	25	59-1608.02	38	Omitted	100	Omitted
	26	59-1609	39	Omitted	101	Omitted
	27	59-1609.01	40	Omitted	102	Omitted
	28	59-1610	41	Omitted	103	Omitted
	29	59-1611	42	Omitted	104	Omitted
	30	59-1614	43	Omitted	105	Omitted
	31	59-1615	44	Omitted	106	Omitted
	32	59-1616	45	Omitted	107	Omitted
	33	59-1623	46	Omitted	108	Omitted
	34	59-1803	47	Omitted	109	Omitted
	35	68-1035	48	Omitted	110	Omitted
	36	Omitted	49	Omitted	111	Omitted
LB 1303	§ 1	29-3601	50	Omitted	112	Omitted
	2	29-3602	51	Omitted	113	Omitted
	3	29-3603	52	90-529	114	Omitted
	4	29-3604	53	Omitted	115	Omitted
	5	29-3605	54	Omitted	116	Omitted
	6	29-3606	55	Omitted	117	Omitted
	7	29-3607	56	Omitted	118	Omitted
	8	29-3608	57	Omitted	119	Omitted
	9	29-3609	58	Omitted	120	Omitted
	10	60-601	59	Omitted	121	Omitted
	11	60-6,287.01	60	Omitted	122	Omitted
	12	Omitted	61	Omitted	123	Omitted
	13	Omitted	62	Omitted	124	Omitted
LB 1309	§ 1	Omitted	63	Omitted	125	Omitted
	2	Omitted	64	Omitted	126	Omitted
	3	Omitted	65	Omitted	127	Omitted
	4	Omitted	66	Omitted	128	Omitted
	5	Omitted	67	Omitted	129	Omitted
	6	Omitted	68	Omitted	130	Omitted
	7	Omitted	69	Omitted	131	Omitted
	8	Omitted	70	Omitted	132	Omitted
	9	Omitted	71	Omitted	133	Omitted
	10	Omitted	72	Omitted	134	Omitted
	11	Omitted	73	Omitted	135	Omitted
	12	Omitted	74	Omitted	136	Omitted
	13	Omitted	75	Omitted	137	Omitted
	14	Omitted	76	Omitted	138	Omitted
	15	Omitted	77	Omitted	139	Omitted
	16	Omitted	78	Omitted	140	Omitted
	17	Omitted	79	Omitted	141	Omitted
	18	Omitted	80	Omitted	142	Omitted
	19	Omitted	81	Omitted	143	Omitted
	20	Omitted	82	Omitted	144	Omitted
	21	Omitted	83	Omitted	145	Omitted
	22	Omitted	84	Omitted	146	Omitted
	23	Omitted	85	Omitted	147	Omitted
	24	Omitted	86	Omitted	148	Omitted
	25	Omitted	87	Omitted	149	Omitted
	26	Omitted	88	Omitted	150	Omitted
	27	Omitted	89	Omitted	151	Omitted
	28	Omitted	90	Omitted	152	Omitted
	29	Omitted	91	Omitted	153	Omitted

CROSS REFERENCE TABLE

2002 Second Session	2002 Cumulative Supplement
	154 Omitted
	155 Omitted
	156 Omitted
	157 Omitted
	158 Omitted
	159 Omitted
	160 Omitted
	161 Omitted
	162 Omitted
	163 Omitted
	164 Omitted
	165 Omitted
	166 Omitted
	167 Omitted
	168 Omitted
	169 Omitted
	170 Omitted
	171 Omitted
	172 Omitted
	173 Omitted
	174 Omitted
	175 Omitted
	176 Omitted
	177 Omitted
LB 1310	§ 1 Omitted
	2 9-1,101
	3 9-812
	4 43-1906
	5 48-1,116
	6 60-1409
	7 66-1519
	8 71-5714
	9 77-1342
	10 77-4025
	11 81-179
	12 81-184
	13 81-188.01
	14 81-188.02
	15 81-188.03
	16 81-188.04
	17 81-188.05
	18 81-188.06
	19 81-1188
	20 84-612
	21 Omitted
	22 Omitted

APPENDIX

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Legislative Bills, 97th Legislature
Second Session, 2002

Showing the date each act went into effect.

The Ninety-seventh Session of the Legislature adjourned April 19, 2002.

LB No.	Effective Date	LB No.	Effective Date
21	March 19, 2002	458	July 20, 2002
22	July 20, 2002	460	Sections 1, 3, 5, and 6 of this act become operative on April 18, 2002. The other sections of this act become operative on July 20, 2002.
29	July 20, 2002		
57	October 1, 2002 (operative date)	470	July 20, 2002
58	July 20, 2002	470A	July 20, 2002
82	July 20, 2002	474	February 28, 2002
93	July 20, 2002	482	July 20, 2002
112	July 20, 2002	488	July 20, 2002
123	October 1, 2002 (operative date)	488A	July 20, 2002
176	July 20, 2002	491	July 20, 2002
188	July 20, 2002	499	July 20, 2002
235	July 20, 2002	500	July 20, 2002
235A	July 20, 2002	545	Sections 14 and 60 of this act become operative on October 1, 2002. The other sections of this act become operative on July 20, 2002.
241	July 20, 2002		
241A	July 20, 2002	547	July 20, 2002
251	July 20, 2002	547A	July 20, 2002
259	July 20, 2002	564	July 20, 2002
276	July 20, 2002	568	Sections 1 to 4, 6 to 8, and 13 of this act become operative on July 1, 2002. The other sections of this act become operative on February 28, 2002.
326	July 20, 2002		
326A	July 20, 2002	589	July 20, 2002
384	Sections 18 to 22 of this act become operative on July 1, 2003. The other sections of this act become operative on July 20, 2002.	604	July 20, 2002
385	July 20, 2002	616	Sections 1 and 4 of this act become operative on July 20, 2002. The other sections of this act become operative on March 19, 2002.
391	July 20, 2002		
406	July 20, 2002	642	July 20, 2002
407	Sections 1 to 3, 12, 13, 19, 22 to 27, 30, 32 to 46, 49, 50, 54, 55, 60, 63, 66, and 67 of this act become operative on July 1, 2002. The other sections of this act become operative on April 18, 2002.	647	July 20, 2002
417	Sections 2 and 5 of this act become operative on January 1, 2003. The other sections of this act become operative on July 20, 2002.	649	July 20, 2002
435	July 20, 2002	684	July 20, 2002
435A	July 20, 2002	687	April 18, 2002
436	July 20, 2002	687A	April 18, 2002
436A	July 20, 2002	719	July 20, 2002
446	July 20, 2002	722	July 20, 2002
		729	July 20, 2002
		752	July 20, 2002
		824	February 28, 2002
		830	January 1, 2003

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LB No.	Effective Date	LB No.	Effective Date
	(operative date)		
830A	July 20, 2002	1085	Sections 2, 17 to 19, 22, 23, and 26 of this act become operative on July 20, 2002. The other sections of this act become operative on October 1, 2002.
848	March 19, 2002	1085A	April 12, 2002
848A	March 19, 2002	1086	July 20, 2002
857	July 20, 2002	1089	July 20, 2002
858	February 15, 2002	1094	July 20, 2002
859	July 20, 2002	1101	February 23, 2002
860	July 20, 2002	1105	Sections 2 to 426, 428 to 435, 437 to 441, 467 to 510, 513, and 515 of this act become operative on January 1, 2003. The other sections of this act become operative on July 20, 2002.
863	July 20, 2002	1110	April 18, 2002
873	April 18, 2002	1126	July 20, 2002
876	Sections 1, 4, 55, 59 to 63, 72, 73, 78, 80, and 89 of this act become operative on July 20, 2002. Sections 3, 64 to 71, 86 to 88, 91, and 93 of this act become operative on April 19, 2002. The other sections of this act become operative on January 1, 2003.	1139	Sections 20 and 56 of this act become operative on January 1, 2003. The other sections of this act become operative on July 20, 2002.
876A	July 20, 2002		
898	April 12, 2002	1148	April 18, 2002
898A	April 11, 2002	1168	April 18, 2002
905	January 1, 2003	1172	July 20, 2002
	(operative date)	1211	Sections 8 to 10, 13, and 29 of this act become operative on September 1, 2002. The other sections of this act become operative on April 20, 2002.
912	July 20, 2002	1236	January 1, 2003
921	April 20, 2002		(operative date)
931	April 20, 2002	1278	July 20, 2002
932	July 20, 2002	1303	January 1, 2003
935	July 20, 2002		(operative date)
947	July 20, 2002	1309	Provisions line-item vetoed by the Governor and overridden by the Legislature became effective on April 12, 2002. All other provisions became effective on April 9, 2002.
951	July 20, 2002	1310	April 9, 2002
952	July 20, 2002		
952A	July 20, 2002		
957	Sections 1 to 6, 9 to 11, 14 to 19, 21 to 23, 30 to 32, and 34 of this act become operative on July 20, 2002. The other sections of this act become operative on April 20, 2002.		
970	July 20, 2002		
977	July 20, 2002		
989	April 20, 2002		
989A	July 20, 2002		
994	April 20, 2002		
994A	April 20, 2002		
1003	July 20, 2002		
1003A	July 20, 2002		
1018	July 20, 2002		
1021	January 1, 2003		
	(operative date)		
1033	July 20, 2002		
1033A	July 20, 2002		
1040	April 16, 2002		
1054	July 20, 2002		
1062	Sections 1, 3, 4, 10, 12, 13, 18 to 66, and 70 of this act become operative on July 20, 2002. Sections 6 to 9 and 71 of this act become operative on July 1, 2002. The other sections of this act become operative on April 20, 2002.		
1062A	July 20, 2002		
1071	July 20, 2002		
1073	July 20, 2002		

APPENDIX
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CROSS REFERENCE TABLE

2002 Session Laws of Nebraska, Second Special Session

	2002 Second Special Session	2002 Cumulative Supplement	2002 Second Special Session	2002 Cumulative Supplement	2002 Second Special Session	2002 Cumulative Supplement
LB 1	§ 1	9-812	38	Omitted	91	Omitted
		2 39-2215	39	Omitted	92	Omitted
		3 66-1345.04	40	Omitted	93	Omitted
		4 72-816	41	Omitted	94	Omitted
		5 79-810	42	Omitted	95	Omitted
		6 81-188.01	43	Omitted	96	Omitted
		7 81-15,160	44	Omitted	97	Omitted
		8 81-15,174	45	Omitted	98	Omitted
		9 81-2004.02	46	Omitted	99	Omitted
		10 86-527	47	Omitted	100	Omitted
		11 61-217	48	Omitted	101	Omitted
		12 Omitted	49	Omitted	102	Omitted
		13 Omitted	50	Omitted	103	Omitted
		14 Omitted	51	Omitted	104	Omitted
		15 Omitted	52	Omitted	105	Omitted
	LB 2	§ 1	Omitted	53	Omitted	106
2		Omitted	54	Omitted	107	Omitted
3		Omitted	55	Omitted	108	Omitted
4		Omitted	56	Omitted	109	Omitted
5		Omitted	57	Omitted	110	Omitted
6		Omitted	58	Omitted	111	Omitted
7		Omitted	59	Omitted	112	Omitted
8		Omitted	60	Omitted	113	Omitted
9		Omitted	61	Omitted	114	Omitted
10		Omitted	62	Omitted	115	Omitted
11		Omitted	63	Omitted	116	Omitted
12		Omitted	64	Omitted	117	Omitted
13		Omitted	65	Omitted	118	Omitted
14		Omitted	66	Omitted	119	Omitted
15		Omitted	67	Omitted	120	Omitted
16		Omitted	68	Omitted	121	Omitted
17		Omitted	69	Omitted	122	Omitted
18		Omitted	70	Omitted	123	Omitted
19		Omitted	71	Omitted	124	Omitted
20		Omitted	72	Omitted	125	Omitted
21		Omitted	73	Omitted	126	Omitted
22		Omitted	74	Omitted	127	Omitted
23	Omitted	75	Omitted	128	Omitted	
24	Omitted	76	Omitted	129	Omitted	
25	Omitted	77	Omitted	130	Omitted	
26	Omitted	78	Omitted	131	Omitted	
27	Omitted	79	Omitted	132	Omitted	
28	Omitted	80	Omitted	133	Omitted	
29	Omitted	81	Omitted	134	Omitted	
30	Omitted	82	Omitted	135	Omitted	
31	Omitted	83	Omitted	136	Omitted	
32	Omitted	84	Omitted	137	Omitted	
33	Omitted	85	Omitted	138	Omitted	
34	Omitted	86	Omitted	139	Omitted	
35	Omitted	87	Omitted	140	Omitted	
36	Omitted	88	Omitted	141	90-529	
37	Omitted	89	Omitted	142	Omitted	
		90	Omitted	143	Omitted	

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2002 Second Special Session	2002 Cumulative Supplement	2002 Second Special Session	2002 Cumulative Supplement
LB 3	Omitted	LB 46	§ 1 77-2608
LB 4	§ 1 79-1022		2 Omitted
	2 Omitted		3 Omitted
	3 Omitted	LB 48	§ 1 33-106.03
LB 5	§ 1 79-1244		2 43-1906
	2 79-1201		3 71-612
	3 79-1241		4 71-617.15
	4 Omitted		5 71-627
LB 6	§ 1 79-1310		6 71-628
	2 81-1634		7 Omitted
	3 Omitted		8 Omitted
	4 Omitted	LB 49	§ 1 71-4728.04
LB 8	§ 1 68-1019		2 Omitted
	2 68-1020		3 Omitted
	3 68-1713		
	4 Omitted		
	5 Omitted		
LB 9	§ 1 44-32,180		
	2 44-4726		
	3 77-908		
	4 77-912		
	5 Omitted		
	6 Omitted		
LB 11	§ 1 47-119.01		
	2 47-121.01		
	3 Omitted		
	4 Omitted		
LB 12	§ 1 2-15,106		
	2 81-132		
	3 81-1113		
	4 81-2227		
	5 85-1416		
	6 Omitted		
	7 Omitted		
LB 13	§ 1 24-227.01		
	2 33-107.03		
	3 29-2709		
	4 Omitted		
	5 Omitted		
	6 Omitted		
LB 18	§ 1 60-311.01		
	2 Omitted		
	3 Omitted		
LB 22	§ 1 43-118.01		
	2 Omitted		
LB 25	§ 1 71-3204		
	2 71-3205		
	3 71-3209		
	4 Omitted		
	5 Omitted		
	6 Omitted		
LB 32	§ 1 77-2703		
	2 77-2705		
	3 77-2708		
	4 77-4014		
	5 Omitted		
	6 Omitted		
	7 Omitted		
LB 37	§ 1 86-324		
	2 Omitted		
	3 Omitted		
LB 41	Omitted		

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CROSS REFERENCE TABLE

Legislative Bills, 97th Legislature
Second Special Session, 2002

Showing the date each act went into effect.
Convened July 30, 2002, and adjourned August 15, 2002.

LB No.	Effective Date	LB No.	Effective Date
1	August 16, 2002	18	August 16, 2002
2	August 16, 2002	22	November 16, 2002
3	August 16, 2002	25	October 1, 2002
4	August 16, 2002		(operative date)
5	November 16, 2002	32	October 1, 2002
6	August 16, 2002		(operative date)
8	August 16, 2002	37	August 16, 2002
9	August 16, 2002.	41	August 16, 2002
11	August 16, 2002	46	August 16, 2002
12	August 16, 2002	48	November 16, 2002
13	September 1, 2002 (operative date)	49	August 16, 2002

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CROSS REFERENCE TABLE

2002 Session Laws of Nebraska, Third Special Session

2002 Third Special Session	2003 Supplement	2002 Third Special Session	2003 Supplement	2002 Third Special Session	2003 Supplement	
LB 1	§ 1	28-105	8	29-2204	15	29-2523
	2	28-105.01	9	29-2261	16	29-2524
	3	28-303	10	29-2519	17	83-1,105.01
	4	29-1602	11	29-2520	18	Omitted
	5	29-1603	12	29-2521	19	Omitted
	6	29-2004	13	29-2521.05	20	Omitted
	7	29-2027	14	29-2522	LB 3	Omitted

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CROSS REFERENCE TABLE

Legislative Bills, 97th Legislature
Third Special Session, 2002

Showing the date each act went into effect.
Convened November 7, 2002, and adjourned November 22, 2002.

LB No.	Effective Date
1	November 23, 2002
3	November 23, 2002

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CROSS REFERENCE TABLE

2003 Session Laws of Nebraska, First Session

2003 First Session	2003 Supplement	2003 First Session	2003 Supplement	2003 First Session	2003 Supplement
LB 1	Omitted	LB 15	§ 1 32-811	LB 43	§ 1 43-260.02
LB 2	§ 1 86-101		2 Omitted		2 43-260.03
	2 Omitted	LB 17	§ 1 28-101		3 43-260.04
LB 3	§ 1 9-203		2 28-322.04		4 43-260.05
	2 9-303		3 28-1349		5 43-260.06
	3 9-403		4 28-1350		6 43-260.07
	4 9-603		5 28-1018		7 23-1201
	5 9-603.03		6 28-635		8 28-101
	6 Omitted		7 28-603		9 28-457
LB 4	§ 1 52-1302		8 28-604		10 29-2258
	2 52-1307		9 29-215		11 29-3601
	3 52-1313		10 29-2315		12 43-250
	4 52-1318		11 29-2315.01		13 43-274
	5 52-1602		12 29-2316		14 43-276
	6 9-315 UCC		13 29-2317		15 43-290
	7 9-320 UCC		14 29-2319		16 43-2,129
	8 9-529 UCC		15 29-2320		17 Omitted
	9 9-531 UCC		16 29-2321	LB 45	§ 1 71-5709
	10 Omitted		17 29-3524		2 71-5713
LB 5	§ 1 3-201		18 47-401		3 Omitted
	2 3-501		19 Omitted	LB 46	§ 1 28-416
	3 3-508	LB 19	§ 1 25-304		2 29-2639
	4 3-513		2 25-1210		3 29-2640
	5 Omitted		3 25-1601		4 29-2250
LB 6	§ 1 44-4206.02		4 25-1625		5 29-2252
	2 44-5237.01		5 25-1628		6 29-2254
	3 44-5242		6 Omitted		7 29-2259.01
	4 44-6904		7 Omitted		8 29-2261
	5 44-6908	LB 30	§ 1 46-656.10		9 29-2262
	6 Omitted		2 Omitted		10 29-2263
LB 7	§ 1 85-121		3 Omitted		11 29-2266
	2 85-121.03	LB 30A	Omitted		12 29-2262.06
	3 85-943	LB 31	§ 1 46-606		13 29-2262.07
	4 85-966.01		2 46-1233.01		14 29-2269
	5 85-1412		3 71-5301		15 29-2709
	6 85-1413		4 71-5303		16 81-1423
	7 85-1414		5 71-5304		17 81-1425
	8 Omitted		6 71-5309		18 83-187.01
	9 Omitted		7 Omitted		19 83-1,102
LB 8	§ 1 77-913		8 Omitted		20 83-1,107
	2 81-1113	LB 31A	Omitted		21 83-1,107.01
	3 Omitted	LB 34	§ 1 46-656.29		22 83-1,107.02
	4 Omitted		2 Omitted		23 83-1,110
LB 9	§ 1 13-519	LB 35	§ 1 46-656.30		24 83-1,111
	2 Omitted		2 Omitted		25 83-1,118
LB 10	Omitted	LB 40	§ 1 23-1723.01		26 83-1,123
LB 11	Omitted		2 Omitted		27 83-1,125
LB 12	Omitted	LB 41	§ 1 23-3104		28 83-1,135
LB 14	§ 1 32-204		2 23-3107		29 83-4,146
	2 32-320		3 23-3108		30 83-933
	3 Omitted		4 23-3109		31 47-619
	4 Omitted		5 Omitted		32 47-620

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2003 First Session	2003 Supplement	2003 First Session	2003 Supplement	2003 First Session	2003 Supplement
	33 47-621		3 Omitted		7 85-132
	34 47-622	LB 61	§ 1 76-1301		8 85-194
	35 47-623		2 76-1302		9 85-1,119
	36 47-624		3 76-1304		10 Omitted
	37 47-625		4 76-1305		11 Omitted
	38 47-626		5 76-1306	LB 69	§ 1 55-181
	39 47-627		6 76-1307		2 55-101
	40 47-628		7 76-1308		3 Omitted
	41 47-629		8 76-1309	LB 69A	Omitted
	42 47-630		9 76-1310	LB 70	§ 1 52-1603
	43 47-631		10 76-1313		2 Omitted
	44 47-632		11 76-1314		3 Omitted
	45 47-633		12 76-1315	LB 71	§ 1 45-338
	46 83-960		13 Omitted		2 Omitted
	47 83-961	LB 65	§ 1 70-1001.01	LB 72	§ 1 77-2701
	48 83-962		2 70-1014		2 77-27,119.05
	49 83-963		3 70-1014.01		3 77-27,119.06
	50 83-1,135.02		4 Omitted		4 77-27,119.04
	51 Omitted	LB 66	§ 1 79-1310		5 2-107
	52 Omitted		2 Omitted		6 Omitted
	53 Omitted		3 Omitted	LB 72A	Omitted
	54 Omitted	LB 66A	Omitted	LB 73	§ 1 81-6,111
	55 Omitted	LB 67	§ 1 10-704		2 81-6,112
	56 Omitted		2 79-101		3 81-6,113
	57 Omitted		3 79-2,135		4 81-6,114
LB 46A	Omitted		4 79-4,102		5 81-6,115
LB 48	§ 1 81-3602		5 79-527		6 81-6,116
	2 81-3606		6 79-528		7 81-6,117
	3 81-3601 to 81-3609, revived		7 79-554		8 81-6,118
	4 Omitted		8 79-565		9 81-6,119
	5 Omitted		9 79-598		10 44-7,101
	LB 52		10 79-602		11 44-1525
	§ 1 16-6,109		11 79-1007.02		12 Omitted
	2 19-2408		12 79-1022	LB 73A	Omitted
	3 19-2409		13 79-1023	LB 76	§ 1 17-966
	4 19-2410		14 79-1024		2 Omitted
	5 19-2411		15 79-1026	LB 83	§ 1 80-407
	6 19-2414		16 79-1027		2 Omitted
	7 19-2415		17 79-1027.01		3 Omitted
	8 Omitted		18 79-1028	LB 84	§ 1 23-1201.01
LB 53	§ 1 79-1241		19 79-1029		2 32-604
	2 Omitted		20 79-1070		3 Omitted
LB 54	§ 1 71-1904		21 79-1083.02		4 Omitted
	2 Omitted		22 79-1083.03	LB 85	§ 1 8-105
	3 Omitted		23 79-10,110		2 44-119
LB 54A	Omitted		24 79-1135		3 81-1316
LB 55	§ 1 71-507		25 79-1155		4 81-1373
	2 71-510		26 79-1156		5 Omitted
	3 71-511		27 79-1167		6 Omitted
	4 Omitted		28 79-1303	LB 85A	Omitted
LB 56	§ 1 71-2601		29 79-1305	LB 90	§ 1 22-112
	2 71-2602		30 79-1306		2 22-119
	3 71-2603		31 79-1307		3 22-171
	4 71-2606		32 79-1324		4 Omitted
	5 71-2607		33 Omitted		5 Omitted
	6 71-2610		34 Omitted	LB 92	Omitted
	7 71-2610.01	LB 68	35 Omitted	LB 93	§ 1 46-656.07
	8 71-2611		§ 1 85-105		2 Omitted
	9 Omitted		2 85-106.06	LB 94	§ 1 81-15,236
	10 Omitted		3 85-108		2 81-15,237
LB 60	§ 1 81-885.13		4 85-112		3 81-15,238
	2 81-885.17		5 85-118		4 81-15,239
			6 85-131		5 81-15,240

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2003 First Session	2003 Supplement	2003 First Session	2003 Supplement	2003 First Session	2003 Supplement		
	6	81-15,241		2	Omitted	12	30-3812
	7	81-15,242	LB 102A		Omitted	13	30-3813
	8	81-15,243	LB 103	§ 1	60-6,294.01	14	30-3814
	9	81-15,244		2	Omitted	15	30-3815
	10	81-15,245	LB 106	§ 1	85-9,181	16	30-3816
	11	81-15,246		2	Omitted	17	30-3817
	12	81-15,247	LB 107	§ 1	85-1730	18	30-3818
	13	81-15,248		2	85-1738	19	30-3819
	14	81-15,249		3	Omitted	20	30-3820
	15	81-15,250		4	Omitted	21	30-3821
	16	81-15,251	LB 111	§ 1	28-813.01	22	30-3822
	17	81-15,252		2	Omitted	23	30-3823
	18	81-15,253		3	Omitted	24	30-3824
	19	81-3453	LB 112	§ 1	81-1120.19	25	30-3825
	20	Omitted		2	Omitted	26	30-3826
LB 94A		Omitted		3	Omitted	27	30-3827
LB 95	§ 1	71-1355	LB 114	§ 1	50-114.03	28	30-3828
	2	71-1356		2	Omitted	29	30-3829
	3	71-1357	LB 118	§ 1	87-302	30	30-3830
	4	71-1358		2	Omitted	31	30-3831
	5	71-1359	LB 119	§ 1	71-1,104.01	32	30-3832
	6	71-1360		2	71-519	33	30-3833
	7	71-1361		3	Omitted	34	30-3834
	8	71-1362	LB 122	§ 1	37-438	35	30-3835
	9	71-1363		2	Omitted	36	30-3836
	10	71-1364	LB 126	§ 1	81-2101	37	30-3837
	11	71-1365		2	81-2102	38	30-3838
	12	71-1366		3	81-2103	39	30-3839
	13	71-1367		4	81-2104	40	30-3840
	14	71-1368		5	81-2106	41	30-3841
	15	71-1369		6	81-2107	42	30-3842
	16	71-1370		7	81-2108	43	30-3843
	17	71-1371		8	81-2113	44	30-3844
	18	71-1372		9	81-2114	45	30-3845
	19	71-1373		10	81-2117.02	46	30-3846
	20	71-1374		11	81-2118	47	30-3847
	21	71-1375		12	81-2119	48	30-3848
	22	71-1376		13	81-2135	49	30-3849
	23	71-1377		14	81-2141	50	30-3850
	24	71-1378		15	Omitted	51	30-3851
	25	71-1379		16	Omitted	52	30-3852
	26	71-1380		17	Omitted	53	30-3853
	27	71-1381	LB 127	§ 1	21-2602	54	30-3854
	28	71-1382		2	Omitted	55	30-3855
	29	71-1383	LB 128	§ 1	3-103 UCC	56	30-3856
	30	71-1384		2	3-104 UCC	57	30-3857
	31	71-1385		3	3-309 UCC	58	30-3858
	32	28-1301		4	3-416 UCC	59	30-3859
	33	71-605		5	3-417 UCC	60	30-3860
	34	71-606		6	4-207 UCC	61	30-3861
	35	71-1301		7	4-208 UCC	62	30-3862
	36	71-1339		8	Omitted	63	30-3863
	37	71-1340	LB 130	§ 1	30-3801	64	30-3864
	38	71-20,121		2	30-3802	65	30-3865
	39	Omitted		3	30-3803	66	30-3866
	40	Omitted		4	30-3804	67	30-3867
LB 95A		Omitted		5	30-3805	68	30-3868
LB 97	§ 1	14-3,107		6	30-3806	69	30-3869
	2	14-3,127		7	30-3807	70	30-3870
	3	Omitted		8	30-3808	71	30-3871
LB 101	§ 1	39-1108		9	30-3809	72	30-3872
	2	Omitted		10	30-3810	73	30-3873
LB 102	§ 1	60-106		11	30-3811	74	30-3874

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75	30-3875		138	76-2004	11	81-15,160
76	30-3876		139	76-2006	12	81-15,161
77	30-3877		140	Omitted	13	81-15,162
78	30-3878		141	Omitted	14	Omitted
79	30-3879		142	Omitted	15	Omitted
80	30-3880		143	Omitted		Omitted
81	30-3881	LB 131	§ 1	8-101	LB 143A	
82	30-3882		2	8-102	LB 146	§ 1
83	30-3883		3	8-103		44-2825
84	30-3884		4	8-157.01		2
85	30-3885		5	8-1,139		44-2827
86	30-3886		6	8-345.01		3
87	30-3887		7	8-601		44-2829
88	30-3888		8	8-602		4
89	30-3889		9	8-1110		44-2831
90	30-3890		10	8-1401		5
91	30-3891		11	8-1501		44-2840
92	30-3892		12	8-1502		6
93	30-3893		13	8-1504		44-2842
94	30-3894		14	8-1505		7
95	30-3895		15	8-1506.01		25-21,188.02
96	30-3896		16	8-1516		8
97	30-3897		17	8-1901		Omitted
98	30-3898		18	9-1,104	LB 148	§ 1
99	30-3899		19	12-1102		43-1226
100	30-38,100		20	12-1107		2
101	30-38,101		21	18-2707		43-1227
102	30-38,102		22	21-20,138		3
103	30-38,103		23	21-20,162		43-1228
104	30-38,104		24	28-612		4
105	30-38,105		25	45-101.04		43-1229
106	30-38,106		26	45-190		5
107	30-38,107		27	45-1,112		43-1230
108	30-38,108		28	45-345		6
109	30-38,109		29	45-702		43-1231
110	30-38,110		30	45-1002		7
111	8-201		31	45-1003		43-1232
112	12-1107		32	62-301		8
113	21-20,168		33	64-215		43-1233
114	24-517		34	69-1301		9
115	25-1901		35	76-2221		43-1234
116	25-2705		36	77-2366		10
117	25-2708		37	77-2387		43-1235
118	25-2728		38	77-3801		11
119	30-1601		39	Omitted		43-1236
120	30-2202		40	Omitted		12
121	30-2208	LB 137	§ 1	60-6,297		43-1237
122	30-2210		2	Omitted		13
123	30-2211		3	Omitted		43-1238
124	30-2212	LB 138	§ 1	71-4802		14
125	30-2214		2	Omitted		43-1239
126	30-2222	LB 142	§ 1	13-2033		15
127	30-2352		2	Omitted		43-1240
128	30-2464	LB 143	§ 1	13-2001		16
129	30-24,111		2	13-2003		43-1241
130	30-2628		3	13-2013.01		17
131	30-2637		4	13-2013.02		43-1242
132	30-2646		5	13-2033		18
133	30-3119		6	13-2039		43-1243
134	30-3201		7	13-2040		19
135	30-3205		8	13-2042		43-1244
136	30-3508		9	81-1504.01		20
137	49-1544		10	81-15,159.02		43-1245
						21
						43-1246
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						42-701
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						42-710

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	50	42-711		8	Omitted	52	54-2752
	51	42-712	LB 150	§ 1	71-15,141	53	54-2753
	52	42-713		2	Omitted	54	54-2754
	53	42-713.01	LB 156	§ 1	8-1401	55	54-2755
	54	42-713.02		2	8-1402	56	54-2756
	55	42-714		3	8-1403	57	54-2757
	56	42-716		4	Omitted	58	54-2758
	57	42-717	LB 157	§ 1	2-2624	59	54-2759
	58	42-718		2	2-2646	60	54-2760
	59	42-719		3	2-4324	61	54-2761
	60	42-720		4	81-2,162.27	62	54-2238
	61	42-721		5	Omitted	63	54-2244
	62	42-723	LB 158	§ 1	54-2701	64	54-2254
	63	42-724		2	54-2702	65	54-2277
	64	42-725		3	54-2703	66	54-2280
	65	42-726		4	54-2704	67	54-2287
	66	42-727		5	54-2705	68	54-2289
	67	42-729		6	54-2706	69	54-2290
	68	42-730		7	54-2707	70	54-2296
	69	42-732		8	54-2708	71	54-2299
	70	42-733		9	54-2709	72	Omitted
	71	42-734		10	54-2710	73	Omitted
	72	42-734.01		11	54-2711	74	Omitted
	73	42-734.02		12	54-2712	75	Omitted
	74	42-734.05		13	54-2713	LB 160	§ 1 54-785
	75	42-735		14	54-2714		2 54-786
	76	42-737		15	54-2715		3 54-787
	77	42-738		16	54-2716		4 54-788
	78	42-739		17	54-2717		5 54-790
	79	42-740		18	54-2718		6 54-791
	80	42-742		19	54-2719		7 54-796
	81	42-745		20	54-2720		8 54-1182
	82	42-746		21	54-2721		9 54-1403
	83	42-747		22	54-2722		10 54-1509
	84	42-747.01		23	54-2723		11 54-1517
	85	42-747.03		24	54-2724		12 54-1902
	86	42-748		25	54-2725		13 54-1906
	87	42-749		26	54-2726		14 54-1914
	88	42-750		27	54-2727		15 Omitted
	89	42-751		28	54-2728	LB 161	§ 1 89-183
	90	42-932		29	54-2729		2 89-185
	91	42-933		30	54-2730		3 89-186
	92	42-934		31	54-2731		4 89-187
	93	42-935		32	54-2732		5 89-187.02
	94	42-936		33	54-2733		6 89-188
	95	42-937		34	54-2734		7 89-1,100
	96	42-938		35	54-2735		8 Omitted
	97	42-939		36	54-2736		9 Omitted
	98	42-940		37	54-2737	LB 164	§ 1 81-15,149
	99	42-931		38	54-2738		2 81-15,153
	100	43-104		39	54-2739		3 Omitted
	101	Omitted		40	54-2740	LB 164A	Omitted
	102	Omitted		41	54-2741	LB 165	§ 1 71-3523
	103	Omitted		42	54-2742		2 71-3524
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	105	Omitted		44	54-2744		4 71-3526
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	3	72-1252		47	54-2747		7 18-2410
	4	72-1254		48	54-2748		8 18-2427
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LB 167	§ 1 35-108		21	LB 210	§ 1 48-106
	2 Omitted		22		2 48-125.01
	3 Omitted		23		3 Omitted
LB 168	§ 1 77-2701		24	LB 213	§ 1 71-1773
	2 77-2704.43		25		2 71-1774
	3 Omitted		26		3 71-1775
	4 Omitted		27		4 71-1776
	5 Omitted		28		5 71-1779
LB 175	§ 1 17-607		29		6 71-1780
	2 72-1261		30		7 Omitted
	3 72-1262		31	LB 214	§ 1 1-114
	4 72-1263		32		2 1-118
	5 72-1264		33		3 1-119
	6 72-1265		34		4 1-120
	7 72-1266		35		5 1-124
	8 72-1268		36		6 1-135
	9 72-1268.01		37		7 1-136
	10 72-1268.02	LB 191	§ 1 77-1601		8 Omitted
	11 72-1268.03		2 Omitted		9 Omitted
	12 72-1268.04	LB 192	§ 1 77-3510	LB 216	§ 1 44-113
	13 77-2365.01		2 77-3512		2 44-114
	14 77-2387		3 Omitted		3 44-322
	15 77-2389	LB 194	§ 1 48-1623		4 44-407.14
	16 10-145		2 Omitted		5 44-501
	17 Omitted	LB 195	§ 1 48-606		6 44-924
LB 181	§ 1 32-101		2 Omitted		7 44-1103
	2 32-573	LB 197	§ 1 48-621		8 44-1106
	3 32-571		2 Omitted		9 44-1994
	4 32-572		3 Omitted		10 44-19,116
	5 32-618	LB 199	§ 1 48-603.01		11 44-2707
	6 85-103		2 48-604		12 44-5101
	7 Omitted		3 Omitted		13 44-5110
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	3 60-695		4 Omitted		19 44-7508.01
	4 60-699	LB 209	§ 1 60-462		20 44-7507
	5 Omitted		2 60-479		21 44-7508.02
	6 Omitted		3 60-498		22 44-7513
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	2 Omitted		5 60-498.02		24 Omitted
LB 187	§ 1 14-115		6 60-498.03		25 Omitted
	2 14-116		7 60-498.04	LB 217	§ 1 8-101
	3 15-901		8 60-4,110		2 8-115.01
	4 16-902		9 60-4,118.06		3 8-116.01
	5 17-1002		10 60-4,129		4 8-132
	6 18-2432		11 60-6,196		5 8-133
	7 39-1311		12 60-6,197		6 8-148
	8 39-1311.01		13 60-6,209		7 8-157
	9 39-1311.02		14 60-6,211.04		8 8-1,118
	10 39-1311.03		15 60-6,211.05		9 8-1,140
	11 39-1311.04		16 60-1513		10 8-234
	12 70-604.06		17 83-1,129		11 8-355
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	18	8-1001		6	23-1727	16	71-121.01
	19	8-1001.01		7	23-1729	17	71-122
	20	8-1003		8	23-1730	18	71-131
	21	8-1012.01		9	23-1731	19	71-145
	22	8-1013		10	23-1732	20	71-149
	23	8-1103		11	23-1734	21	71-157
	24	8-1120		12	23-1736	22	71-158
	25	8-1503		13	Omitted	23	71-162
	26	8-1507		14	Omitted	24	71-162.01
	27	8-1510	LB 228	§ 1	42-1201	25	71-162.02
	28	8-1603		2	42-1202	26	71-162.03
	29	8-1731		3	42-1203	27	71-162.04
	30	21-1725.01		4	42-1204	28	71-162.05
	31	21-17,102		5	42-1205	29	71-164.01
	32	21-17,115		6	42-1206	30	71-163
	33	45-191.02		7	42-1207	31	71-172.01
	34	45-335		8	42-1208	32	71-172.02
	35	45-343		9	42-1209	33	71-175
	36	45-345		10	42-1210	34	71-185
	37	45-902		11	32-331	35	71-185.02
	38	45-1002		12	60-484	36	71-185.03
	39	45-1003		13	60-4,144	37	71-193.18
	40	45-1018		14	60-4,181	38	71-193.31
	41	59-1701.01		15	84-907.03	39	71-1,104
	42	59-1703		16	Omitted	40	71-1,107.10
	43	59-1749	LB 228A		Omitted	41	71-1,107.13
	44	59-1722.01	LB 233	§ 1	54-626	42	71-1,107.14
	45	59-1758.01		2	54-627	43	71-1,107.26
	46	76-2,123		3	Omitted	44	71-1,132.13
	47	Omitted		4	Omitted	45	71-1,132.20
	48	Omitted	LB 233A		Omitted	46	71-1,132.21
	49	Omitted	LB 234	§ 1	81-3109	47	71-1,132.37
	50	Omitted		2	Omitted	48	71-1,132.48
	51	Omitted	LB 234A		Omitted	49	71-1,132.53
LB 218	§ 1	45-702	LB 235	§ 1	14-548	50	71-1,135.02
	2	45-704		2	Omitted	51	71-1,143.01
	3	45-705	LB 238	§ 1	60-105	52	71-1,147.30
	4	45-706		2	60-106	53	71-1,147.42
	5	45-707		3	60-311.16	54	71-1,147.64
	6	45-709		4	60-320	55	71-1,158
	7	45-710		5	60-6,162	56	71-1,161
	8	45-711		6	60-6,226	57	71-1,165
	9	45-714		7	60-6,263	58	71-1,166
	10	45-715		8	60-3001	59	71-1,194
	11	45-716		9	Omitted	60	71-1,195.01
	12	45-717.01	LB 241	§ 1	71-1559	61	71-1,227
	13	45-1007		2	71-4604.01	62	71-1,228
	14	45-1024		3	Omitted	63	71-1,232
	15	45-1025	LB 242	§ 1	11-201	64	71-1,235
	16	45-1033		2	28-406	65	71-1,238
	17	45-1066		3	28-410	66	71-1,239.01
	18	76-252		4	33-151	67	71-1,240
	19	76-1014.01		5	46-602	68	71-1,242
	20	Omitted		6	46-606	69	71-1,278
LB 219	§ 1	2-3745		7	46-1222	70	71-1,281.01
	2	2-3748		8	46-1224	71	71-1,291
	3	Omitted		9	46-1229	72	71-1,294
	4	Omitted		10	46-1231	73	71-1,314.01
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78	71-1,329	141	71-6110	16	81-2,272.25
79	71-1,331	142	71-6113	17	81-2,272.27
80	71-1,344	143	71-6114	18	81-2,272.28
81	71-1,345	144	71-6303	19	81-2,272.31
82	71-388	145	71-6321	20	81-2,272.29
83	71-394.01	146	71-6328.01	21	81-2,272.30
84	71-397	147	71-6734	22	81-2,272.32
85	71-3,115	148	71-7417	23	81-2,272.33
86	71-3,125	149	71-7418	24	81-2,272.34
87	71-3,132	150	71-7420	25	81-2,272.35
88	71-3,147	151	71-7421	26	81-2,272.36
89	71-3,155	152	Omitted	27	81-2,272.37
90	71-3,173	153	Omitted	28	Omitted
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92	71-3,196	LB 243 § 1	2-1203	30	Omitted
93	71-3,205		2 Omitted	LB 255 § 1	25-2930
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96	71-3,228		3 43-1723	4	25-2933
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98	71-1327		5 43-3329	6	25-2935
99	71-1327.01		6 46-602	7	25-2936
100	71-1331		7 46-1204.01	8	25-2937
101	71-1722		8 46-1235	9	25-2938
102	71-1723		9 54-311	10	25-2939
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109	71-1777		16 81-1316	3	Omitted
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112	71-2803.01		19 Omitted	LB 259 § 1	74-1336
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114	71-3508.03		2 79-2,125	3	74-1415.05
115	71-3515.02		3 79-2,126	4	Omitted
116	71-3702		4 79-2,127	LB 267 § 1	53-131.01
117	71-3703		5 79-2,127.01	2	71-3205
118	71-3704		6 79-2,128	3	Omitted
119	71-3705		7 79-2,131	LB 273 § 1	28-1017
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121	71-3710		9 79-2,133	3	28-1005
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123	71-4305		11 Omitted	5	28-1009
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128	71-5172		3 81-2,239	10	Omitted
129	71-5181.01		4 81-2,244.01	LB 274 § 1	54-625
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	2	13-319	65	77-2704.50	15	77-5004
	3	13-324	66	77-2704.51	16	79-1082
	4	13-326	67	77-2704.52	17	81-1174
	5	77-3,117	68	77-2704.53	18	Omitted
	6	77-2701	69	77-2704.54	19	Omitted
	7	77-2701.03	70	77-2705	20	Omitted
	8	77-2701.04	71	77-2708	21	Omitted
	9	77-2701.05	72	77-2708.01	LB 294	§ 1 30-809
	10	77-2701.06	73	77-2711		2 Omitted
	11	77-2701.07	74	77-2712.02	LB 295	§ 1 77-112
	12	77-2701.08	75	77-2712.03		2 77-1361
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	15	77-2701.11	78	77-2713	LB 305	§ 1 37-201
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	42	77-2701.38		7 77-5011		28 Omitted
	43	77-2701.39		8 77-5015		29 Omitted
	44	77-2701.40		9 77-5016		30 Omitted
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	19	37-562		2 49-1495	LB 359	§ 1 32-101
	20	37-1212		3 Omitted	2	32-312
	21	37-1214	LB 354	§ 1 84-617	3	32-319
	22	37-1217		2 Omitted	4	32-914
	23	Omitted	LB 357	§ 1 32-221	5	32-915.02
	24	Omitted		2 32-223	6	32-916
LB 307	§ 1	81-1347		3 32-230	7	32-947
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	3	81-1354		5 32-301	LB 365	§ 1 16-404
	4	Omitted		6 32-308	2	17-614
LB 319	§ 1	77-1832		7 32-312	3	Omitted
	2	77-1833		8 32-329	LB 367	§ 1 9-812
	3	77-1834		9 84-510	2	66-1519
	4	Omitted		10 67-293	3	Omitted
	5	Omitted		11 Omitted	4	Omitted
LB 320	§ 1	24-703		12 Omitted	LB 371	§ 1 60-1438
	2	24-708	LB 357A	Omitted	2	Omitted
	3	24-721	LB 358	§ 1 32-101	LB 381	§ 1 13-324
	4	Omitted		2 32-103	2	13-2814
	5	Omitted		3 32-110.01	3	77-2703
LB 331	§ 1	23-135		4 32-119.01	4	77-27,143
	2	Omitted		5 32-202	5	Omitted
	3	Omitted		6 32-216	6	Omitted
LB 332	§ 1	48-115		7 32-223	LB 381A	Omitted
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	3	Omitted		9 32-320	2	13-2706
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	7	60-145		16 32-901	4	79-419
	8	60-146		17 32-902	5	79-479
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	10	60-148		19 32-906	7	79-611
	11	60-149		20 32-909	8	79-1036
	12	60-150		21 32-913	9	Omitted
	13	60-151		22 32-914	10	Omitted
	14	60-152		23 32-914.02	11	Omitted
	15	60-153		24 32-915	LB 402	Omitted
	16	60-154		25 32-915.01	LB 403	§ 1 90-267
	17	60-155		26 32-916	2	90-268
	18	60-156		27 32-918	3	90-269
	19	60-157		28 32-921	4	90-270
	20	60-158		29 32-929	5	81-829.33
	21	60-159		30 32-1002	6	72-815
	22	60-160		31 32-1005	7	72-816
	23	60-161		32 32-1006	8	81-829.42
	24	60-162		33 32-1007	9	81-829.58
	25	60-163		34 32-1012	10	81-829.59
	26	60-164		35 32-1019	11	81-829.72
	27	60-165		36 32-1026	12	Omitted
	28	60-166		37 32-1041	13	Omitted
	29	60-167		38 32-1042	LB 403A	Omitted
	30	60-168		39 32-1043	LB 404	Omitted
	31	60-169		40 32-1044	LB 405	Omitted
	32	23-186		41 32-1045	LB 406	Omitted
	33	60-6,355		42 32-1202	LB 407	Omitted
	34	Omitted		43 32-1307	LB 408	§ 1 39-1390
	35	Omitted		44 32-1701	2	60-1303

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2003 First Session	2003 Supplement	2003 First Session	2003 Supplement	2003 First Session	2003 Supplement		
	2	44-7702	7	21-311	17	60-4,168.01	
	3	44-7703	8	21-313	18	60-4,168.02	
	4	44-7704	9	21-314	19	60-4,172	
	5	44-7705	10	21-321	20	60-462.01	
	6	44-7706	11	21-323	21	Omitted	
	7	44-7707	12	21-323.01	22	Omitted	
	8	44-7708	13	21-325		Omitted	
	9	44-7709	14	21-325.01	LB 562A		
	10	44-7710	15	21-330	LB 563	§ 1 60-349	
	11	44-7711	16	21-20,182		2 60-350	
	12	44-7712	17	21-20,188		3 60-351	
	13	Omitted	18	21-2216		4 60-352	
LB 494	§ 1	9-516 UCC	19	21-2217		5 60-353	
	2	Omitted	20	33-101		6 60-354	
LB 498	§ 1	60-1401.02	21	Omitted		7 60-355	
	2	60-1403.01	22	Omitted		8 60-356	
	3	60-1406	23	Omitted		9 60-357	
	4	60-1407	LB 536	§ 1	53-101.02	10 60-358	
	5	60-1410		2	53-103	11 60-359	
	6	60-1411		3	53-123.11	12 60-360	
	7	60-1411.01		4	53-304	13 60-361	
	8	60-1411.02		5	Omitted	14 60-362	
	9	60-1413	LB 537	§ 1	32-608	15 60-363	
	10	60-1416		2	32-615	16 13-518	
	11	Omitted		3	32-617	17 39-2215	
LB 500	§ 1	39-2301		4	Omitted	18 60-102	
	2	39-2301.01	LB 540	§ 1	13-518	19 60-104	
	3	39-2302		2	77-3442	20 60-106	
	4	39-2304		3	77-3446	21 60-301	
	5	39-2305		4	79-1008.01	22 60-305.02	
	6	39-2306		5	79-1022	23 60-305.03	
	7	39-2307		6	79-1022.02	24 60-305.04	
	8	39-2308		7	79-1025	25 60-306	
	9	39-2308.01		8	79-1026	26 60-310	
	10	39-2308.02		9	79-1083.03	27 60-311	
	11	39-2308.03		10	79-10,110	28 60-311.02	
	12	39-2309		11	85-1536.01	29 60-318	
	13	39-2310		12	Omitted	30 60-331	
	14	39-2311		13	Omitted	31 60-344	
	15	39-2502		14	Omitted	32 60-348	
	16	39-2503	LB 548	§ 1	32-241	33 60-6,298	
	17	39-2504		2	Omitted	34 60-1401.02	
	18	39-2512	LB 561	§ 1	60-364	35 60-3002	
	19	39-2513		2	60-305.02	36 60-3004	
	20	39-2514		3	60-305.09	37 60-3007	
	21	Omitted		4	Omitted	38 66-1406.02	
	22	Omitted		5	Omitted	39 66-1414	
	23	Omitted	LB 562	§ 1	29-3608	40 75-305	
LB 510	§ 1	50-401.01		2	60-462	41 75-386	
	2	Omitted		3	60-483	42 77-1342	
LB 513	§ 1	85-902		4	60-487	43 77-2703	
LB 521	§ 1	10-703.01		5	60-4,112	44 Omitted	
	2	18-2521		6	60-4,116	45 Omitted	
	3	32-101		7	60-4,131	LB 572	§ 1 69-2704
	4	32-405		8	60-4,132		2 69-2705
	5	32-559		9	60-4,137		3 69-2706
	6	Omitted		10	60-4,138		4 69-2707
LB 524	§ 1	21-301		11	60-4,139.01		5 69-2708
	2	21-302		12	60-4,141.01		6 69-2709
	3	21-303		13	60-4,142		7 69-2710
	4	21-304		14	60-4,144		8 69-2702
	5	21-305		15	60-4,156		9 77-2601
	6	21-306		16	60-4,168		10 77-2603
							11 77-2608

CROSS REFERENCE TABLE

2003 First Session	2003 Supplement	2003 First Session	2003 Supplement	2003 First Session	2003 Supplement
	12		11		10
	13		12		11
	14		13		Omitted
	15		14	LB 626A	Omitted
LB 574	§ 1		15	LB 643	§ 1
	2		16		2
	3		17		3
	4		18		4
	5		19		5
	6		20	LB 655	§ 1
	7		21		2
	8		22		3
	9	LB 608	§ 1		4
	10		2		5
	11		3		6
	12		4		7
	13		5		8
	14		6		9
	15		7		10
	16		8		11
	17		9	LB 667	§ 1
	18		10		2
	19		11		3
	20		12		4
	21		13		5
	22		14		6
	23	LB 608A	Omitted		7
	24	LB 610	§ 1		8
	25		2		9
	26	LB 619	§ 1		10
	27		2		11
	28		3		12
	29		4		13
	30		5		14
	31		6		15
	32		7		16
	33		8		17
	34		9		18
	35		10		19
	36		11		20
	37		12		21
	38		13		22
	39		14		23
	40		15		24
	41		16		25
	42		17		26
	43		18	LB 667A	Omitted
	44		19	LB 685	§ 1
	45		20		2
LB 574A	Omitted		21		3
LB 596	§ 1	LB 622	§ 1		4
	2		2		5
	3		3		6
LB 607	§ 1		4		7
	2	LB 626	§ 1		8
	3		2		9
	4		3		10
	5		4		11
	6		5		12
	7		6		13
	8		7		14
	9		8		15
	10		9		16

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2003 First Session	2003 Supplement	2003 First Session	2003 Supplement	2003 First Session	2003 Supplement		
	17	79-827		2	75-901	4	24-703
	18	79-829		3	75-902	5	25-21,223
	19	79-871		4	75-903	6	25-2221
	20	79-8,133		5	75-903.02	7	33-155
	21	79-8,135		6	75-910	8	25-2921
	22	79-8,137		7	88-525	9	29-3920
	23	79-1104		8	88-526	10	29-3921
	24	79-1239		9	88-527	11	29-3930
	25	79-1601		10	88-528	12	33-156
	26	79-1605		11	88-528.01	13	33-106
	27	85-1105		12	88-530	14	33-138
	28	85-1108		13	88-530.01	15	42-720
	29	85-1412		14	88-536	16	48-191
	30	85-1603		15	88-543.01	17	49-1203
	31	85-1604		16	89-1,104.01	18	76-1442
	32	85-1620		17	Omitted	19	83-4,125
	33	85-1622	LB 735A		Omitted	20	Omitted
	34	85-1640	LB 754	§ 1	54-2801	21	Omitted
	35	85-1643		2	54-2802	LB 760A	Omitted
	36	Omitted		3	23-114.01	LB 790	§ 1
	37	Omitted		4	Omitted		66-1801
	38	Omitted	LB 756	§ 1	71-2422		2
LB 688	§ 1	85-1,131		2	71-2423		66-1802
	2	85-1,132		3	71-2424		3
	3	85-1,133		4	71-2425		66-1803
	4	85-1,134		5	71-2426		4
	5	85-1,135		6	71-2427		66-1804
	6	85-1,136		7	71-2428		5
	7	85-1,137		8	71-2429		66-1805
LB 701	§ 1	48-1120.01		9	Omitted		6
	2	48-1119	LB 756A		Omitted		66-1806
	3	48-1125	LB 759	§ 1	53-160		7
	4	Omitted		2	77-2101.03		66-1807
LB 707	§ 1	32-208		3	77-2602		8
	2	Omitted		4	77-2701		66-1808
LB 720	§ 1	14-1801		5	77-2701.02		9
	2	14-1803		6	77-2701.04		66-1809
	3	14-1805		7	77-2701.10		10
	4	14-1813		8	77-2701.16		66-1810
	5	14-1820		9	77-2702.13		11
	6	14-1821		10	77-2701.32		66-1811
	7	14-1823		11	77-2702.17		12
	8	Omitted		12	77-2703		66-1812
LB 721	§ 1	31-727		13	77-2703.01		13
	2	31-730		14	77-2704.07		66-1813
	3	31-739		15	77-2704.23		14
	4	Omitted		16	77-2704.26		66-1814
LB 724	§ 1	71-5058		17	77-2704.55		15
	2	71-5059		18	77-2704.33		66-1815
	3	71-5060		19	77-2704.45		16
	4	71-5061		20	77-2705		66-1816
	5	71-5062		21	77-2715.02		17
	6	71-5063		22	77-27,132		66-1817
	7	71-5064		23	77-27,222		18
	8	71-5065		24	77-4008		66-1818
	9	71-5066		25	Omitted		19
	10	83-1079		26	Omitted		66-1819
	11	Omitted		27	Omitted		20
LB 726	§ 1	81-1245		28	Omitted		66-1820
	2	81-1254	LB 759A		Omitted		21
	3	81-1255	LB 760	§ 1	24-205		66-1821
	4	Omitted		2	24-205.01		22
LB 735	§ 1	75-156		3	33-154		66-1822

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2003 First Session	2003 Supplement
	45 66-1845
	46 66-1846
	47 66-1847
	48 66-1848
	49 66-1849
	50 66-1850
	51 66-1851
	52 66-1852
	53 66-1853
	54 66-1854
	55 66-1855
	56 66-1856
	57 66-1857
	58 57-705
	59 59-1617
	60 75-101
	61 75-102
	62 75-109
	63 75-109.01
	64 75-110.01
	65 75-112
	66 75-118
	67 75-122.01
	68 75-128
	69 75-129
	70 75-131
	71 75-132
	72 75-139.01
	73 75-156
	74 84-612
	75 Omitted
	76 Omitted
	77 Omitted
	78 Omitted
LB 790A	Omitted
LB 796	§ 1 79-10,138
	2 Omitted
	3 Omitted
LB 798	§ 1 84-612
	2 Omitted
	3 Omitted
LB 799	§ 1 80-401.01
	2 Omitted
	3 Omitted
LB 804	§ 1 37-1015
	2 Omitted
LB 806	Omitted

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CROSS REFERENCE TABLE

Legislative Bills, 98th Legislature
First Session, 2003

Showing the date each act went into effect.
The Ninety-eighth Session of the Legislature adjourned
May 30, 2003.

LB No.	Effective Date	LB No.	Effective Date
1	August 31, 2003	60	August 31, 2003
2	August 31, 2003	61	August 31, 2003
3	August 31, 2003	65	August 31, 2003
4	August 31, 2003	66	May 29, 2003
5	August 31, 2003	66A	May 29, 2003
6	August 31, 2003	67	January 31, 2003
7	August 31, 2003	68	August 31, 2003
8	August 31, 2003	69	August 31, 2003
9	August 31, 2003	69A	August 31, 2003
10	August 31, 2003	70	February 4, 2003
11	August 31, 2003	71	August 31, 2003
12	August 31, 2003	72	August 31, 2003
14	February 21, 2003	72A	August 31, 2003
15	August 31, 2003	73	August 31, 2003
17	August 31, 2003	73A	August 31, 2003
19	August 31, 2003	76	August 31, 2003
30	March 21, 2003	83	February 21, 2003
30A	August 31, 2003	84	March 4, 2003
31	January 1, 2004 (operative date)	85	March 4, 2003
31A	August 31, 2003	85A	March 4, 2003
34	August 31, 2003	90	January 1, 2004 (operative date)
35	August 31, 2003	92	July 1, 2003 (operative date)
40	August 31, 2003	93	August 31, 2003
41	August 31, 2003	94	August 31, 2003
43	August 31, 2003	94A	August 31, 2003
45	August 31, 2003	95	August 31, 2003
46	Sections 2 to 4, 6, 27, 30, 53, and 55 of this act become operative when thirty-five states have adopted the Interstate Compact for Adult Offender Supervision. Sections 12, 13, 21, and 22 of this act become operative on July 1, 2003. The other sections of this act become operative on May 24, 2003.	95A	August 31, 2003
46A	May 24, 2003	97	August 31, 2003
48	May 31, 2003	101	August 31, 2003
52	August 31, 2003	102	August 31, 2003
53	August 31, 2003	102A	August 31, 2003
54	March 21, 2003	103	August 31, 2003
54A	March 21, 2003	106	August 31, 2003
55	August 31, 2003	107	March 21, 2003
56	October 1, 2003 (operative date)	111	April 17, 2003
		112	May 1, 2003
		114	August 31, 2003
		118	August 31, 2003
		119	August 31, 2003
		122	August 31, 2003
		126	March 4, 2003
		127	August 31, 2003
		128	August 31, 2003
		130	January 1, 2005

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LB No.	Effective Date	LB No.	Effective Date
	(operative date)		2003.
131	August 31, 2003	218	August 31, 2003
137	February 4, 2003	219	March 21, 2003
138	August 31, 2003	222	August 31, 2003
142	August 31, 2003	228	August 31, 2003
143	August 31, 2003	228A	August 31, 2003
143A	August 31, 2003	233	April 17, 2003
146	August 31, 2003	233A	April 17, 2003
148	January 1, 2004	234	January 1, 2004
	(operative date)		(operative date)
149	August 31, 2003	234A	August 31, 2003
150	August 31, 2003	235	August 31, 2003
156	August 31, 2003	238	August 31, 2003
157	August 31, 2003	241	August 31, 2003
158	Sections 1 to 61 of this act become operative on January 1, 2004. The other sections of this act become operative on March 21, 2003.	242	July 1, 2004
			(operative date)
		243	August 31, 2003
		245	January 1, 2004
			(operative date)
160	August 31, 2003	249	May 29, 2003
161	March 21, 2003	250	April 17, 2003
164	August 31, 2003	255	August 31, 2003
164A	August 31, 2003	257	August 31, 2003
165	August 31, 2003	258	August 31, 2003
	(operative date)	259	August 31, 2003
165A	August 31, 2003	267	August 31, 2003
167	October 1, 2003	273	August 31, 2003
	(operative date)	274	August 31, 2003
168	July 1, 2003	281	February 21, 2003
	(operative date)	282	Sections 74 to 77, 84, and 85 of this act become operative on August 31, 2003. The other sections of this act become operative on January 1, 2004.
175	August 31, 2003		Sections 2 and 6 of this act become operative on January 1, 2003. The other sections of this act become operative on July 1, 2003.
181	August 31, 2003	283	Sections 2 and 6 of this act become operative on January 1, 2003. The other sections of this act become operative on July 1, 2003.
182	August 31, 2003		
185	January 1, 2004	285	October 1, 2003
	(operative date)		(operative date)
186	August 31, 2003	285A	May 31, 2003
187	Sections 14, 17, 23, 24, 33, and 35 of this act become operative on January 1, 2004. The other sections of this act become operative on August 31, 2003.	291	April 3, 2003
		292	Sections 15, 17 to 19, and 21 of this act become operative on July 1, 2003. The other sections of this act become operative on August 31, 2003.
191	August 31, 2003		
192	August 31, 2003	294	August 31, 2003
194	August 31, 2003	295	August 31, 2003
195	August 31, 2003	305	Sections 1, 3 to 19, 24, and 28 of this act become operative on August 31, 2003. Sections 2, 20, 21, 25, 26, and 29 of this act become operative on June 1, 2003. The other sections of this act become operative on May 14, 2003.
197	May 1, 2003		
199	August 31, 2003	306	July 1, 2004
200	August 31, 2003		(operative date)
205	August 31, 2003	307	August 31, 2003
209	Sections 1 to 15, 17, 18, 20, and 22 of this act become operative on October 1, 2003. The other sections of this act become operative on May 30, 2003.	319	April 3, 2003
		320	May 30, 2003
209A	May 30, 2003	331	August 31, 2003
210	August 31, 2003		
213	August 31, 2003		
214	March 4, 2003		
216	August 31, 2003		
217	Sections 1 to 8, 10, 12 to 31, 33 to 46, 49, and 50 of this act become operative on August 31, 2003. The other sections of this act become operative on March 4,		

CROSS REFERENCE TABLE

LB No.	Effective Date	LB No.	Effective Date
332	May 1, 2003		
333	August 31, 2003		
333A	August 31, 2003	524	Sections 20 to 22 of this act become operative on August 31, 2003. The other sections of this act become operative on January 1, 2004.
349	August 31, 2003		
354	August 31, 2003		
357	April 17, 2003		
357A	April 17, 2003	536	August 31, 2003
358	August 31, 2003	537	August 31, 2003
359	August 31, 2003	540	May 28, 2003
365	August 31, 2003	548	August 31, 2003
367	October 1, 2003 (operative date)	561	April 3, 2003
371	August 31, 2003	562	August 31, 2003
381	October 1, 2003 (operative date)	562A	August 31, 2003
381A	August 31, 2003	563	August 31, 2003
385	August 31, 2003	572	May 30, 2003
394	July 1, 2003 (operative date)	574	Sections 21 and 43 of this act become operative on July 1, 2003. The other sections of this act become operative on May 30, 2003.
402	May 27, 2003		
403	May 27, 2003	574A	May 30, 2003
403A	May 27, 2003	596	August 31, 2003
404	July 1, 2003 (operative date)	607	August 31, 2003
405	July 1, 2003 (operative date)	608	January 1, 2004 (operative date)
406	July 1, 2003 (operative date)	608A	August 31, 2003
407	July 1, 2003 (operative date)	610	August 31, 2003
408	May 27, 2003	619	April 17, 2003
410	July 1, 2003 (operative date)	622	May 31, 2003
411	May 27, 2003	626	August 31, 2003
412	July 1, 2003 (operative date)	626A	August 31, 2003
414	July 1, 2003 (operative date)	643	January 1, 2004 (operative date)
415	July 1, 2003 (operative date)	655	August 31, 2003
418	August 31, 2003	667	August 31, 2003
424	July 1, 2003 (operative date)	667A	August 31, 2003
429	April 3, 2003	685	May 27, 2003
430	August 31, 2003	688	August 31, 2003
440	July 1, 2003 (operative date)	701	August 31, 2003
443	August 31, 2003	707	August 31, 2003
444	August 31, 2003	720	August 31, 2003
451	April 17, 2003	721	August 31, 2003
461	August 31, 2003	724	August 31, 2003
464	August 31, 2003	726	August 31, 2003
467	August 31, 2003	735	August 31, 2003
476	August 31, 2003	735A	August 31, 2003
480	August 31, 2003	754	August 31, 2003
481	August 31, 2003	756	September 15, 2003
487	August 31, 2003	756A	August 31, 2003
494	August 31, 2003	759	Sections 10, 13, 16, 19, 20, and 27 of this act become operative on January 1, 2004. The other sections of this act become operative on October 1, 2003.
498	August 31, 2003		
500	January 1, 2004 (operative date)	759A	August 31, 2003
510	August 31, 2003	760	May 24, 2003
513	August 31, 2003	760A	May 24, 2003
521	August 31, 2003	790	May 31, 2003
		790A	May 31, 2003
		796	May 27, 2003
		798	May 27, 2003
		799	May 27, 2003
		804	August 31, 2003
		806	May 27, 2003

CROSS REFERENCE TABLE

APPENDIX

CROSS REFERENCE TABLE

2004 Session Laws of Nebraska, Second Session

2004 Second Session	2004 Cumulative Supplement	2004 Second Session	2004 Cumulative Supplement	2004 Second Session	2004 Cumulative Supplement
LB 16	§ 1 21-2204		2 25-21,279	LB 355	§ 1 77-2716.01
	2 21-2209		3 29-119		2 Omitted
	3 21-2607		4 81-1423		3 Omitted
	4 21-2631		5 81-1801.01		4 Omitted
	5 21-2639		6 81-1841	LB 382	§ 1 48-212
	6 67-454		7 81-1840.01		2 Omitted
	7 67-456		8 81-1844	LB 439	§ 1 72-2201
	8 67-458		9 81-1844.01		2 72-2202
	9 Omitted		10 81-1845		3 72-2203
LB 75	§ 1 23-1701.01		11 81-1848		4 72-2204
	2 Omitted		12 81-1848.01		5 72-2205
LB 155	§ 1 44-1984		13 81-1848.02		6 72-2206
	2 44-1993		14 81-1848.03		7 72-2207
	3 44-19,106		15 81-1849		8 72-2208
	4 44-19,116		16 81-1850		9 72-2209
	5 44-19,120.01		17 81-1851		10 72-2210
	6 76-238		18 Omitted		11 72-2211
	7 Omitted	LB 279	§ 1 60-308		12 72-2212
	8 Omitted		2 60-311		13 72-2213
LB 172	Omitted		3 60-320		14 72-2214
LB 208	§ 1 28-306		4 Omitted		15 81-188.01
	2 28-394	LB 279A	Omitted		16 81-188.02
	3 29-3605	LB 297	§ 1 83-1202.01		17 81-1107
	4 60-484		2 83-1209		18 81-1108.15
	5 60-498.01		3 83-1216		19 81-1108.17
	6 60-498.02		4 83-1217		20 81-1108.18
	7 60-4,144		5 83-1219		21 81-1108.20
	8 60-601		6 83-1224		22 81-1108.22
	9 60-6,108		7 Omitted		23 81-1108.23
	10 60-6,196		8 Omitted		24 81-1108.31
	11 60-6,197	LB 315	§ 1 33-133		25 81-1108.32
	12 60-6,197.02		2 64-101		26 81-1108.38
	13 60-6,197.03		3 64-101.01		27 81-1108.50
	14 60-6,197.04		4 64-102		28 81-1108.51
	15 60-6,197.05		5 64-103		29 81-1108.52
	16 60-6,197.06		6 64-105		30 81-1108.53
	17 60-6,197.07		7 64-105.01		31 81-2004
	18 60-6,197.08		8 64-105.02		32 Omitted
	19 60-6,209		9 64-105.03		33 Omitted
	20 60-6,210		10 64-105.04		34 Omitted
	21 60-6,211.04		11 64-113	LB 439A	Omitted
	22 60-6,211.05		12 64-210	LB 449	§ 1 81-1505
	23 83-1,129		13 Omitted		2 81-1505.06
	24 Omitted		14 Omitted		3 81-1532
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	2 60-6,267		2 32-608		5 81-15,182
	3 60-6,268		3 Omitted		6 81-15,183
	4 Omitted		4 Omitted		7 81-15,186.01
LB 236	§ 1 84-712.05		5 Omitted		8 81-15,184
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	13 81-15,186		3 60-494		4 81-3451
	14 81-15,248		4 60-4,144		5 81-3453
	15 Omitted		5 60-4,181		6 Omitted
LB 449A	Omitted		6 60-2907		7 Omitted
LB 454	§ 1 24-1301		7 71-4822		8 Omitted
	2 24-1302		8 71-4823	LB 599A	Omitted
LB 479	§ 1 66-482		9 Omitted	LB 613	§ 1 29-4301
	2 66-1330		10 Omitted		2 29-4302
	3 66-1345.05		11 Omitted		3 29-4303
	4 66-1333	LB 559A	Omitted		4 29-4304
	5 66-1344	LB 560	§ 1 13-910		5 28-323
	6 66-1344.01		2 30-24,125		6 29-404.02
	7 66-1345		3 37-1201		7 29-439
	8 66-1345.01		4 37-1291		8 29-440
	9 77-4104.01		5 37-1292		9 29-4401
	10 77-5536		6 37-1293		10 29-4402
	11 Omitted		7 37-1294		11 29-4305
	12 Omitted		8 37-1295		12 42-903
	13 Omitted		9 37-1296		13 Omitted
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	2 53-101		11 37-1298		2 20-330
	3 53-103		12 37-1299		3 Omitted
	4 53-116.01		13 37-12,100		4 Omitted
	5 53-116.02		14 37-12,101	LB 644	§ 1 77-202.13
	6 53-117		15 37-12,102	LB 644A	Omitted
	7 53-119.01		16 37-12,103	LB 692	§ 1 25-21,211
	8 53-122		17 37-12,104		2 Omitted
	9 53-123		18 37-12,105	LB 727	§ 1 32-939
	10 53-123.02		19 37-12,106		2 Omitted
	11 53-123.03		20 37-12,107	LB 740	§ 1 60-110
	12 53-123.04		21 37-12,108		2 Omitted
	13 53-123.13		22 37-12,109	LB 810	Omitted
	14 53-123.15		23 37-12,110	LB 811	§ 1 77-3901
	15 53-124		24 60-106		2 Omitted
	16 53-124.02		25 60-108		3 Omitted
	17 53-124.12		26 60-110	LB 812	§ 1 60-6,347
	18 53-124.14		27 60-111.01		2 Omitted
	19 53-129		28 60-129	LB 813	§ 1 10-505
	20 53-131		29 60-139		2 12-522
	21 53-132		30 60-301		3 15-813
	22 53-133		31 60-302.05		4 19-3005
	23 53-134		32 60-308		5 19-3006
	24 53-134.03		33 60-311.01		6 19-3007.01
	25 53-134.04		34 60-311.02		7 19-3037
	26 53-135		35 60-364		8 23-1802
	27 53-138.03		36 60-462.01		9 23-1809
	28 53-168		37 60-483		10 30-2329
	29 53-179		38 60-484.02		11 30-3408
	30 53-1,115		39 60-6,324		12 31-324
	31 Omitted		40 60-1805		13 31-331
	32 Omitted		41 60-1901		14 31-333
	33 Omitted		42 60-1904		15 32-812
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	2 Omitted		45 Omitted		18 32-1401
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	24	53-1,108	43	85-1502	LB 868 § 1	79-201
	25	54-403	44	86-327		2 25-21,280
	26	57-202	45	86-413		3 84-712.05
	27	58-525	46	Omitted		4 Omitted
	28	76-1004	LB 824	§ 1 3-104		5 Omitted
	29	76-1007		2 Omitted	LB 869	§ 1 2-945.01
	30	76-1008	LB 826	§ 1 37-201		2 2-953
	31	76-1012		2 37-706.01		3 2-954
	32	77-1819		3 37-706		4 2-958.01
	33	77-1839		4 37-707		5 2-958.02
	34	77-3204		5 37-708.01		6 2-958
	35	Omitted		6 Omitted		7 2-10,117
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	2	Omitted		2 81-15,175	LB 878	§ 1 75-363
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	2	32-1306		4 Omitted		3 Omitted
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	6	13-2801		8 Omitted		7 9-807
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	9	25-2937		2 2-3951		10 11-201
	10	28-731		3 2-3951.01		11 11-201.01
	11	39-1108		4 2-3951.02		12 11-202
	12	46-2,120		5 2-3951.03		13 25-2101
	13	50-307		6 2-3951.04		14 25-21,207
	14	58-230		7 Omitted		15 25-21,218
	15	66-1619		8 Omitted		16 32-561
	16	71-121		9 Omitted		17 32-602
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	23	77-5005		4 68-1803		24 48-804.03
	24	79-317		5 68-1804		25 53-109
	25	79-554		6 68-1805		26 54-191
	26	79-560		7 68-1806		27 55-123
	27	79-561		8 68-1807		28 55-126
	28	79-814.01		9 68-1808		29 55-127
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	30	79-1239		11 Omitted		31 57-917
	31	81-1505.03		12 Omitted		32 60-1303
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	33	81-1712		14 Omitted		34 71-222.01
	34	84-1407	LB 841A	Omitted		35 72-1241
	35	84-1408	LB 845	§ 1 76-1708		36 77-366
	36	84-1409		2 76-1711		37 77-703
	37	84-1410		3 76-1734		38 80-401.02
	38	84-1411		4 81-885.55		39 81-111
	39	84-1412		5 Omitted		40 81-151
	40	84-1414	LB 846	§ 1 60-311.14		41 81-8,128
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	46	83-139	25	71-385.02		3 Omitted
	47	84-106	26	71-3,119.02	LB 936 § 1	51-213
	48	84-206	27	71-3,119.03		2 Omitted
	49	84-314	28	71-3,106	LB 937 § 1	16-696
	50	84-502	29	71-3,169		2 Omitted
	51	84-505	30	71-3,170	LB 939 § 1	13-501
	52	84-718	31	71-3,174		2 13-513
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	54	Omitted	33	71-3,179		4 13-2504
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	2	72-805	35	71-3,237	LB 940 § 1	43-260
	3	72-806	36	71-3,238		2 81-8,271.01
	4	81-1608	37	Omitted		3 Omitted
	5	81-1609		Omitted		4 Omitted
	6	81-1611	LB 906A			5 Omitted
	7	81-1613	LB 911 § 1	60-529		5 Omitted
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	9	81-1615		3 Omitted		2 28-310.01
	10	81-1616	LB 914 § 1	81-2102		3 28-320.02
	11	81-1617		2 81-2108		4 28-318
	12	81-1618		3 81-2109		5 28-322
	13	81-1620		4 81-2113		6 28-322.01
	14	81-1622		5 81-2118		7 28-1463.05
	15	81-1625		6 81-2121		8 29-110
	16	Omitted		7 81-2124		9 29-4003
	17	Omitted		8 Omitted		10 Omitted
	18	Omitted	LB 914A			11 Omitted
	19	Omitted	LB 915 § 1	84-902	LB 944 § 1	69-2703
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	4	81-3527		3 46-257	LB 947 § 1	48-1805
	5	81-3529		4 54-744.01		2 Omitted
	6	81-3539		5 54-2416		3 Omitted
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	8	Omitted		7 54-2418		2 Omitted
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	2	Omitted		10 54-2421		2 77-2794
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	2	71-162		12 54-2423	LB 961 § 1	79-907
	3	71-340		13 54-2424		2 Omitted
	4	71-341		14 54-2425	LB 962 § 1	2-1586
	5	71-342		15 54-2426		2 2-1588
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	12	71-362.01		22 54-2433		9 46-229.04
	13	71-363.01		23 54-2434		10 46-229.06
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22	46-294.02	84	46-744	4	23-168.03
23	46-294.03	85	46-745	5	77-123
24	46-294.04	86	46-746	6	77-201
25	46-294.05	87	46-747	7	77-202.03
26	46-295	88	46-748	8	77-202.04
27	46-296	89	46-749	9	77-422
28	46-2,112	90	46-750	10	77-603
29	46-2,119	91	46-751	11	77-612
30	46-2,127	92	46-752	12	77-684
31	46-2,132	93	46-753	13	77-801
32	46-2,135	94	46-676	14	77-802
33	46-2,138	95	46-678.01	15	77-802.02
34	46-601.01	96	46-680	16	77-1234
35	46-602	97	46-691.03	17	77-1249
36	46-609	98	46-1207.01	18	77-1301
37	46-613.02	99	46-1207.02	19	77-1303
38	46-651	100	46-1212	20	77-1315
39	46-653	101	46-1228	21	77-1315.01
40	46-655.01	102	61-206	22	77-1317
41	46-701	103	66-1501	23	77-1318
42	46-702	104	66-1532	24	77-1330
43	46-703	105	66-1519	25	77-1343
44	46-704	106	66-1523	26	77-1344
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47	46-707	109	77-27,137.02	29	77-1348
48	46-708	110	77-3442	30	77-1363
49	46-709	111	81-15,174	31	77-1380
50	46-710	112	Omitted	32	77-1384
51	46-711	113	81-15,176	33	77-1502
52	46-712	114	Omitted	34	77-1504.01
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54	46-714	116	Omitted	36	77-1510.01
55	46-715	117	Omitted	37	77-1514
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58	46-718	120	Omitted	40	77-1610
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61	46-721		2 55-125	43	77-3506.02
62	46-722		3 55-126	44	77-3519
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65	46-725	LB 969	§ 1 70-1701	47	77-5004
66	46-726		2 70-1702	48	77-5007
67	46-727		3 70-1703	49	77-5013
68	46-728		4 70-1704	50	77-5015
69	46-729		5 70-1705	51	77-5016
70	46-730		6 18-412.06	52	77-5016.01
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73	46-733		9 18-412.09	55	77-5016.04
74	46-734		10 18-412.10	56	77-5016.05
75	46-735		11 18-2451	57	77-5016.06
76	46-736		12 70-601	58	77-5016.07
77	46-737		13 70-623	59	77-5016.08
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	66	79-1016	53	66-733	23	30-2734		
	67	79-1022	54	66-734	24	30-3811		
	68	84-912.03	55	66-735	25	30-3837		
	69	Omitted	56	66-736	26	30-3854		
	70	Omitted	57	66-737	27	30-3855		
	71	Omitted	58	66-1334	28	30-3867		
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	73	Omitted	60	66-1401	30	43-3334		
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	2	Omitted	62	66-1417	32	45-205		
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	2	60-1303	64	66-1419	34	45-342		
	3	60-1306	65	66-1510	35	45-346		
	4	60-1307	66	66-1521	36	45-351		
	5	66-482	67	77-2704.05	37	45-921		
	6	66-483	68	77-2734.03	38	45-1017		
	7	66-484	69	Omitted	39	45-1018		
	8	66-485	70	Omitted	40	45-1024		
	9	66-486	71	Omitted	41	45-1025		
	10	66-487	LB 986	§ 1	77-3526	42	45-1065	
	11	66-488		2	77-3527	43	72-1262	
	12	66-489		3	Omitted	44	76-1006	
	13	66-489.01		4	Omitted	45	76-1009	
	14	66-495		5	Omitted	46	76-1010	
	15	66-495.01	LB 986A		Omitted	47	76-1012	
	16	66-496	LB 997	§ 1	16-230	48	77-2365.01	
	17	66-498		2	17-563	49	77-2366	
	18	66-499		3	Omitted	50	77-2387	
	19	66-4,105	LB 998	§ 1	44-2824	51	77-2365.02	
	20	66-4,106		2	44-2825	52	Omitted	
	21	66-4,114		3	44-2827	53	Omitted	
	22	66-4,116		4	44-2829	54	Omitted	
	23	66-4,140		5	44-2831	55	Omitted	
	24	66-4,124.01		6	44-2831.01	56	Omitted	
	25	66-4,141		7	44-2832	57	Omitted	
	26	66-4,143		8	44-2833	LB 1002	§ 1	54-626
	27	66-4,144		9	44-2855		2	54-627
	28	66-4,145		10	Omitted		3	Omitted
	29	66-4,146		11	Omitted	LB 1004	§ 1	75-112
	30	66-4,146.01	LB 998A		Omitted		2	86-329
	31	66-4,147	LB 999	§ 1	8-113		3	Omitted
	32	66-4,149		2	8-157.01	LB 1005	§ 1	13-518
	33	66-502		3	8-1,140		2	28-414
	34	66-525		4	8-355		3	29-2264
	35	66-685		5	8-602		4	43-107
	36	66-686		6	8-910		5	43-3344
	37	66-687		7	8-1001		6	43-3346
	38	66-698		8	8-1003		7	68-1036.02
	39	66-6,100		9	8-1006		8	71-101
	40	66-6,106		10	8-1008		9	71-110.01
	41	66-6,107		11	8-1009		10	71-162
	42	66-6,109.01		12	8-1010		11	71-185.03
	43	66-6,110		13	8-1012.01		12	71-190
	44	66-6,111		14	8-1511		13	71-1,142
	45	66-712		15	8-1512		14	71-1,144
	46	66-713		16	8-1513		15	71-1,143.01
	47	66-717		17	8-2401		16	71-1,146
	48	66-718		18	8-2402		17	71-1,147.33
	49	66-720		19	8-2403		18	71-1,155
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	22	71-365.01	84	71-1921	146	Omitted
	23	71-368	85	71-1922	LB 1005A	Omitted
	24	71-371	86	71-1923	LB 1017	§ 1 49-801.01
	25	71-385.01	87	71-3601.01		2 77-2701
	26	71-387	88	71-3601		3 77-2701.04
	27	71-389	89	71-3602		4 77-2701.44
	28	71-3,102	90	71-3603		5 77-2701.45
	29	71-3,105	91	71-3608		6 77-2701.10
	30	71-3,106.01	92	71-3609		7 77-2701.16
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	32	71-3,139	94	71-3611		9 77-2701.42
	33	71-3,140	95	71-3612		10 77-2703
	34	71-3,141	96	71-3613		11 77-2703.01
	35	71-3,145	97	71-3614		12 77-2703.02
	36	71-3,147	98	71-5301		13 77-2704.12
	37	71-3,150	99	71-5651		14 77-2704.15
	38	71-3,169	100	71-5652		15 77-2704.32
	39	71-3,177	101	71-5653		16 77-2704.33
	40	71-3,179	102	71-5654		17 77-2704.36
	41	71-401	103	71-5661		18 77-2704.49
	42	71-409	104	71-5662		19 77-2704.55
	43	71-428	105	71-5663		20 77-2712.05
	44	71-448	106	71-5665		21 77-27,188.01
	45	71-5901	107	71-5666		22 77-3101
	46	71-5902	108	71-5668		23 77-5601
	47	71-5903	109	71-5707		24 Omitted
	48	71-5904	110	71-6038		25 Omitted
	49	71-5905	111	71-6039		26 Omitted
	50	71-5906	112	71-6040		27 Omitted
	51	71-5907	113	71-6041		28 Omitted
	52	71-5908	114	71-6042	LB 1033	§ 1 81-8,139.01
	53	71-501	115	71-6039.01		2 Omitted
	54	71-542	116	71-6039.02		3 Omitted
	55	71-604.05	117	71-6039.03	LB 1034	§ 1 77-2101.03
	56	71-612	118	71-6039.04		2 Omitted
	57	71-617.05	119	71-6039.05		3 Omitted
	58	71-617.15	120	71-6101	LB 1045	§ 1 81-2,239
	59	71-627	121	71-6103		2 81-2,240
	60	71-628	122	71-6104		3 81-2,254
	61	71-634	123	71-6117		4 81-2,267
	62	71-1626	124	71-6118		5 81-2,270
	63	71-1628.04	125	71-6119		6 Omitted
	64	71-1628.08	126	71-6120		7 Omitted
	65	71-1636	127	71-6121	LB 1047	§ 1 44-161
	66	71-1903	128	71-6122		2 44-201
	67	71-1908	129	71-6113		3 44-407.11
	68	71-1909	130	71-6123		4 44-407.13
	69	71-1910	131	71-6115		5 44-407.14
	70	71-1911	132	72-6721		6 44-407.16
	71	71-1911.02	133	71-6735		7 44-407.23
	72	71-1911.01	134	71-8611		8 44-2703
	73	71-1912	135	81-3201		9 44-4201
	74	71-1914	136	84-304		10 44-4203
	75	71-1914.01	137	85-134		11 44-4215.02
	76	71-1914.02	138	Omitted		12 44-4221
	77	71-1914.03	139	Omitted		13 44-4228
	78	71-1915	140	Omitted		14 44-4809
	79	71-1916	141	Omitted		15 44-4842
	80	71-1917	142	Omitted		16 44-4842.01
	81	71-1918	143	Omitted		17 44-4862

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2004 Second Session	2004 Cumulative Supplement	2004 Second Session	2004 Cumulative Supplement	2004 Second Session	2004 Cumulative Supplement	
	18	44-5143	36	71-916	98	48-1102
	19	44-6124	37	71-917	99	53-1,120
	20	44-6125	38	71-918	100	58-703
	21	44-708	39	71-919	101	58-706
	22	44-708.01	40	71-920	102	60-6,209
	23	Omitted	41	71-921	103	71-101
	24	Omitted	42	71-922	104	71-102
	25	Omitted	43	71-923	105	71-107
LB 1065	§ 1	66-489	44	71-924	106	71-110
	2	66-4,124	45	71-925	107	71-112
	3	66-4,134	46	71-926	108	71-113
	4	66-726	47	71-927	109	71-114
	5	66-1344	48	71-928	110	71-116
	6	66-1344.01	49	71-929	111	71-131
	7	66-1345	50	71-930	112	71-139.02
	8	66-1345.01	51	71-931	113	71-162
	9	66-1519	52	71-932	114	71-1,312
	10	77-4103	53	71-933	115	71-1,351
	11	Omitted	54	71-934	116	71-1,352
	12	Omitted	55	71-935	117	71-1,353
	13	Omitted	56	71-936	118	71-1,354
	14	Omitted	57	71-937	119	71-1,355
LB 1069	§ 1	81-3451	58	71-938	120	71-1,356
	2	Omitted	59	71-939	121	71-1,357
	3	Omitted	60	71-940	122	71-1,358
LB 1071	§ 1	85-1415	61	71-941	123	71-1,359
	2	Omitted	62	71-942	124	71-1,360
LB 1083	§ 1	71-801	63	71-943	125	71-1,361
	2	71-802	64	71-944	126	80-601
	3	71-803	65	71-945	127	81-1850
	4	71-804	66	71-946	128	81-2213
	5	71-805	67	71-947	129	83-305
	6	71-806	68	71-948	130	83-305.01
	7	71-807	69	71-949	131	83-314
	8	71-808	70	71-950	132	83-324
	9	71-809	71	71-951	133	83-336
	10	71-810	72	71-952	134	83-338
	11	71-811	73	71-953	135	83-340
	12	71-812	74	71-954	136	83-349
	13	71-813	75	71-955	137	83-350
	14	71-814	76	71-956	138	83-351
	15	71-815	77	71-957	139	83-354
	16	71-816	78	71-958	140	83-364
	17	71-817	79	71-959	141	83-376
	18	71-818	80	71-960	142	83-4,157
	19	71-819	81	71-961	143	84-1211
	20	71-820	82	71-962	144	84-1326.01
	21	71-901	83	9-812	145	Omitted
	22	71-902	84	20-164	146	Omitted
	23	71-903	85	23-3402	147	Omitted
	24	71-904	86	28-416	148	Omitted
	25	71-905	87	29-434	149	Omitted
	26	71-906	88	29-3705	150	Omitted
	27	71-907	89	29-3915	LB 1083A	§ 1 Omitted
	28	71-908	90	42-917		2 Omitted
	29	71-909	91	43-245		3 Omitted
	30	71-910	92	43-247		4 90-530
	31	71-911	93	43-248		5 Omitted
	32	71-912	94	43-250		6 Omitted
	33	71-913	95	43-254.01		7 Omitted
	34	71-914	96	44-773	LB 1084	§ 1 68-1073
	35	71-915	97	44-774		2 68-1074

CROSS REFERENCE TABLE

2004 Second Session	2004 Cumulative Supplement	2004 Second Session	2004 Cumulative Supplement	2004 Second Session	2004 Cumulative Supplement	
	3	68-1075	48	Omitted	110	Omitted
	4	68-1076	49	Omitted	111	Omitted
	5	68-1077	50	Omitted	112	Omitted
	6	68-1078	51	Omitted	113	Omitted
	7	68-1079	52	Omitted	114	Omitted
	8	68-1080	53	Omitted	115	Omitted
	9	68-1081	54	Omitted	116	Omitted
	10	68-1082	55	Omitted	117	Omitted
	11	68-1083	56	Omitted	118	Omitted
	12	68-1084	57	Omitted	119	Omitted
	13	68-1085	58	Omitted	120	Omitted
	14	68-1086	59	Omitted	121	Omitted
	15	Omitted	60	Omitted	122	Omitted
	16	Omitted	61	Omitted	123	Omitted
LB 1084A		Omitted	62	Omitted	124	Omitted
LB 1089	§ 1	Omitted	63	Omitted	125	Omitted
	2	Omitted	64	Omitted	126	Omitted
	3	Omitted	65	Omitted	127	Omitted
	4	Omitted	66	Omitted	128	Omitted
	5	Omitted	67	Omitted	129	Omitted
	6	Omitted	68	Omitted	130	Omitted
	7	Omitted	69	Omitted	131	Omitted
	8	Omitted	70	Omitted	132	Omitted
	9	Omitted	71	Omitted	133	Omitted
	10	Omitted	72	Omitted	134	Omitted
	11	Omitted	73	Omitted	135	Omitted
	12	Omitted	74	Omitted	136	Omitted
	13	Omitted	75	Omitted	137	Omitted
	14	Omitted	76	Omitted	138	Omitted
	15	Omitted	77	Omitted	139	Omitted
	16	Omitted	78	Omitted	140	Omitted
	17	Omitted	79	Omitted	141	Omitted
	18	Omitted	80	Omitted	142	Omitted
	19	Omitted	81	Omitted	143	Omitted
	20	Omitted	82	Omitted	144	Omitted
	21	Omitted	83	Omitted	145	Omitted
	22	Omitted	84	Omitted	146	Omitted
	23	Omitted	85	Omitted	147	Omitted
	24	Omitted	86	Omitted	148	Omitted
	25	Omitted	87	Omitted	149	Omitted
	26	Omitted	88	Omitted	150	Omitted
	27	Omitted	89	Omitted	151	Omitted
	28	Omitted	90	Omitted	152	Omitted
	29	Omitted	91	Omitted	153	Omitted
	30	Omitted	92	Omitted	154	Omitted
	31	Omitted	93	Omitted	155	Omitted
	32	Omitted	94	Omitted	156	Omitted
	33	Omitted	95	Omitted	157	Omitted
	34	Omitted	96	Omitted	158	Omitted
	35	Omitted	97	Omitted	159	Omitted
	36	Omitted	98	Omitted	160	Omitted
	37	Omitted	99	Omitted	161	Omitted
	38	Omitted	100	Omitted	162	Omitted
	39	Omitted	101	Omitted	163	Omitted
	40	Omitted	102	Omitted	164	Omitted
	41	Omitted	103	Omitted	165	Omitted
	42	Omitted	104	Omitted	166	Omitted
	43	Omitted	105	Omitted	167	Omitted
	44	Omitted	106	Omitted	168	Omitted
	45	Omitted	107	Omitted	169	Omitted
	46	Omitted	108	Omitted	170	Omitted
	47	Omitted	109	Omitted	171	Omitted

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2004 Second Session	2004 Cumulative Supplement	2004 Second Session	2004 Cumulative Supplement	2004 Second Session	2004 Cumulative Supplement
172	Omitted	234	Omitted	13	24-707
173	Omitted	235	Omitted	14	24-708
174	Omitted	236	Omitted	15	24-710
175	Omitted	237	Omitted	16	24-710.02
176	Omitted	238	Omitted	17	24-710.07
177	Omitted	239	Omitted	18	24-710.09
178	Omitted	LB 1090 § 1	81-179	19	24-713.01
179	Omitted	2	84-612	20	24-714
180	Omitted	3	84-613	21	42-1102
181	Omitted	4	Omitted	22	48-155.01
182	Omitted	5	Omitted	23	79-916
183	Omitted	LB 1091 § 1	9-812	24	79-921
184	Omitted	2	28-1249	25	79-942
185	Omitted	3	48-162.01	26	79-946
186	Omitted	4	48-162.02	27	79-947.01
187	Omitted	5	71-7607	28	79-951
188	Omitted	6	71-7608	29	79-966
189	Omitted	7	71-7611	30	81-2026
190	Omitted	8	79-1001	31	81-2027.03
191	Omitted	9	79-1011	32	84-1301
192	Omitted	10	79-1012	33	84-1307
193	Omitted	11	79-1028	34	84-1311.03
194	Omitted	12	81-504	35	84-1322
195	Omitted	13	81-509	36	84-1323
196	Omitted	14	81-523	37	84-1325
197	Omitted	15	81-528	38	84-1501
198	Omitted	16	81-550	39	84-1511.01
199	Omitted	17	81-5,153	40	Omitted
200	Omitted	18	Omitted	41	Omitted
201	90-530	19	Omitted	42	Omitted
202	Omitted	LB 1092 § 1	81-181	43	Omitted
203	Omitted	2	81-188.01	44	Omitted
204	Omitted	3	81-188.02		Omitted
205	Omitted	4	81-188.03	LB 1097A	
206	Omitted	5	81-188.04	LB 1099 § 1	52-1313
207	Omitted	6	81-188.05	2	52-1316
208	Omitted	7	81-188.06	3	9-525 UCC
209	Omitted	8	81-1108.15	4	Omitted
210	Omitted	9	81-1108.22	LB 1107 § 1	85-1903
211	Omitted	10	90-271	2	85-1912
212	Omitted	11	85-414	3	Omitted
213	Omitted	12	Omitted	LB 1118 § 1	50-1203
214	Omitted	13	Omitted	2	50-1205.01
215	Omitted	LB 1093 § 1	77-3442	3	84-304
216	Omitted	2	79-1005.01	4	Omitted
217	Omitted	3	79-1005.02	LB 1144 § 1	13-1210
218	Omitted	4	79-1007.02	2	13-1214
219	Omitted	5	79-1008.01	3	39-2215
220	Omitted	6	79-1009	4	66-4,100
221	Omitted	7	Omitted	5	Omitted
222	Omitted	LB 1097 § 1	16-1036	LB 1149 § 1	37-455
223	Omitted	2	23-2301	2	37-530
224	Omitted	3	23-2306	3	Omitted
225	Omitted	4	23-2310.05	4	Omitted
226	Omitted	5	23-2320	LB 1162 § 1	20-503
227	Omitted	6	23-2321	2	20-504
228	Omitted	7	24-707.01	3	81-1413
229	Omitted	8	24-703.03	4	81-1438
230	Omitted	9	24-701.02	5	20-506
231	Omitted	10	24-701.01	6	Omitted
232	Omitted	11	24-703	7	Omitted
233	Omitted	12	24-704.01	LB 1179 § 1	84-1410
				2	84-1411

CROSS REFERENCE TABLE

2004 Second Session	2004 Cumulative Supplement
	3 Omitted
LB 1207	§ 1 24-301.02
	2 24-809.05
	3 25-1144.01
	4 25-1315.02
	5 25-1329
	6 25-1553
	7 25-1565
	8 25-1916
	9 25-21,281
	10 25-21,223
	11 25-21,230
	12 25-21,232
	13 25-21,233
	14 25-21,234
	15 25-2301.02
	16 25-2740
	17 29-2261
	18 42-349
	19 42-350
	20 42-352
	21 42-353
	22 42-355
	23 42-357
	24 42-361
	25 42-364
	26 42-364.11
	27 42-364.13
	28 42-365
	29 42-371
	30 42-373
	31 42-376
	32 42-380
	33 42-501
	34 42-502
	35 42-503
	36 43-512.01
	37 43-512.03
	38 43-512.04
	39 43-512.15
	40 43-1411.01
	41 43-1412
	42 43-2917
	43 43-3318
	44 44-3311
	45 Omitted
	46 Omitted
	47 Omitted
	48 Omitted
	49 Omitted
	50 Omitted
LB 1231	§ 1 12-1301
	2 Omitted
LB 1231A	Omitted
LB 1241	Omitted

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CROSS REFERENCE TABLE

Legislative Bills, 98th Legislature
Second Session, 2004

Showing the date each act went into effect.
The Ninety-eighth Session of the Legislature adjourned
April 15, 2004.

LB No.	Effective Date	LB No.	Effective Date
16	July 16, 2004		(operative date)
75	July 16, 2004	644	July 16, 2004
155	July 16, 2004	644A	July 16, 2004
172	July 16, 2004	692	July 16, 2004
208	July 16, 2004	727	July 16, 2004
227	July 16, 2004	740	July 16, 2004
236	July 16, 2004	810	July 16, 2004
270	July 16, 2004	811	July 16, 2004
279	July 16, 2004	812	July 16, 2004
279A	July 16, 2004	813	July 16, 2004
297	April 14, 2004	818	July 16, 2004
315	July 16, 2004	819	July 16, 2004
323	Sections 2 and 4 of this act become operative on January 1, 2005. The other sections of this act become operative on July 16, 2004.	820	March 20, 2004
		821	July 16, 2004
		824	July 16, 2004
		826	July 16, 2004
353	July 16, 2004	826A	July 16, 2004
355	January 1, 2003	832	July 16, 2004
382	July 16, 2004	835	July 16, 2004
439	April 16, 2004	836	March 20, 2004
439A	April 16, 2004	837	July 16, 2004
449	July 16, 2004	841	Sections 1, 12, and 13 of this act become operative on October 1, 2004. The other sections of this act become operative on April 15, 2004.
449A	July 16, 2004		
454	July 16, 2004	841A	April 15, 2004
479	April 16, 2004	845	July 16, 2004
485	May 1, 2005 (operative date)	846	April 10, 2004
485A	July 16, 2004	868	July 16, 2004
499	April 16, 2004	869	July 16, 2004
514	July 1, 2004 (operative date)	878	March 20, 2004
559	July 1, 2004 (operative date)	884	July 16, 2004
559A	July 16, 2004	888	Sections 1 to 12, 14, 15, and 17 of this act become operative on July 1, 2005. The other sections of this act become operative on July 16, 2004.
560	Sections 1 to 27, 29 to 44, and 47 of this act become operative on July 16, 2004. The other sections of this act become operative on March 20, 2004.		
		890	January 1, 2005 (operative date)
560A	July 16, 2004	902	July 16, 2004
599	April 15, 2004	906	July 16, 2004
599A	April 15, 2004	906A	July 16, 2004
613	July 16, 2004	911	March 20, 2004
625	October 1, 2005	914	July 16, 2004

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LB No.	Effective Date	LB No.	Effective Date
914A	July 16, 2004		become operative on July 16, 2004. The other sections of this act become operative on April 16, 2004.
915	July 16, 2004	1005A	April 16, 2004
916	July 16, 2004	1017	Sections 1, 22 to 26, and 28 of this act become operative on April 16, 2004. The other sections of this act become operative on July 1, 2004.
916A	July 16, 2004		
917	July 16, 2004	1033	March 20, 2004
927	July 16, 2004	1034	April 16, 2004
936	July 16, 2004	1045	April 16, 2004
937	July 16, 2004	1047	July 16, 2004
939	July 16, 2004	1065	Sections 1, 4, and 12 of this act become operative on January 1, 2005. The other sections of this act become operative on April 16, 2004.
940	March 20, 2004		
943	April 16, 2004	1069	March 20, 2004
944	April 10, 2004	1071	July 16, 2004
947	January 1, 2005 (operative date)	1083	Sections 1 to 17, 21 to 99, 102 to 144, 147, and 149 of this act become operative on July 1, 2004. The other sections of this act become operative on April 15, 2004.
950	January 1, 2005 (operative date)	1083A	April 15, 2004
955	July 16, 2004	1084	July 16, 2004
961	July 16, 2004	1084A	July 16, 2004
962	Sections 3, 4, 93, 110, and 117 of this act become operative on July 1, 2004. Sections 111, 112, 114, 115, 116, and 120 of this act become operative on April 16, 2004. The other sections of this act become operative on July 16, 2004.	1089	April 14, 2004
962A	April 16, 2004	1090	April 14, 2004
963	July 16, 2004	1091	April 14, 2004
969	April 1, 2004	1092	April 14, 2004
973	Sections 33 and 71 of this act become operative on January 1, 2005. The other sections of this act become operative on April 2, 2004.	1093	July 16, 2004
980	July 16, 2004	1097	Sections 2, 3, 5 to 22, 24 to 28, 31 to 33, 35 to 37, 39, and 41 of this act become operative on July 1, 2004. Sections 1, 4, 30, 34, 38, and 42 of this act become operative on July 16, 2004. The other sections of this act become operative on April 16, 2004.
983	January 1, 2005 (operative date)		
986	January 1, 2004 (operative date)	1097A	April 16, 2004
986A	April 15, 2004	1099	July 16, 2004
997	July 16, 2004	1107	July 16, 2004
998	January 1, 2005 (operative date)	1118	July 16, 2004
998A	July 16, 2004	1144	July 16, 2004
999	Sections 1, 2, 5 to 20, 31 to 42, and 54 of this act become operative on July 16, 2004. Sections 24 to 29 and 55 of this act become operative on January 1, 2005. The other sections of this act become operative on April 16, 2004.	1149	July 16, 2004
1002	July 16, 2004	1162	April 16, 2004
1004	July 16, 2004	1179	July 16, 2004
1005	Sections 1, 53, 62 to 65, 136, and 140 of this act become operative on July 1, 2004. Sections 41, 44 to 52, 141, and 144 of this act become operative on January 1, 2005. Sections 2 to 9, 11 to 40, 43, 54 to 61, 66 to 98, 109, 120 to 134, 137, 139, and 143 of this act	1207	Sections 1 and 47 of this act become operative on July 1, 2004. The other sections of this act become operative on April 16, 2004.
		1231	July 16, 2004
		1231A	July 16, 2004
		1241	April 14, 2004

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CROSS REFERENCE TABLE

2005 Session Laws of Nebraska, First Session
Showing LB section number to statute section number

2005 Session Laws	2005 Supplement	2005 Session Laws	2005 Supplement	2005 Session Laws	2005 Supplement
LB 1	§ 1 60-484	31	48-1,102	LB 33	§ 1 81-1566
	2 60-484.01	32	48-1,110		2 Omitted
	3 60-484.02	33	48-1,116	LB 37	§ 1 72-724
	4 60-490	34	Omitted		2 72-728
	5 60-4,115	35	Omitted		3 Omitted
	6 60-4,119	36	Omitted		4 Omitted
	7 60-4,120	37	Omitted	LB 38	§ 1 13-519
	8 60-4,120.01	38	Omitted		2 77-3442
	9 60-4,150	LB 13A	Omitted		3 85-1503
	10 Omitted	LB 15	§ 1 60-3005		4 85-1517
	11 Omitted		2 60-3006		5 85-1536.01
LB 2	§ 1 71-428		3 77-202.04		6 Omitted
	2 Omitted		4 77-1345.01		7 Omitted
LB 3	§ 1 37-734		5 77-1507.01	LB 39	§ 1 85-162.04
	2 Omitted		6 77-1514		2 Omitted
LB 9	§ 1 23-174.03		7 77-5005	LB 40	§ 1 58-703
	2 Omitted		8 77-5007		2 58-706
LB 10	§ 1 48-1220		9 77-5016		3 58-708
	2 Omitted		10 77-5018		4 66-1519
LB 11	§ 1 86-644		11 77-5019		5 71-812
LB 13	§ 1 48-106		12 77-5026		6 76-901
	2 48-118		13 77-5028		7 76-903
	3 48-120.02		14 Omitted		8 77-1327
	4 48-121.02		15 Omitted		9 Omitted
	5 48-125		16 Omitted		10 Omitted
	6 48-144	LB 16	§ 1 77-2712.05		11 Omitted
	7 48-144.03		2 Omitted	LB 40A	Omitted
	8 48-145		3 Omitted	LB 51	§ 1 81-201
	9 48-145.01	LB 17	§ 1 77-3508		2 81-2,293
	10 48-145.02		2 Omitted		3 Omitted
	11 48-145.04	LB 18	§ 1 77-1719.03	LB 52	§ 1 75-903
	12 48-146.02		2 Omitted		2 75-903.02
	13 48-152	LB 20	§ 1 37-524.01		3 75-905
	14 48-155		2 54-416		4 88-528
	15 48-157		3 Omitted		5 88-528.01
	16 48-158		4 Omitted		6 88-530.01
	17 48-159	LB 21	§ 1 37-1241.07		7 89-1,105
	18 48-162		2 Omitted		8 Omitted
	19 48-162.01		3 Omitted		9 Omitted
	20 48-162.02	LB 28	§ 1 77-2701		10 Omitted
	21 48-163		2 77-27,228	LB 53	§ 1 29-112
	22 48-165		3 77-27,229		2 29-113
	23 48-118.01		4 77-27,230		3 29-2264
	24 48-118.02		5 77-27,231		4 32-312
	25 48-118.03		6 77-27,232		5 32-313
	26 48-118.04		7 77-27,233		6 32-1530
	27 48-118.05		8 77-27,234		7 83-1,118
	28 48-120.03		9 Omitted		8 Omitted
	29 48-177		10 Omitted	LB 54	§ 1 12-104
	30 48-188	LB 28A	Omitted		2 12-1301

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	5	23-1310	6	60-490	22	Omitted
	6	37-420	7	60-4,131	LB 90A	Omitted
	7	48-225	8	60-4,132	LB 94	§ 1 81-1505.04
	8	48-227	9	60-4,137		2 Omitted
	9	48-229	10	60-4,141	LB 97	§ 1 76-239
	10	60-311.03	11	60-4,143		2 Omitted
	11	60-311.04	12	60-4,144	LB 98	§ 1 10-703.01
	12	60-311.08	13	60-4,149.01		2 23-3557
	13	60-3002	14	60-4,159		3 23-3575
	14	71-605	15	60-4,168		4 32-331
	15	71-1002	16	60-4,147.01		5 32-558
	16	77-202.24	17	60-4,147.02		6 32-559
	17	77-3508	18	60-4,147.03		7 32-807
	18	77-3509	19	60-4,147.04		8 32-808
	19	77-3513	20	60-4,147.05		9 32-936
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	21	80-102	22	Omitted		11 32-939
	22	80-104	23	Omitted		12 32-940
	23	80-105	LB 78	§ 1 74-1413		13 32-941
	24	80-106		2 Omitted		14 32-942
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	32	80-401.06		6 60-2404		22 32-950
	33	80-410		7 60-2410		23 32-951
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	35	Omitted		9 9-324 UCC		25 32-958
	36	Omitted		10 Omitted		26 32-1027
	37	Omitted		11 Omitted		27 32-1030
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	39	Omitted	LB 83	§ 1 75-363		29 32-1032
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	2	71-8612		3 Omitted		31 32-1539
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	4	Omitted	LB 88	§ 1 76-2422		33 42-1207
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	2	Omitted	LB 89	§ 1 71-183.01		35 Omitted
LB 61	§ 1	43-146.17		2 Omitted	LB 105	§ 1 25-1629.01
	2	Omitted	LB 90	§ 1 81-12,125		2 25-1635
	3	Omitted		2 81-12,126		3 Omitted
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	2	77-1386		4 2-5413		2 29-213
	3	77-1387		5 2-5414		3 29-214
	4	77-1388		6 2-5415		4 29-214.01
	5	77-1389		7 2-5416		5 Omitted
	6	77-1390		8 2-5417	LB 111A	Omitted
	7	77-1391		9 2-5418	LB 114	§ 1 79-214
	8	77-1392		10 2-5419		2 79-220
	9	77-1393		11 2-5420		3 Omitted
	10	77-1394		12 2-5421	LB 115	§ 1 81-1403
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	12	Omitted		14 2-5423	LB 116	§ 1 28-710
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	9	28-718		39	44-7901	53	79-1083.03
	10	28-719		40	44-7902	54	Omitted
	11	28-720		41	44-7903	55	Omitted
	12	28-720.01		42	48-146.01	56	Omitted
	13	28-721		43	Omitted	57	Omitted
	14	28-722		44	Omitted		Omitted
	15	28-723	LB 121	§ 1	37-421.01	LB 126A	
	16	28-724		2	37-201	LB 131	§ 1
	17	28-725		3	Omitted		81-2,239
	18	28-726	LB 122	§ 1	48-726		2
	19	28-727		2	Omitted		81-2,240
	20	43-1724	LB 126	§ 1	79-4,112		3
	21	43-3342.03		2	79-4,113		81-2,242.04
	22	43-3709		3	79-4,114		4
	23	71-6906		4	79-4,115		81-2,245.01
	24	Omitted		5	79-1072.03		5
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	3	28-416		8	79-102		2
	4	28-450		9	79-401		70-601
	5	28-456		10	79-402		3
	6	28-456.01		11	79-403		70-601.01
	7	Omitted		12	79-405		4
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	2	Omitted		14	79-408		70-604.02
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	2	12-1110		16	79-410		70-626
	3	12-1115		17	79-413		7
	4	12-1116		18	79-415		70-628.01
	5	44-401		19	79-416		8
	6	44-402.01		20	79-418		70-628.02
	7	44-409		21	79-419		9
	8	44-417		22	79-422		70-628.03
	9	44-797		23	79-423		10
	10	44-2131		24	79-433		70-628.04
	11	44-2132		25	79-434		11
	12	44-4814		26	79-435		70-631
	13	44-5103		27	79-443		12
	14	44-5109		28	79-447		70-632
	15	44-5143		29	79-449		13
	16	44-5144		30	79-452		70-636
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	18	44-5153		32	79-455		70-637
	19	44-5154		33	79-470		15
	20	44-5505		34	79-473		70-646.01
	21	44-5508		35	79-479		16
	22	44-6122		36	79-499		70-655
	23	44-6125		37	79-4,101		17
	24	44-6143		38	79-4,108		70-667
	25	44-7506		39	79-4,111		18
	26	44-7508.01		40	79-4,116		70-802
	27	44-7508.02		41	79-556		19
	28	44-7509		42	79-611		70-1402
	29	44-7511		43	79-850	LB 146	20
	30	44-416.05		44	79-857		70-1403
	31	44-416.06		45	79-1003		21
	32	44-416.07		46	79-1016		70-1404
	33	44-416.08		47	79-1022		22
	34	44-416.09		48	79-1026		70-1409
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		12	74-1307	20	71-1120	8	72-2308
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	2	37-407		23	71-1123	11	13-2531
	3	37-411		24	71-1124	12	Omitted
	4	37-415		25	71-1125	13	Omitted
	5	37-416		26	71-1126	LB 227	§ 1 12-1301
	6	37-420		27	71-1127	2	37-420
	7	37-421		28	71-1128	3	37-421
	8	37-426		29	71-1129	4	Omitted
	9	37-427		30	71-1130	5	Omitted
	10	37-428		31	71-1131	6	Omitted
	11	37-429		32	71-1132	LB 234	§ 1 16-672.01
	12	37-431		33	71-1133	2	Omitted
	13	37-432		34	71-1134	LB 236	§ 1 48-179
	14	37-438		35	83-1212.01	2	Omitted
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	22	Omitted		6	82-506	8	48-144.03
	23	Omitted		7	82-507	9	48-144.04
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	2	Omitted		9	82-509	11	48-146
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	2	Omitted		11	12-1401	13	48-155.01
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	3	Omitted		3	77-2115	LB 241	§ 1 50-1302
	4	Omitted		4	77-2701.16	2	Omitted
	5	Omitted		5	77-2701.27	LB 242	§ 1 32-1603
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	2	71-1102		15	77-2775	11	49-1446.03
	3	71-1103		16	77-2776	12	49-1446.04
	4	71-1104		17	77-2786	13	49-1447
	5	71-1105		18	77-27,119	14	49-1453
	6	71-1106		19	77-27,127	15	49-1458
	7	71-1107		20	85-1808	16	49-1461.01
	8	71-1108		21	Omitted	17	49-1463.01
	9	71-1109		22	Omitted	18	49-1467
	10	71-1110		23	Omitted	19	49-1469
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	12	71-1112		25	Omitted	21	49-1469.06
	13	71-1113	LB 217	§ 1	72-2301	22	49-1469.07
	14	71-1114		2	72-2302	23	49-1469.08
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	28	49-1479.01	5	71-17,121	68	71-1725
	29	49-1479.02	6	71-17,122	69	71-1725.01
	30	49-1480.01	7	71-17,123	70	71-1726
	31	49-1481	8	71-17,124	71	71-1726.01
	32	49-1482	9	71-17,125	72	71-1726.02
	33	49-1483	10	71-17,126	73	71-1728
	34	49-1486	11	71-17,127	74	71-1729
	35	49-1488.01	12	71-17,128	75	71-1736.01
	36	49-1494	13	71-17,129	76	71-1736.02
	37	49-1496	14	71-17,130	77	71-1736.03
	38	49-1497	15	18-1738	78	71-1730
	39	49-1499	16	28-401	79	71-1731
	40	49-1499.01	17	44-2803	80	71-1735
	41	49-1499.02	18	44-2824	81	71-1737
	42	49-1499.03	19	44-2827	82	71-1738
	43	49-1499.04	20	71-121.01	83	71-1743
	44	49-14,101.01	21	71-168	84	71-1747
	45	49-14,101.02	22	71-168.02	85	71-1749
	46	49-14,102	23	71-1,103	86	71-1750
	47	49-14,103	24	71-1,132.05	87	71-1753
	48	49-14,103.01	25	71-1,132.07	88	71-1754
	49	49-14,103.02	26	71-1,132.08	89	71-1755
	50	49-14,103.03	27	71-1,132.11	90	71-1757
	51	49-14,103.04	28	71-1,132.18	91	71-1758
	52	49-14,104	29	71-1,142	92	71-1913.01
	53	49-14,112	30	71-1,143	93	71-2610.01
	54	49-14,115	31	71-1,198	94	71-5191
	55	49-14,120	32	71-1,339	95	77-2704.09
	56	49-14,123	33	71-3,106	96	79-214
	57	49-14,124	34	71-541	97	79-221
	58	49-14,124.01	35	71-1405	98	83-4,157
	59	49-14,125	36	71-17,131	99	83-4,159
	60	49-14,127	37	71-17,132	100	Omitted
	61	49-14,132	38	71-17,133	101	Omitted
	62	49-14,135	39	71-17,134	102	Omitted
	63	49-14,136	40	71-17,135	103	Omitted
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	67	50-114.05	44	71-17,139		2 Omitted
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	70	Omitted	47	71-1704		3 77-1315.01
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	5	Omitted	52	71-1716		8 77-5007
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		8 77-1311	43	60-343	106	60-3,106
		9 77-1311.02	44	60-344	107	60-3,107
		10 77-1331	45	60-345	108	60-3,108
		11 77-1345.01	46	60-346	109	60-3,109
		12 77-1347	47	60-347	110	60-3,110
		13 77-1504	48	60-348	111	60-3,111
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		15 77-5027	50	60-350	113	60-3,113
		16 79-1016	51	60-351	114	60-3,114
		17 Omitted	52	60-352	115	60-3,115
		18 Omitted	53	60-353	116	60-3,116
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	4	Omitted	57	60-357	120	60-3,120
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	2	35-1312	59	60-359	122	60-3,122
	3	35-1320	60	60-360	123	60-3,123
	4	35-1324	61	60-361	124	60-3,124
	5	35-1330	62	60-362	125	60-3,125
	6	Omitted	63	60-363	126	60-3,126
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	2	60-302	65	60-365	128	60-3,128
	3	60-303	66	60-366	129	60-3,129
	4	60-304	67	60-367	130	60-3,130
	5	60-305	68	60-368	131	60-3,131
	6	60-306	69	60-369	132	60-3,132
	7	60-307	70	60-370	133	60-3,133
	8	60-308	71	60-371	134	60-3,134
	9	60-309	72	60-372	135	60-3,135
	10	60-310	73	60-373	136	60-3,136
	11	60-311	74	60-374	137	60-3,137
	12	60-312	75	60-375	138	60-3,138
	13	60-313	76	60-376	139	60-3,139
	14	60-314	77	60-377	140	60-3,140
	15	60-315	78	60-378	141	60-3,141
	16	60-316	79	60-379	142	60-3,142
	17	60-317	80	60-380	143	60-3,143
	18	60-318	81	60-381	144	60-3,144
	19	60-319	82	60-382	145	60-3,145
	20	60-320	83	60-383	146	60-3,146
	21	60-321	84	60-384	147	60-3,147
	22	60-322	85	60-385	148	60-3,148
	23	60-323	86	60-386	149	60-3,149
	24	60-324	87	60-387	150	60-3,150
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	26	60-326	89	60-389	152	60-3,152
	27	60-327	90	60-390	153	60-3,153
	28	60-328	91	60-391	154	60-3,154
	29	60-329	92	60-392	155	60-3,155
	30	60-330	93	60-393	156	60-3,156
	31	60-331	94	60-394	157	60-3,157
	32	60-332	95	60-395	158	60-3,158
	33	60-333	96	60-396	159	60-3,159
	34	60-334	97	60-397	160	60-3,160
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	36	60-336	99	60-399	162	60-3,162
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171	60-3,171	234	60-108	11	60-111
172	60-3,172	235	60-465	12	60-112
173	60-3,173	236	60-505.02	13	60-113
174	60-3,174	237	60-653	14	60-114
175	60-3,175	238	60-683	15	60-115
176	60-3,176	239	60-685	16	60-116
177	60-3,177	240	60-697	17	60-117
178	60-3,178	241	60-6,100	18	60-118
179	60-3,179	242	60-6,162	19	60-119
180	60-3,180	243	60-6,226	20	60-120
181	60-3,181	244	60-6,246	21	60-121
182	60-3,182	245	60-6,255	22	60-122
183	60-3,183	246	60-6,298	23	60-123
184	60-3,184	247	60-6,309	24	60-124
185	60-3,185	248	60-6,320	25	60-125
186	60-3,186	249	60-6,347	26	60-126
187	60-3,187	250	60-6,355	27	60-127
188	60-3,188	251	60-6,364	28	60-128
189	60-3,189	252	60-6,375	29	60-129
190	60-3,190	253	60-1303	30	60-130
191	60-3,191	254	60-1306	31	60-131
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193	60-3,193	256	60-1401.02	33	60-133
194	60-3,194	257	60-1411.02	34	60-134
195	60-3,195	258	60-1515	35	60-135
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198	60-3,198	261	60-1804	38	60-138
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200	60-3,200	263	60-1901	40	60-140
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205	60-3,205	268	66-686	45	60-145
206	60-3,206	269	66-6,103	46	60-146
207	60-3,207	270	75-305	47	60-147
208	60-3,208	271	75-363	48	60-148
209	60-3,209	272	77-1342	49	60-149
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214	60-3,214	277	77-27,143	54	60-154
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217	60-3,217	280	77-5007	57	60-157
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	80	60-180	12	76-2611	52	71-5647		
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	95	60-195		4	68-1021	67	81-6,101	
	96	60-196		5	68-1021.01	68	81-3004	
	97	60-197		6	68-1037	69	81-3102	
	98	13-910		7	68-1048	70	81-3202	
	99	23-186		8	68-1604	71	81-3208	
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	3	77-1504		28	71-642		7	77-2701.04
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	5	77-1507		30	71-701		9	77-2701.47
	6	77-1510		31	71-703		10	77-2704.22
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	47	77-5725		8	46-1608
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	64	77-5806		25	46-1625
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	12	48-664		5	8-124	68	Omitted
	13	Omitted		6	8-135	69	Omitted
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	14	47-623	22	32-321	26	1-307 UCC	
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	2	81-12,118	42	32-940	46	2A-519 UCC	
	3	81-12,119	43	32-941	47	2A-526 UCC	
	4	81-12,120	44	32-942	48	2A-527 UCC	
	5	81-12,121	45	32-943	49	2A-528 UCC	
	6	81-12,122	46	32-945	50	3-103 UCC	
	7	81-12,123	47	32-946	51	4-104 UCC	
	8	81-12,124	48	32-947	52	4-210 UCC	
LB 546A		Omitted	49	32-948	53	4A-105 UCC	
LB 551	§ 1	71-1,356	50	32-949	54	4A-106 UCC	
	2	71-1,358	51	32-950	55	4A-204 UCC	
	3	71-810	52	32-951	56	5-103 UCC	
	4	71-813	53	32-1002	57	7-101 UCC	
	5	71-815	54	32-1027	58	7-102 UCC	
	6	71-816	55	32-1502	59	7-103 UCC	
	7	71-817	56	Omitted	60	7-104 UCC	
	8	71-818	57	Omitted	61	7-105 UCC	
	9	71-922	58	Omitted	62	7-106 UCC	
	10	Omitted	59	Omitted	63	7-201 UCC	
	11	Omitted	LB 570	§ 1	45-1,109	64	7-202 UCC
	12	Omitted		2	53-208	65	7-203 UCC
LB 557	§ 1	81-1258		3	69-2103	66	7-204 UCC
	2	Omitted		4	86-630	67	7-205 UCC
LB 566	§ 1	32-101		5	86-643	68	7-206 UCC
	2	32-103		6	1-101 UCC	69	7-207 UCC
	3	32-110.02		7	1-102 UCC	70	7-208 UCC
	4	32-203		8	1-103 UCC	71	7-209 UCC
	5	32-301		9	1-104 UCC	72	7-210 UCC
	6	32-306		10	1-105 UCC	73	7-301 UCC
	7	32-308		11	1-106 UCC	74	7-302 UCC
	8	32-309		12	1-107 UCC	75	7-303 UCC
	9	32-310		13	1-108 UCC	76	7-304 UCC
	10	32-311.01		14	1-201 UCC	77	7-305 UCC
	11	32-312		15	1-202 UCC	78	7-306 UCC
	12	32-312.01		16	1-203 UCC	79	7-307 UCC
	13	32-312.02		17	1-204 UCC	80	7-308 UCC
	14	32-312.03		18	1-205 UCC	81	7-309 UCC
	15	32-312.04		19	1-206 UCC	82	7-401 UCC
	16	32-312.05		20	1-301 UCC	83	7-402 UCC
	17	32-314		21	1-302 UCC	84	7-403 UCC

CROSS REFERENCE TABLE

2005 Session Laws	2005 Supplement	2005 Session Laws	2005 Supplement	2005 Session Laws	2005 Supplement		
	85	7-404 UCC		4	17-952	4	29-4003
	86	7-501 UCC		5	Omitted	5	29-4004
	87	7-502 UCC	LB 639	§ 1	39-1302	6	29-4009
	88	7-503 UCC		2	39-1311	7	29-4013
	89	7-504 UCC		3	Omitted	8	Omitted
	90	7-505 UCC	LB 640	§ 1	76-547	LB 737	Omitted
	91	7-506 UCC		2	Omitted	LB 739	§ 1
	92	7-507 UCC	LB 645	§ 1	86-593		2
	93	7-508 UCC		2	86-594		3
	94	7-509 UCC		3	86-595		4
	95	7-601 UCC		4	86-596		5
	96	7-602 UCC		5	86-597		6
	97	7-603 UCC		6	86-598		7
	98	7-703 UCC		7	86-599		8
	99	7-704 UCC		8	25-2602.01		9
	100	8-103 UCC		9	86-575		10
	101	9-102 UCC		10	Omitted		11
	102	9-203 UCC		11	Omitted		12
	103	9-207 UCC	LB 664	§ 1	71-409		13
	104	9-208 UCC		2	Omitted		14
	105	9-301 UCC		3	Omitted	LB 753	§ 1
	106	9-310 UCC	LB 664A		Omitted		2
	107	9-312 UCC	LB 668	§ 1	90-201		3
	108	9-313 UCC	LB 675	§ 1	60-480	LB 754	§ 1
	109	9-314 UCC		2	60-4,120.01		2
	110	9-317 UCC		3	60-4,123		3
	111	9-338 UCC		4	60-4,124	LB 761	§ 1
	112	9-601 UCC		5	Omitted		2
	113	Omitted		6	Omitted	LB 761A	Omitted
	114	Omitted	LB 675A		Omitted	LB 762	§ 1
	115	Omitted	LB 676	§ 1	76-2221		2
	116	Omitted		2	Omitted		3
LB 573	§ 1	2-1203		3	Omitted		
	2	2-1207	LB 682	§ 1	32-564		
	3	2-1208		2	32-571		
	4	2-1213		3	Omitted		
	5	Omitted	LB 684	§ 1	72-2201		
	6	Omitted		2	72-2205.01		
LB 577	§ 1	79-1003		3	72-2211.01		
	2	79-1007.01		4	81-1108.32		
	3	79-1007.02		5	Omitted		
	4	79-1028	LB 684A		Omitted		
	5	79-1103	LB 689	§ 1	79-1329		
	6	Omitted		2	79-1330		
LB 589	§ 1	68-10,100		3	Omitted		
	2	68-10,101	LB 689A		Omitted		
	3	68-10,102	LB 709	§ 1	68-1087		
	4	68-10,103		2	68-1088		
	5	68-10,104		3	68-1089		
	6	68-10,105		4	68-1090		
	7	68-10,106		5	68-1091		
	8	68-10,107		6	68-1092		
	9	44-1540		7	68-1093		
	10	Omitted		8	68-1094		
	11	Omitted		9	68-1095		
LB 589A		Omitted		10	68-1096		
LB 594	§ 1	28-106		11	68-1097		
	2	60-6,197.02		12	68-1098		
	3	60-6,197.03		13	68-1099		
	4	Omitted		14	Omitted		
LB 626	§ 1	14-3,100	LB 713	§ 1	29-4306		
	2	16-696		2	29-110		
	3	17-501		3	29-2264		

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CROSS REFERENCE TABLE

Legislative Bills, 99th Legislature
First Session, 2005

Showing the date each act went into effect.
The Ninety-ninth Session of the Legislature adjourned
June 3, 2005.

LB No.	Effective Date	LB No.	Effective Date
1	September 4, 2005	66	September 4, 2005
2	September 4, 2005	66A	September 4, 2005
3	September 4, 2005	71A	September 4, 2005
9	September 4, 2005	76	March 23, 2005
10	September 4, 2005	78	September 4, 2005
11	September 4, 2005	80	September 4, 2005
13	Sections 1 to 4, 6 to 30, 32, 33, and 37 of this act become operative on September 4, 2005. The other sections of this act become operative on June 3, 2005.	82	Sections 8, 9, and 11 of this act become operative on October 17, 2005. The other sections of this act become operative on September 4, 2005.
13A	September 4, 2005	83	March 10, 2005
15	March 10, 2005	88	September 4, 2005
16	March 10, 2005	89	September 4, 2005
17	September 4, 2005	90	May 27, 2005
18	September 4, 2005	90A	May 27, 2005
20	March 10, 2005	94	September 4, 2005
21	March 10, 2005	97	September 4, 2005
28	January 1, 2006 (operative date)	98	September 4, 2005
28A	September 4, 2005	105	September 4, 2005
33	September 4, 2005	111	September 4, 2005
37	March 10, 2005	111A	September 4, 2005
38	May 7, 2005	114	September 4, 2005
39	September 4, 2005	115	September 4, 2005
40	July 1, 2005 (operative date)	116	September 4, 2005
40A	June 3, 2005	117	September 4, 2005
51	September 4, 2005	118	September 4, 2005
52	Sections 7 and 10 of this act become operative on January 1, 2006. The other sections of this act become operative on September 4, 2005.	119	September 4, 2005
53	September 4, 2005	121	September 4, 2005
54	Sections 1 to 5, 10 to 13, 15, 21 to 28, 30 to 34, and 36 of this act become operative on July 1, 2004. The other sections of this act become operative on March 10, 2005.	122	September 4, 2005
55	March 26, 2005	126	Sections 8, 42, 50, and 55 of this act become operative on June 15, 2006. The other sections of this act become operative on September 4, 2005.
59	September 4, 2005	126A	September 4, 2005
61	March 10, 2005	131	September 4, 2005
		139	March 23, 2005
		144	September 4, 2005
		146	September 4, 2005
		146A	September 4, 2005
		161	September 4, 2005
		162	Sections 14, 21, and 22 of this act become operative on September 4, 2005. The other sections of this

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LB No.	Effective Date	LB No.	Effective Date
	act become operative on January 1, 2006.	276	September 4, 2005
169	September 4, 2005	283	September 4, 2005
175	September 4, 2005	284	September 4, 2005
176	September 4, 2005	291	September 4, 2005
193	July 1, 2005 (operative date)	298	Sections 1 and 18 of this act become operative on January 1, 2005. Sections 2 to 15 and 19 of this act become operative on September 4, 2005. The other sections of this act become operative on March 23, 2005.
198	September 4, 2005	299	April 8, 2005
201	March 26, 2005	301	Sections 8, 12 to 20, 30 to 40, 44 to 65, 69 to 74, and 77 of this act become operative on July 1, 2005. Sections 1 to 7, 9 to 11, 21 to 29, 41 to 43, 66 to 68, 76, and 78 of this act become operative on September 4, 2005. The other sections of this act become operative on March 10, 2005.
205	September 4, 2005		
206	June 1, 2005	306	September 4, 2005
211	Section 11 of this act becomes operative on January 1, 2006. The other sections of this act become operative on September 4, 2005.	306A	March 29, 2005
211A	September 4, 2005	312	January 1, 2006 (operative date)
216	Sections 2, 13, and 23 of this act become operative on January 1, 2006. Sections 4 to 8 and 24 of this act become operative on October 1, 2005. Sections 10 to 12, 20, and 22 of this act become operative for taxable years beginning or deemed to begin on or after January 1, 2005, under the Internal Revenue Code of 1986, as amended. The other sections of this act become operative on September 4, 2005.	312A	September 4, 2005
217	September 4, 2005	319	March 29, 2005
227	Sections 2, 3, and 5 of this act become operative on January 1, 2006. The other sections of this act become operative on September 4, 2005.	320	September 4, 2005
234	September 4, 2005	329	September 4, 2005
236	September 4, 2005	331	September 4, 2005
238	September 4, 2005	332	July 1, 2005 (operative date)
241	September 4, 2005	332A	June 3, 2005
242	January 1, 2006 (operative date)	334	January 1, 2005 (operative date)
243	March 23, 2005	335	September 4, 2005
243A	March 23, 2005	342	September 4, 2005
244	March 23, 2005	343	June 3, 2005
246	September 4, 2005	348	Sections 2, 4 to 17, and 22 of this act become operative on July 1, 2005. Sections 18 and 21 of this act become operative on September 4, 2005. The other sections of this act become operative on June 3, 2005.
247	September 4, 2005	348A	June 3, 2005
256	Sections 33, 100, and 101 of this act become operative on September 4, 2005. The other sections of this act become operative on July 1, 2007, except that necessary actions preparatory to their implementation may be taken prior to such date.	351	April 28, 2005
256A	September 4, 2005	352	September 4, 2005
259	March 26, 2005	355	September 4, 2005
261	January 1, 2006 (operative date)	361	April 28, 2005
262	September 4, 2005	364	Sections 1 to 7, 10, 16 to 22, 24, and 27 of this act become operative on September 4, 2005. Sections 8, 9, and 25 of this act become operative on July 1, 2005. The other sections of this act become operative on June 1, 2005.
263	March 10, 2005	373	September 4, 2005
264	September 4, 2005	380	September 4, 2005
268	September 4, 2005	382	Sections 15 and 17 of this act become operative on September 4, 2005. The other sections of this act become operative on May 7,
274	September 4, 2005		

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LB No.	Effective Date	LB No.	Effective Date
	2005.		4, 2005. The other sections of this act become operative on January 1, 2006.
383	March 10, 2005		
389	September 4, 2005		
389A	September 4, 2005	570	January 1, 2006 (operative date)
396	September 4, 2005	573	June 3, 2005
401	September 4, 2005	577	September 4, 2005
402	September 4, 2005	589	September 4, 2005
406	August 1, 2005 (operative date)	589A	September 4, 2005
421	May 25, 2005	594	September 4, 2005
422	July 1, 2005 (operative date)	626	September 4, 2005
423	July 1, 2005 (operative date)	639	September 4, 2005
424	July 1, 2005 (operative date)	640	September 4, 2005
425	July 1, 2005 (operative date)	645	September 4, 2005
426	May 25, 2005	664	June 1, 2005
427	May 25, 2005	664A	June 1, 2005
439	April 8, 2005	668	September 4, 2005
441	March 23, 2005	675	January 1, 2006 (operative date)
450	September 4, 2005	675A	September 4, 2005
451	September 4, 2005	676	March 29, 2005
453	September 4, 2005	682	September 4, 2005
465	September 4, 2005	684	September 4, 2005
471	September 4, 2005	684A	April 8, 2005
475	September 4, 2005	689	June 1, 2005
476	September 4, 2005	689A	June 1, 2005
484	Sections 1 and 15 of this act become operative on June 3, 2005. The other sections of this act become operative on January 1, 2006.	709	June 3, 2005
485	September 4, 2005	713	September 4, 2005
492	September 4, 2005	737	May 25, 2005
499	June 1, 2005	739	September 4, 2005
501	September 4, 2005	753	June 1, 2005
503	Sections 1, 2, 16, 17, and 25 of this act become operative on September 4, 2005. The other sections of this act become operative on July 1, 2005.	754	September 4, 2005
503A	April 28, 2005	761	September 4, 2005
516	September 4, 2005	761A	September 4, 2005
525	September 4, 2005	762	September 4, 2005
528	September 4, 2005		
533	Sections 1 to 10, 12, 14 to 18, 20 to 31, 33 to 35, 47 to 65, 69, and 70 of this act become operative on September 4, 2005. The other sections of this act become operative on March 23, 2005.		
534	September 4, 2005		
538	September 4, 2005		
538A	September 4, 2005		
544	September 4, 2005		
546	September 4, 2005		
546A	September 4, 2005		
551	July 1, 2005 (operative date)		
557	September 4, 2005		
566	Sections 30, 56, and 57 of this act become operative on September		

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2006 Session Laws of Nebraska, Second Session
Showing LB section number to statute section number

2006 Session Laws	2006 Cumulative Supplement	2006 Session Laws	2006 Cumulative Supplement	2006 Session Laws	2006 Cumulative Supplement
LB 14	§ 1 66-1840		13 49-1446.04		10 29-4109
	2 66-1841		14 49-1463		11 29-4112
	3 Omitted		15 49-1463.01		12 29-4113
	4 Omitted		16 49-14,124		13 29-4114
LB 32	§ 1 2-3218		17 49-14,125		14 29-4115
	2 Omitted		18 49-14,126		15 Omitted
LB 57	§ 1 28-101		19 Omitted	LB 385A	Omitted
	2 28-395		20 Omitted	LB 409	§ 1 40-104
	3 28-396		21 Omitted		2 Omitted
	4 28-397	LB 196	§ 1 85-408	LB 454	§ 1 69-2427
	5 28-398		2 85-1402		2 69-2428
	6 28-399		3 85-1409		3 69-2429
	7 28-3,100		4 85-1414		4 69-2430
	8 28-3,101		5 Omitted		5 69-2431
	9 28-115	LB 239	§ 1 85-502		6 69-2432
	10 60-6,198		2 Omitted		7 69-2433
	11 Omitted	LB 248	§ 1 60-3,186		8 69-2434
	12 Omitted		2 60-3,187		9 69-2435
LB 79	§ 1 74-1334		3 Omitted		10 69-2436
	2 Omitted		4 Omitted		11 69-2437
LB 85	§ 1 12-1106		5 Omitted		12 69-2438
	2 68-129	LB 287	§ 1 28-1320.01		13 69-2439
	3 Omitted		2 28-1320.02		14 69-2440
LB 85A	Omitted		3 28-1320.03		15 69-2441
LB 87	§ 1 20-150		4 28-101		16 69-2442
	2 20-151		6 Omitted		17 69-2443
	3 20-156		7 Omitted		18 69-2444
	4 71-4728	LB 366	§ 1 2-1608		19 69-2445
	5 71-4728.05		2 23-2301		20 69-2446
	6 Omitted		3 23-2306		21 69-2447
LB 87A	Omitted		4 23-2306.03		22 28-1202
LB 173	§ 1 69-1301		5 23-2308.01		23 Omitted
	2 69-1305.02		6 23-2319		24 Omitted
	3 69-1305.03		7 84-1301		25 Omitted
	4 69-1308		8 84-1307	LB 454A	Omitted
	5 69-1329		9 84-1308	LB 489	§ 1 48-2501
	6 Omitted		10 84-1309.02		2 48-2502
	7 Omitted		11 84-1321		3 48-2503
LB 188	§ 1 32-1601		12 Omitted		4 48-2504
	2 32-1602		13 Omitted		5 48-2505
	3 32-1603		14 Omitted		6 48-2506
	4 32-1604	LB 385	§ 1 29-2262		7 48-2507
	5 32-1604.01		2 29-4101		8 48-2508
	6 32-1606		3 29-4102		9 48-2509
	7 32-1606.01		4 29-4103		10 48-2510
	8 32-1607		5 29-4104		11 48-2511
	9 32-1608		6 29-4105		12 48-2512
	10 32-1608.01		7 29-4106		13 48-2513
	11 32-1608.03		8 29-4107		14 48-2514
	12 32-1612		9 29-4108		15 48-2515

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2006 Session Laws	2006 Cumulative Supplement	2006 Session Laws	2006 Cumulative Supplement	2006 Session Laws	2006 Cumulative Supplement			
	16	48-2516	13	70-1813	9	60-142.04		
	17	48-2517	14	70-1814	10	60-142.05		
	18	48-2518	15	70-1815	11	60-142.06		
	19	48-2519	16	70-1816	12	60-143		
	20	48-2520	17	70-1817	13	60-144		
	21	48-2521	18	Omitted	14	60-148		
	22	48-2522	LB 562	§ 1	53-103	15	60-149	
	23	48-2523		2	53-123.04	16	60-154	
	24	48-2524		3	53-123.11	17	60-159	
	25	48-2525		4	53-124.11	18	60-159.01	
	26	48-2526		5	53-124.12	19	60-169	
	27	48-2527		6	60-6,211.08	20	60-193	
	28	48-2528		7	Omitted	21	60-301	
	29	48-2529		8	Omitted	22	60-333	
	30	48-2530	LB 588	§ 1	50-1203	23	60-3,104	
	31	48-2531		2	50-1204	24	60-3,130	
	32	48-2532		3	50-1205	25	60-3,130.01	
	33	48-2533		4	50-1205.01	26	60-3,130.02	
	34	48-168		5	50-1213	27	60-3,130.03	
	35	48-418		6	50-1214	28	60-3,130.04	
	36	48-418.04		7	50-1215	29	60-3,130.05	
	37	48-418.09		8	77-2711	30	60-3,130.06	
	38	Omitted		9	77-27,119	31	60-3,130.07	
	39	Omitted		10	84-304	32	60-3,132	
	40	Omitted		11	84-311	33	60-3,133	
	41	Omitted		12	Omitted	34	60-3,175	
	42	Omitted	LB 605	§ 1	85-419	35	Omitted	
LB 489A		Omitted		2	85-420	36	Omitted	
LB 508	§ 1	46-286		3	85-421	37	Omitted	
	2	46-602		4	85-422	38	Omitted	
	3	46-602.01		5	85-423	39	Omitted	
	4	46-1208		6	85-424	LB 690	§ 1	79-763
	5	46-1217		7	85-425	2	79-764	
	6	46-1233.01		8	Omitted	3	79-765	
	7	46-1238	LB 605A		Omitted	4	79-766	
	8	46-1239	LB 647	§ 1	21-301	5	79-767	
	9	46-1404		2	21-304	6	79-768	
	10	46-1405		3	21-330	LB 690A		Omitted
	11	81-2121		4	21-2601	LB 693	§ 1	58-201
	12	Omitted		5	21-2601.01	2	58-202	
LB 542	§ 1	77-6001		6	21-2603	3	58-203	
	2	77-6002		7	21-2606	4	58-207	
	3	77-6003		8	21-2607	5	58-210.02	
	4	77-6004		9	21-2610	6	58-219	
	5	77-6005		10	21-2613	7	58-219.01	
	6	77-6006		11	21-2617.01	8	58-239.04	
	7	77-6007		12	21-2632.01	9	Omitted	
	8	Omitted		13	21-2631	10	Omitted	
	9	Omitted		14	21-2631.01	LB 746	§ 1	25-3005
LB 542A		Omitted		15	21-2632	2	25-3006	
LB 548	§ 1	70-1801		16	21-2634	3	25-3007	
	2	70-1802		17	21-2639	4	25-3008	
	3	70-1803		18	Omitted	5	25-3009	
	4	70-1804			Omitted	6	25-3010	
	5	70-1805	LB 647A	§ 1	60-101	7	81-1413	
	6	70-1806	LB 663	2	60-117	8	81-1428	
	7	70-1807		3	60-139	9	81-1429	
	8	70-1808		4	60-140	10	Omitted	
	9	70-1809		5	60-142	LB 746A		Omitted
	10	70-1810		6	60-142.01	LB 757	§ 1	84-106
	11	70-1811		7	60-142.02	2	Omitted	
	12	70-1812		8	60-142.03	3	Omitted	

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2006 Session Laws	2006 Cumulative Supplement	2006 Session Laws	2006 Cumulative Supplement	2006 Session Laws	2006 Cumulative Supplement
LB 764	Omitted		47 76-2227		14 23-2520
LB 765	§ 1 60-123		48 76-2228		15 23-2522
	2 60-137		49 76-2228.01		16 23-2524
	3 60-144		50 76-2229		17 23-2525
	4 60-146		51 76-2229.01		18 23-2526
	5 60-362		52 76-2230		19 23-2527
	6 60-385		53 76-2231.01		20 23-2531
	7 60-3,187		54 76-2232		21 23-2533
	8 Omitted		55 76-2233		22 23-3202
	9 Omitted		56 76-2233.01		23 23-3209
LB 771	§ 1 69-1318.01		57 76-2233.02		24 77-201
	2 69-1329		58 76-2236		25 77-422
	3 Omitted		59 76-2237		26 77-801.01
LB 776	§ 1 13-2039		60 76-2238		27 77-1343
	2 Omitted		61 76-2239		28 77-1344
	3 Omitted		62 76-2241		29 77-1345
LB 778	§ 1 2-1502		63 76-2242		30 77-1345.01
	2 2-5506		64 76-2243		31 77-1347
	3 13-403		65 76-2245		32 77-1347.01
	4 44-320		66 76-2246		33 77-1348
	5 49-14,103.01		67 76-2247.01		34 77-1355
	6 72-224.03		68 76-2248		35 77-1359
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	8 76-706		70 76-2250		37 77-1502
	9 76-1907		71 77-1355		38 77-1504
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	24 76-2210.01		11 Omitted		53 Omitted
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	33 76-2215		3 Omitted	LB 818	§ 1 13-2039
	34 76-2216	LB 808	§ 1 18-2117.01		2 Omitted
	35 76-2217		2 18-2147		3 Omitted
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28	71-7454	90	71-634	152	81-3309
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70	68-1403	132	71-1,376		4 60-462.01
71	68-1405	133	71-1,377		5 60-465
72	68-1503	134	71-1,378		6 60-4,138
73	68-1514	135	71-1,379		7 60-4,145
74	68-1521	136	71-1,380		8 60-4,146
75	68-1522	137	71-1,381		9 60-4,163
76	68-1523	138	71-1,382		10 60-6,251
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	8	79-902	46	79-468	108	79-2106
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	3	75-302	41	43-1412	48	Omitted	
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	11	43-3811		17	5	77-2704.12	
	12	43-3812		18	6	77-2704.15	
	13	2-3202		19	7	Omitted	
	14	2-3290.01		20	8	Omitted	
	15	2-3290		21	9	Omitted	
	16	2-3296		22	10	Omitted	
	17	2-3297		23	LB 1189A		Omitted
	18	18-1755		24	LB 1199	§ 1	28-101
	19	20-504		25	2	28-111	
	20	23-1824		26	3	28-311	
	21	28-311.02		27	4	28-318	
	22	28-311.03		28	5	28-319	
	23	28-311.04		29	6	28-319.01	
	24	28-728		30	7	28-320.01	
				31	8	28-320.02	

CROSS REFERENCE TABLE

2006 Session Laws	2006 Cumulative Supplement	2006 Session Laws	2006 Cumulative Supplement	2006 Session Laws	2006 Cumulative Supplement	
	9	28-707	71	71-1215	23	79-1337
	10	29-110	72	71-1216	24	79-1319
	11	29-119	73	71-1217	25	79-1325
	12	29-1926	74	71-1218	26	81-1634
	13	29-2028	75	71-1219	27	86-515
	14	29-2221	76	71-1220	28	86-516
	15	29-2290	77	71-1221	29	86-520
	16	29-2923	78	71-1222	30	86-5,100
	17	29-4001	79	71-1223	31	Omitted
	18	29-4003	80	71-1224	32	Omitted
	19	29-4004	81	71-1225		Omitted
	20	29-4005	82	71-1226	LB 1208A	
	21	29-4006	83	79-267	LB 1222	§ 1
	22	29-4007	84	80-601		2
	23	29-4009	85	81-1850		3
	24	29-4011	86	83-174		4
	25	29-4013	87	83-174.01		5
	26	29-4014	88	83-174.02		6
	27	29-4015	89	83-174.03		7
	28	29-4016	90	83-174.04		8
	29	29-4017	91	83-174.05		9
	30	29-4103	92	83-1,100		10
	31	42-1203	93	83-1,102		11
	32	71-1,206.14	94	83-1,103		12
	33	71-1,206.18	95	83-1,103.01		13
	34	71-1,206.34	96	83-1,103.02		14
	35	71-916	97	83-1,103.03		15
	36	71-917	98	83-1,103.04	LB 1222A	Omitted
	37	71-918	99	83-1,135	LB 1226	§ 1
	38	71-919	100	83-338		2
	39	71-942	101	83-351		3
	40	71-944	102	83-364		4
	41	71-945	103	83-376		5
	42	71-946	104	83-4,143		6
	43	71-947	105	83-933		7
	44	71-948	106	29-4019		8
	45	71-949	107	71-1227		9
	46	71-954	108	71-1228		10
	47	71-956	109	Omitted		11
	48	71-957		Omitted		12
	49	71-958	LB 1199A			13
	50	71-959	LB 1208	§ 1		14
	51	71-960		9-812		15
	52	71-961		79-704		16
	53	71-962		79-761		17
	54	71-1128		79-1003		18
	55	29-4018		79-1007.02		19
	56	71-6908		79-1018.01		20
	57	71-1201		79-1028		21
	58	71-1202		79-1204		22
	59	71-1203		79-1223		23
	60	71-1204		79-1233		24
	61	71-1205		79-1241.01		25
	62	71-1206		79-1241.02		26
	63	71-1207		79-1243		27
	64	71-1208		79-1302		28
	65	71-1209		79-1303		29
	66	71-1210		79-1304		30
	67	71-1211		79-1331		31
	68	71-1212		79-1332		32
	69	71-1213		79-1333		33
	70	71-1214		79-1334		34
				79-1335		Omitted
				79-1336	LB 1226A	Omitted

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2006 Session Laws	2006 Cumulative Supplement	2006 Session Laws	2006 Cumulative Supplement	2006 Session Laws	2006 Cumulative Supplement
LB 1227	§ 1 69-2402		53 30-2487		9 84-612
	2 69-2404		54 43-512.12		10 84-613
	3 69-2405		55 43-2508		11 Omitted
	4 69-2406		56 44-3,144	LB 1256A	Omitted
	5 69-2410		57 44-3,149		
	6 69-2411		58 44-526		
	7 69-2418		59 44-1540		
	8 69-2419		60 44-32,180		
	9 Omitted		61 44-4221		
	10 Omitted		62 44-4222		
LB 1248	§ 1 68-901		63 44-4228		
	2 68-902		64 44-4726		
	3 68-903		65 44-5305		
	4 68-904		66 44-8002		
	5 68-905		67 68-104		
	6 68-906		68 68-150		
	7 68-907		69 68-716		
	8 68-908		70 68-1070		
	9 68-909		71 68-1509		
	10 68-910		72 68-1802		
	11 68-911		73 68-1803		
	12 68-912		74 71-804		
	13 68-913		75 71-806		
	14 68-914		76 71-820		
	15 68-915		77 71-2426		
	16 68-916		78 71-6017.01		
	17 68-917		79 71-7607		
	18 68-918		80 71-7610		
	19 68-919		81 71-8405		
	20 68-920		82 71-8506		
	21 68-921		83 77-908		
	22 68-922		84 77-912		
	23 68-923		85 77-2704.09		
	24 68-924		86 77-27,163.01		
	25 68-925		87 79-215		
	26 68-926		88 81-6,113		
	27 68-927		89 50-422		
	28 68-928		90 Omitted		
	29 68-929		91 Omitted		
	30 68-930		92 Omitted		
	31 68-931	LB 1248A	Omitted		
	32 68-932	LB 1249	§ 1 13-2802		
	33 68-933		2 66-1801		
	34 68-934		3 66-1804		
	35 68-935		4 66-1852		
	36 68-936		5 66-1858		
	37 68-937		6 66-1859		
	38 68-938		7 66-1860		
	39 68-939		8 66-1861		
	40 68-940		9 66-1862		
	41 68-941		10 66-1863		
	42 68-942		11 66-1864		
	43 68-943		12 75-109.01		
	44 68-944		13 Omitted		
	45 68-945	LB 1256	§ 1 79-1101		
	46 68-946		2 79-1103		
	47 68-947		3 79-1104		
	48 68-948		4 79-1104.01		
	49 68-949		5 79-1104.02		
	50 25-21,188.02		6 79-1104.03		
	51 28-705		7 79-1104.04		
	52 28-706		8 79-1104.05		

APPENDIX

APPENDIX

CROSS REFERENCE TABLE

Legislative Bills, 99th Legislature
Second Session, 2006

Showing the date each act went into effect.
The Ninety-ninth Session of the Legislature adjourned
April 13, 2006.

LB No.	Effective Date	LB No.	Effective Date
14	March 7, 2006	542A	April 12, 2006
32	July 14, 2006	548	July 14, 2006
57	April 14, 2006	562	July 14, 2006
79	July 14, 2006	588	July 14, 2006
85	July 14, 2006	605	April 12, 2006
85A	July 14, 2006	605A	April 12, 2006
87	July 14, 2006	647	July 14, 2006
87A	July 14, 2006	647A	July 14, 2006
173	November 2, 2006 (operative date)	663	Sections 19 and 37 of this act become operative on June 1, 2006. Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 36 of this act become operative on July 14, 2006. The other sections of this act become operative on March 17, 2006.
188	January 1, 2007 (operative date)	690	July 14, 2006
196	July 14, 2006	690A	July 14, 2006
239	July 14, 2006	693	February 7, 2006
248	Sections 2 and 4 of this act become operative on January 1, 2007. The other sections of this act become operative on July 14, 2006.	746	July 14, 2006
287	April 5, 2006	746A	July 14, 2006
366	January 1, 2007 (operative date)	757	March 14, 2006
385	July 14, 2006	764	July 14, 2006
385A	July 14, 2006	765	February 7, 2006
409	July 14, 2006	771	July 14, 2006
454	January 1, 2007 (operative date)	776	March 7, 2006
454A	July 14, 2006	778	July 14, 2006
489	Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 35, 36, and 41 of this act become operative on January 1, 2008. Sections 34 and 39 of this act become operative on July 14, 2006. Sections 37 and 40 of this act become operative on July 1, 2006. The other sections of this act become operative on April 14, 2006.	787	July 1, 2006 (operative date)
489A	July 14, 2006	789	July 14, 2006
508	July 14, 2006	792	March 14, 2006
542	April 12, 2006	795	April 12, 2006
		808	Sections 5, 24, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 43, 44, 49, and 52 of this act become operative on January 1, 2007. Sections 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, and 50 of this act become operative on July 14, 2006. The other sections of this act become operative on April 13, 2006.

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LB No.	Effective Date	LB No.	Effective Date
815	July 14, 2006		
817	July 14, 2006		
817A	April 14, 2006		
818	March 7, 2006		
819	July 14, 2006		
821	July 14, 2006		
823	July 14, 2006		
833	July 14, 2006		
845	July 14, 2006		
845A	July 14, 2006		
853	Sections 11 and 24 of this act become operative on January 1, 2007. The other sections of this act become operative on March 17, 2006.	968A	April 7, 2006
		975	Sections 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, and 22 of this act become operative on December 1, 2006. The other sections of this act become operative on March 17, 2006.
856	July 14, 2006		
856A	July 14, 2006		
860	July 14, 2006	990	July 14, 2006
872	July 14, 2006	994	Sections 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 63, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 86, 87, 88, 89, 90, 151, 152, 153, 154, and 157 of this act become operative on July 1, 2006. Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 81, 158, and 161 of this act become operative on August 1, 2006. Sections 115, 116, 117, and 159 of this act become operative on January 1, 2007. Sections 38, 39, 40, 41, 50, 62, 64, 79, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 160, and 162 of this act become operative on July 14, 2006. The other sections of this act become operative on April 13, 2006.
872A	July 14, 2006		
874	July 14, 2006		
875	Section 24 of this act becomes operative on December 31, 2007. Sections 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 22 of this act become operative on July 14, 2006. The other sections of this act become operative on March 14, 2006.	994A	April 13, 2006
		996	July 14, 2006
876	Sections 1, 2, 3, 4, 5, 6, 7, 8, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 49, and 60 of this act become operative on July 14, 2006. The other sections of this act become operative on April 7, 2006.	996A	July 14, 2006
		1003	Sections 1, 8, 9, and 20 of this act become operative for all taxable years beginning or deemed to begin on or after January 1, 2006, under the Internal Revenue Code of 1986, as amended. Sections 3, 4, and 21 of this act become operative on July 1, 2006. The other sections of this act become operative on March 7, 2006.
887	July 14, 2006		
898	July 14, 2006		
904	October 1, 2006 (operative date)	1007	March 7, 2006
915	July 14, 2006	1008	Sections 2, 3, and 6 of this act become operative on January 1, 2007. The other sections of this act become operative on July 14,
921	July 14, 2006		
924	July 14, 2006		
925	July 14, 2006		
940	July 14, 2006		
941	July 14, 2006		
956	July 14, 2006		
956A	July 14, 2006		
962	July 14, 2006		
962A	July 14, 2006		
965	Sections 7, 8, and 10 of this act become operative on July 14, 2006. The other sections of this act become operative for taxable years beginning or deemed to begin on or after January 1, 2006, under the Internal Revenue Code of 1986, as amended.		
965A	July 14, 2006		
968	Sections 2, 13, 14, 15, and 18 of this act become operative on January 1, 2007. Sections 7, 8, 9,		

CROSS REFERENCE TABLE

LB No.	Effective Date	LB No.	Effective Date
	2006.		operative on July 14, 2006.
1008A	July 14, 2006		Sections 29, 30, 38, 39, 40, and
1010	January 1, 2006 (operative date)		45 of this act become operative
1019	Sections 1, 2, 3, 4, 6, 7, 8, 10, 11, 13, 14, 15, 16, 17, 18, 19, 21, and 23 of this act become operative on July 14, 2006. The other sections of this act become operative on March 23, 2006.		on January 1, 2007. The other sections of this act become operative on March 17, 2006.
		1116	July 1, 2006 (operative date)
1024	July 14, 2006	1126	April 4, 2006
1024A	July 14, 2006	1131	April 4, 2006
1038	July 14, 2006	1148	July 14, 2006
1039	July 14, 2006	1175	April 14, 2006
1060	Provisions line-item vetoed by the Governor and overridden by the Legislature become effective on April 6, 2006. All other provisions became effective April 4, 2006.	1178	July 14, 2006
		1189	July 1, 2006 (operative date)
1061	Sections 9, 10, 22, 23, 26, and 28 of this act become operative on July 1, 2006. The other sections of this act become operative on April 4, 2006.	1189A	July 14, 2006
		1199	July 14, 2006
1066	July 14, 2006	1199A	July 14, 2006
1067	July 14, 2006	1208	July 14, 2006
1069	July 14, 2006	1208A	July 14, 2006
1069A	July 14, 2006	1222	April 14, 2006
1086	July 14, 2006	1222A	April 14, 2006
1107	July 14, 2006	1226	Sections 4, 30, 31, 32, and 34 of this act become operative on April 14, 2006. The other sections of this act become operative on July 14, 2006.
1111	July 14, 2006		
1113	July 14, 2006	1226A	July 14, 2006
1113A	July 14, 2006	1227	April 14, 2006
1115	Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 31, 32, 33, 34, 35, 36, 37, 41, 42, 44, and 47 of this act become	1248	July 1, 2006 (operative date)
		1248A	July 14, 2006
		1249	July 14, 2006
		1256	July 14, 2006
		1256A	July 14, 2006

APPENDIX
APPENDIX

CROSS REFERENCE TABLE

2007 Session Laws of Nebraska, First Session
Showing LB section number to statute section number

2007		2007		2007		2007		2007		2007	
Session Laws	Supplement	Session Laws	Supplement	Session Laws	Supplement	Session Laws	Supplement	Session Laws	Supplement	Session Laws	Supplement
LB 1	§ 1 28-1317	LB 35	§ 1 60-4,182	LB 97	§ 1 69-2441						
	2 28-1318		2 60-6,186		2 69-2443						
	3 Omitted		3 Omitted		3 Omitted						
LB 2	§ 1 Omitted		4 Omitted	LB 99	§ 1 25-1081						
LB 5	§ 1 81-1346	LB 43	§ 1 39-1359.01		2 Omitted						
	2 81-1350	LB 44	§ 1 32-913		3 Omitted						
	3 81-1351		2 32-914	LB 108	§ 1 2-4806						
	4 Omitted		3 32-1026		2 2-4808						
LB 8	§ 1 81-1525		4 Omitted		3 34-102						
	2 Omitted	LB 63	§ 1 44-784		4 34-112						
LB 11	§ 1 16-117		2 Omitted		5 34-112.01						
	2 Omitted	LB 64	§ 1 Omitted		6 34-112.02						
LB 12	§ 1 54-625	LB 67	§ 1 25-1629.04		7 34-112.03						
	2 54-627		2 Omitted		8 37-1012						
	3 54-628	LB 69	§ 1 2-5415		9 Omitted						
	4 54-629		2 2-5416		10 Omitted						
	5 54-630		3 2-5418	LB 110	§ 1 54-706.01						
	6 54-631		4 Omitted		2 54-706.02						
	7 54-632	LB 73	§ 1 79-10,138		3 54-706.03						
	8 54-633		2 Omitted		4 54-706.04						
	9 54-643		3 Omitted		5 54-706.05						
	10 Omitted		4 Omitted		6 54-706.06						
LB 12A	Omitted	LB 73A	Omitted		7 54-706.07						
LB 21	§ 1 79-1007.02	LB 74	§ 1 81-2,239		8 54-706.08						
	2 79-1007.10		2 81-2,244.01		9 54-706.09						
	3 79-1022		3 81-2,248		10 54-706.10						
	4 79-1026		4 81-2,257		11 54-706.11						
	5 79-1027		5 81-2,270		12 54-706.12						
	6 79-1031.01		6 81-2,272.10		13 54-706.13						
	7 Omitted		7 81-2,272.17		14 54-706.14						
	8 Omitted		8 81-2,272.24		15 54-706.15						
LB 24	§ 1 1-124		9 81-2,272.25		16 54-706.16						
	2 1-136.02		10 Omitted		17 54-706.17						
	3 Omitted		11 Omitted		18 2-3918						
	4 Omitted		12 Omitted		19 Omitted						
LB 25	§ 1 71-4401		13 Omitted		20 Omitted						
	2 71-4402	LB 79	§ 1 81-1504.01		21 Omitted						
	3 71-4402.02		2 Omitted	LB 111	§ 1 2-3965						
	4 71-4402.03		3 Omitted		2 2-3966						
	5 71-4403	LB 80	§ 1 71-5318		3 2-3967						
	6 71-4404		2 71-5322		4 2-3968						
	7 71-4405		3 Omitted		5 2-3969						
	8 71-4406	LB 80A	Omitted		6 2-3970						
	9 71-4407	LB 83	§ 1 83-4,142		7 2-3971						
	10 71-4408		2 83-4,143		8 2-3972						
	11 71-4409		3 83-4,144		9 2-3973						
	12 71-4410		4 83-4,145		10 2-3974						
	13 71-4412		5 83-4,146		11 2-3975						
	14 Omitted		6 Omitted		12 2-3976						
LB 26	§ 1 81-885.01		7 Omitted		13 2-3977						
	2 Omitted	LB 88	Omitted		14 2-3978						
LB 28	§ 1 17-503.02	LB 94	§ 1 77-2711		15 2-3979						
	2 Omitted		2 77-27,144		16 2-3980						
LB 34	§ 1 50-445		3 Omitted		17 2-3981						

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2007		2007		2007		2007		
Session Laws	Supplement	Session Laws	Supplement	Session Laws	Supplement	Session Laws	Supplement	
	18	2-3982	49	44-8215	58	52-1301		
	19	2-3983	50	44-8216	59	52-1302		
	20	2-3984	51	44-8217	60	52-1302.01		
	21	2-3985	52	44-8218	61	52-1307		
	22	2-3986	53	77-908	62	52-1308		
	23	2-3987	54	Omitted	63	52-1312		
	24	2-3988	55	Omitted	64	52-1313		
	25	2-3989	LB 124	§ 1	8-108	65	52-1314	
	26	2-3990		2	8-113	66	52-1315	
	27	2-3991		3	8-124	67	52-1317	
	28	2-3992		4	8-148.04	68	52-1318	
	29	81-2,270		5	8-149	69	52-1602	
	30	Omitted		6	8-1,140	70	9-315 UCC	
	31	Omitted		7	8-355	71	9-320 UCC	
LB 115	§ 1	44-514		8	8-601	72	9-529 UCC	
	2	Omitted		9	8-602	73	9-531 UCC	
LB 117	§ 1	21-2005		10	8-603	74	Omitted	
	2	44-319.07		11	8-604	75	Omitted	
	3	44-3,158		12	8-605	76	Omitted	
	4	44-501		13	8-606	77	Omitted	
	5	44-507		14	8-607	78	Omitted	
	6	44-508		15	8-915	79	Omitted	
	7	44-522		16	8-1901	LB 132	§ 1	42-372.03
	8	44-1104		17	8-2107	2	Omitted	
	9	44-4501		18	8-2312	LB 136	§ 1	58-610
	10	44-4521		19	8-2504	2	58-611	
	11	44-4519		20	21-17,112	3	58-612	
	12	44-5103		21	21-17,115	4	58-613	
	13	44-5110		22	30-3805	5	58-614	
	14	44-5111		23	30-3846	6	58-615	
	15	44-5120		24	30-3848	7	58-616	
	16	44-5137		25	30-3849	8	58-617	
	17	44-5140		26	30-3851	9	58-618	
	18	44-5141		27	30-3867	10	58-619	
	19	44-5152		28	30-38,110	11	Omitted	
	20	44-5153		29	45-191.01	LB 142	§ 1	28-101
	21	44-5501		30	45-191.04	2	28-833	
	22	44-5502		31	45-334	3	Omitted	
	23	44-5504		32	45-340	LB 143	§ 1	29-216
	24	44-5515		33	45-344	LB 144	§ 1	71-545
	25	44-7504		34	45-346	2	71-546	
	26	44-8101		35	45-346.01	3	71-547	
	27	44-8102		36	45-347	4	71-548	
	28	44-8103		37	45-351	5	71-549	
	29	44-8104		38	45-352	6	71-550	
	30	44-8105		39	45-353	7	Omitted	
	31	44-8106		40	45-701	LB 145	§ 1	77-3510
	32	44-8107		41	45-702	2	77-3513	
	33	48-144.03		42	45-705	3	77-3514	
	34	48-446		43	45-706	4	Omitted	
	35	44-8201		44	45-708	LB 147	§ 1	60-6,304
	36	44-8202		45	45-710	2	Omitted	
	37	44-8203		46	45-711	LB 148	§ 1	60-6,301
	38	44-8204		47	45-714	2	Omitted	
	39	44-8205		48	45-715	LB 150	§ 1	79-809
	40	44-8206		49	45-722	2	79-810	
	41	44-8207		50	45-723	3	Omitted	
	42	44-8208		51	45-716	LB 152	§ 1	71-1,200
	43	44-8209		52	45-920	2	Omitted	
	44	44-8210		53	45-927	LB 160	§ 1	25-21,282
	45	44-8211		54	45-1013	2	35-801	
	46	44-8212		55	45-1014	3	Omitted	
	47	44-8213		56	45-1017	LB 161	§ 1	81-15,130
	48	44-8214		57	45-1033	2	Omitted	

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	3 77-201		39 71-17,138		4 18-2425		
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	5 77-1233.04		41 71-17,140		6 18-2436		
	6 77-1344		42 71-5185		7 18-2438		
	7 77-1347.01		43 71-6039		8 18-2439		
	8 77-1348		44 71-6726		9 84-1411		
	9 77-1355		45 71-6733		10 Omitted		
	10 77-1613.02		46 71-8249	LB 203	§ 1 71-401		
	11 77-5018		47 71-8252		2 71-403		
	12 Omitted		48 81-647		3 71-427.01		
	13 Omitted		49 81-671		4 71-434		
	14 Omitted		50 Omitted		5 71-452		
LB 167	§ 1 25-1901		51 Omitted		6 71-453		
	2 77-1504		52 Omitted		7 Omitted		
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	4 77-5003		54 Omitted		2 14-554		
	5 77-5011		55 Omitted		3 14-1821		
	6 77-5016	LB 186	§ 1 76-2210		4 Omitted		
	7 77-5017		2 76-2210.01		5 Omitted		
	8 77-5020		3 76-2210.02	LB 207	§ 1 14-2109		
	9 77-5023		4 76-2213		2 14-2110		
	10 77-5026		5 76-2213.01		3 14-2146		
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	12 Omitted		7 76-2219		5 Omitted		
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	14 Omitted		9 76-2226		2 Omitted		
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	2 68-919		11 76-2228		2 Omitted		
	3 68-921		12 76-2228.01		3 Omitted		
	4 71-629		13 76-2229	LB 211A	Omitted		
	5 71-1707		14 76-2229.01	LB 213	§ 1 24-514		
	6 71-1722		15 76-2230		2 25-2732		
	7 71-1723		16 76-2231.01		3 Omitted		
	8 71-1723.01		17 76-2232	LB 214	§ 1 23-1205		
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	11 71-1724.01		20 76-2236		4 Omitted		
	12 71-1726.01		21 76-2237		5 Omitted		
	13 71-1726.02		22 76-2241	LB 218	§ 1 28-456		
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	15 71-1730		24 76-2247.01	LB 219	§ 1 79-458		
	16 71-1731		25 77-5004		2 Omitted		
	17 71-1734		26 Omitted		3 Omitted		
	18 71-1735	LB 188	§ 1 44-3522	LB 221	§ 1 42-353		
	19 71-1737		2 Omitted		2 43-1803		
	20 71-1748		3 Omitted		3 Omitted		
	21 71-1749	LB 191	§ 1 21-2095	LB 223	§ 1 77-375		
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	28 71-17,118		4 85-2103		8 77-2703.04		
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	19 77-27,189		30 71-1,147		34 71-1,195.06		
	20 77-27,190		31 71-1,147.65		35 71-1,195.07		
	21 77-27,192		32 71-1,147.66		36 71-1,195.08		
	22 77-3102		33 71-1,147.67		37 71-1,195.09		
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	25 77-4105		36 71-1,147.70		40 71-1,307		
	26 77-4110		37 71-1,147.71		41 71-1,308		
	27 77-4933		38 71-1,147.72		42 71-1,314.02		
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	34 Omitted		45 Omitted		49 71-1,338		
	35 Omitted		46 Omitted		50 71-1913.01		
	36 Omitted		47 Omitted		51 71-2421		
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	7 71-168		11 43-104.08		75 38-2615		
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	6	81-8,239.01		8	39-2512		2
	7	81-8,239.11		9	Omitted	LB 290	§ 1
	8	81-8,239.02	LB 283	§ 1	71-162		2
	9	81-8,239.03		2	71-6728	LB 292	§ 1
	10	81-8,239.04		3	Omitted		2
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	17	Omitted		6	60-123		5
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	4	48-602		12	60-152		11
	5	48-606		13	60-153		12
	6	48-612		14	60-164		13
	7	48-612.01		15	60-166		14
	8	48-624		16	60-168		15
	9	48-649		17	60-168.01		16
	10	48-652		18	60-168.02		17
	11	48-663.01		19	60-173		18
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	13	48-1001		21	60-302		20
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	16	48-1004		24	60-325		23
	17	48-1005		25	60-333		24
	18	48-1007		26	60-336.01		25
	19	48-1008		27	60-339		26
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	25	48-1809		33	60-385		32
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40	28-728	104	43-146.15	168	43-3338		
41	28-734	105	43-146.16	169	43-3342.04		
42	28-735	106	43-146.17	170	43-3401		
43	28-736	107	43-161	171	43-3402		
44	28-737	108	43-284.02	172	43-3810		
45	28-738	109	43-404	173	44-771		
46	29-2928	110	43-411	174	44-772		
47	29-2929	111	43-504.01	175	44-773		
48	29-4125	112	43-507	176	44-774		
49	30-2487	113	43-508	177	44-782		
50	31-740	114	43-511	178	44-793		
51	32-310	115	43-512	179	44-1102		
52	32-327	116	43-512.11	180	44-2835		
53	37-1254.05	117	43-515	181	44-2847		
54	37-1254.06	118	43-522	182	44-2901		
55	42-106	119	43-523	183	44-2904		
56	42-358	120	43-524	184	44-32,119		
57	42-358.01	121	43-525	185	44-32,120		
58	42-358.02	122	43-529	186	44-32,127		
59	42-364.13	123	43-536	187	44-32,128		
60	42-705	124	43-905	188	44-32,134		
61	42-917	125	43-907	189	44-32,136		
62	43-102	126	43-908	190	44-32,152		
63	43-104.01	127	43-1320	191	44-32,153		
64	43-104.02	128	43-1408.01	192	44-32,156		
65	43-104.03	129	43-1414	193	44-32,157		
66	43-104.04	130	43-1718.02	194	44-32,163		
67	43-107	131	43-1720	195	44-32,165		
68	43-118	132	43-1902	196	44-32,176		
69	43-119	133	43-1903	197	44-4109.01		
70	43-122	134	43-1904	198	44-7006		
71	43-123.01	135	43-1905	199	44-7107		
72	43-124	136	43-2002	200	44-7206		
73	43-125	137	43-2003	201	44-7306		
74	43-126	138	43-2411	202	46-602		
75	43-127	139	43-2503	203	46-705		
76	43-130	140	43-2505	204	46-724		
77	43-131	141	43-2507	205	46-1011		
78	43-132	142	43-2508	206	46-1018		
79	43-133	143	43-2509	207	46-1204.01		
80	43-134	144	43-2510	208	46-1207		
81	43-135	145	43-2511	209	46-1217		
82	43-137	146	43-2512	210	46-1235		
83	43-138	147	43-2515	211	46-1235.01		
84	43-139	148	43-2605	212	46-1237.01		
85	43-140	149	43-2606	213	46-1237.02		
86	43-141	150	43-2616	214	46-1240.05		
87	43-142	151	43-2617	215	47-623		
88	43-143	152	43-2620	216	48-602		
89	43-144	153	43-3305.01	217	48-647		
90	43-145	154	43-3314	218	48-1902		
91	43-146	155	43-3317	219	48-2305		
92	43-146.02	156	43-3318	220	48-2306		
93	43-146.04	157	43-3319	221	48-2307		
94	43-146.05	158	43-3320	222	49-506		
95	43-146.06	159	43-3323	223	49-617		
96	43-146.07	160	43-3325	224	54-703		
97	43-146.08	161	43-3326	225	54-744.01		
98	43-146.09	162	43-3327	226	54-747		
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231	60-4,164.01	295	69-305	359	71-1,238		
232	60-6,104	296	71-101	360	71-1,290		
233	60-6,107	297	71-102	361	71-1,312		
234	60-6,201	298	71-104	362	71-1,339		
235	60-6,202	299	71-105	363	71-1,341		
236	68-126	300	71-121.01	364	71-1,367		
237	68-129	301	71-139	365	71-354		
238	68-130	302	71-141	366	71-390		
239	68-309	303	71-142	367	71-3,173		
240	68-312	304	71-150	368	71-3,174		
241	68-313	305	71-151	369	71-410		
242	68-703.01	306	71-153	370	71-411		
243	68-716	307	71-155	371	71-434		
244	68-717	308	71-155.01	372	71-445		
245	68-718	309	71-156	373	71-448		
246	68-907	310	71-161.02	374	71-501		
247	68-908	311	71-161.03	375	71-501.02		
248	68-913	312	71-161.06	376	71-502		
249	68-915	313	71-161.07	377	71-502.01		
250	68-921	314	71-161.12	378	71-502.02		
251	68-922	315	71-161.13	379	71-502.03		
252	68-923	316	71-161.14	380	71-502.04		
253	68-924	317	71-161.16	381	71-503		
254	68-925	318	71-161.17	382	71-503.01		
255	68-926	319	71-161.20	383	71-504		
256	68-927	320	71-165	384	71-505		
257	68-928	321	71-169	385	71-507		
258	68-930	322	71-172.01	386	71-514.02		
259	68-931	323	71-172.02	387	71-516.02		
260	68-932	324	71-181	388	71-516.03		
261	68-940	325	71-188	389	71-516.04		
262	68-948	326	71-193.01	390	71-519		
263	68-949	327	71-193.13	391	71-520		
264	68-1001.01	328	71-193.15	392	71-521		
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266	68-1007	330	71-193.19	394	71-523		
267	68-1008	331	71-193.22	395	71-524		
268	68-1014	332	71-1,104	396	71-529		
269	68-1015	333	71-1,104.01	397	71-532		
270	68-1016	334	71-1,107	398	71-541		
271	68-1017	335	71-1,107.06	399	71-543		
272	68-1095.01	336	71-1,107.07	400	71-601.01		
273	68-1101	337	71-1,107.08	401	71-602		
274	68-1103	338	71-1,107.16	402	71-602.01		
275	68-1104	339	71-1,132.05	403	71-604		
276	68-1105	340	71-1,132.53	404	71-604.01		
277	68-1204	341	71-1,135.02	405	71-604.05		
278	68-1205	342	71-1,136	406	71-605.01		
279	68-1206	343	71-1,141	407	71-605.02		
280	68-1207	344	71-1,142	408	71-606		
281	68-1207.01	345	71-1,143.01	409	71-608.01		
282	68-1210	346	71-1,147.26	410	71-609		
283	68-1402	347	71-1,147.28	411	71-610		
284	68-1403	348	71-1,147.31	412	71-611		
285	68-1405	349	71-1,147.33	413	71-612		
286	68-1503	350	71-1,147.44	414	71-614		
287	68-1514	351	71-1,147.45	415	71-615		
288	68-1521	352	71-1,147.48	416	71-616		
289	68-1522	353	71-1,147.53	417	71-616.03		
290	68-1523	354	71-1,147.59	418	71-616.04		
291	68-1732	355	71-1,154	419	71-617.02		
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424	71-617.10	488	71-1798.01	552	71-2619		
425	71-617.11	489	71-1799	553	71-2620		
426	71-617.12	490	71-17,102	554	71-2621		
427	71-617.13	491	71-17,109	555	71-2622		
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429	71-626	493	71-17,118	557	71-3102		
430	71-626.01	494	71-1802	558	71-3104		
431	71-627	495	71-1803	559	71-3305		
432	71-627.01	496	71-1804	560	71-3306		
433	71-627.02	497	71-1903	561	71-3401		
434	71-628	498	71-1909	562	71-3402		
435	71-629	499	71-1910	563	71-3406		
436	71-630	500	71-1913.01	564	71-3410		
437	71-634	501	71-1913.02	565	71-3502.01		
438	71-636	502	71-1913.03	566	71-3503		
439	71-639	503	71-1914	567	71-3504		
440	71-640.02	504	71-1915	568	71-3505		
441	71-640.03	505	71-1919	569	71-3508.03		
442	71-641	506	71-1922	570	71-3508.04		
443	71-644	507	71-2002	571	71-3513		
444	71-645	508	71-2003	572	71-3516.01		
445	71-646	509	71-2004	573	71-3517		
446	71-647	510	71-2006	574	71-3524		
447	71-648	511	71-2007	575	71-3526		
448	71-701	512	71-2009	576	71-3601		
449	71-702	513	71-2010	577	71-3610		
450	71-703	514	71-2011	578	71-3702		
451	71-705	515	71-2013	579	71-3706		
452	71-706	516	71-2014	580	71-4302		
453	71-707	517	71-2015	581	71-4303		
454	71-804	518	71-2081	582	71-4304		
455	71-805	519	71-2082	583	71-4305		
456	71-806	520	71-2084	584	71-4306		
457	71-809	521	71-2086	585	71-4401		
458	71-811	522	71-2096	586	71-4621		
459	71-812	523	71-2097	587	71-4624		
460	71-814	524	71-2098	588	71-4635		
461	71-916	525	71-2099	589	71-4701		
462	71-919	526	71-20,100	590	71-4728.05		
463	71-961	527	71-20,101	591	71-4737		
464	71-1001	528	71-20,103	592	71-4738		
465	71-1301	529	71-20,113	593	71-4739		
466	71-1333.01	530	71-2201	594	71-4740		
467	71-1340	531	71-2202	595	71-4741		
468	71-1341	532	71-2203	596	71-4742		
469	71-1356	533	71-2207	597	71-4743		
470	71-1363	534	71-2208	598	71-4744		
471	71-1367	535	71-2304	599	71-4813		
472	71-1368	536	71-2305	600	71-4816		
473	71-1405	537	71-2407	601	71-4819		
474	71-1617	538	71-2408	602	71-5175		
475	71-1626	539	71-2409	603	71-5192		
476	71-1628	540	71-2411	604	71-5197		
477	71-1628.05	541	71-2423	605	71-51,102		
478	71-1628.06	542	71-2431	606	71-51,103		
479	71-1628.07	543	71-2432	607	71-5205		
480	71-1630	544	71-2437	608	71-5301		
481	71-1631	545	71-2503	609	71-5302		
482	71-1635	546	71-2506	610	71-5303		
483	71-1637	547	71-2509	611	71-5304.01		
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618	71-5311	682	71-7619	746	81-677		
619	71-5311.02	683	71-7620	747	81-678		
620	71-5318	684	71-7621	748	81-679		
621	71-5322	685	71-7622	749	81-680		
622	71-5402	686	71-7702	750	81-699		
623	71-5647	687	71-8008	751	81-6,110		
624	71-5649	688	71-8211	752	81-6,113		
625	71-5653	689	71-8228	753	81-1021		
626	71-5654	690	71-8231	754	81-1139.01		
627	71-5655	691	71-8236	755	81-1281		
628	71-5681	692	71-8239	756	81-1316		
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630	71-5710	694	71-8313	758	81-15,170		
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632	71-5713	696	72-249	760	81-15,210		
633	71-5714	697	75-303.01	761	81-15,245		
634	71-5803.04	698	75-303.02	762	81-2205		
635	71-5829.05	699	75-303.03	763	81-2206		
636	71-5859	700	76-1304	764	81-2213		
637	71-5903	701	76-14,102	765	81-2226		
638	71-6010	702	77-912	766	81-2229		
639	71-6018.01	703	77-2602	767	81-2248		
640	71-6019	704	77-2704.21	768	81-2249		
641	71-6021	705	77-27,162	769	81-2250		
642	71-6038	706	77-27,222	770	81-2251		
643	71-6042	707	79-217	771	81-2252		
644	71-6043	708	79-218	772	81-2255		
645	71-6045	709	79-219	773	81-2260		
646	71-6048	710	79-248	774	81-2265		
647	71-6053	711	79-249	775	81-2267		
648	71-6059	712	79-843	776	81-2268		
649	71-6065	713	79-1104.04	777	81-3602		
650	71-6068	714	79-1902	778	83-101.08		
651	71-6103	715	79-1903	779	83-107.01		
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654	71-6301	718	80-314	782	83-115		
655	71-6303	719	80-316	783	83-121		
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658	71-6319.28	722	80-319	786	83-305.03		
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	808 83-1206	7	47-633	12	50-417.02		
	809 83-1216	8	48-162.02	13	50-417.03		
	810 84-1409	9	55-131	14	50-417.04		
	811 85-134	10	60-1303	15	50-417.05		
	812 86-570	11	60-1513	16	50-417.06		
	813 Omitted	12	66-489	17	Omitted		
	814 Omitted	13	66-1345	18	Omitted		
	815 Omitted	14	66-1345.01	19	Omitted		
	816 Omitted	15	66-1345.02		Omitted	LB 328A	
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	2 37-407	19	71-7611		4	81-15,248	
	3 37-414	20	77-2602		5	81-15,248.01	
	4 37-426	21	81-188.02		6	81-15,250	
	5 37-427	22	81-188.04		7	81-15,250.01	
	6 37-431	23	81-188.06		8	Omitted	
	7 37-447	24	81-523		9	Omitted	
	8 37-449	25	81-5,153	LB 334	§ 1	2-257	
	9 37-450	26	81-1108.22		2	11-201	
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	11 37-457	28	Omitted		4	23-1611	
	12 37-4,111	29	Omitted		5	35-509	
	13 37-513	30	Omitted		6	49-506	
	14 37-527	31	Omitted		7	49-617	
	15 37-548	32	Omitted		8	57-239	
	16 37-614	33	Omitted		9	60-147	
	17 37-803	34	Omitted		10	60-3,189	
	18 37-811	35	Omitted		11	60-3,202	
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	3 Omitted	40	Omitted		16	77-202.02	
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	3 Omitted	43	Omitted		19	77-202.05	
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	3 Omitted	LB 324	§ 1 81-2014		29	77-421	
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50	77-803		2 81-8,294	47	Omitted
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52	77-1229		4 Omitted	LB 343	§ 1 77-2701
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54	77-1247		2 43-3902	3	77-2715.07
55	77-1249		3 43-3903	4	77-2715.08
56	77-1249.01		4 43-3904	5	77-2715.09
57	77-1250		5 43-3905	6	77-2734.03
58	77-1250.02		6 43-3906	7	Omitted
59	77-1250.03		7 43-3907	8	Omitted
60	77-1250.04		8 43-3908	LB 343A	Omitted
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69	77-1334		2 85-2202	9	16-304
70	77-1339		3 85-2203	10	16-318
71	77-1340		4 85-2204	11	17-541
72	77-1342		5 85-2205	12	17-604
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75	77-1355		8 85-2208	2	60-3,221
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77	77-1376		10 85-2210	LB 351	§ 1 43-504
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80	77-1613.01		13 85-2213	4	68-1709
81	77-1735		14 85-2214	5	68-1710
82	77-1736.06		15 85-2215	6	68-1713
83	77-1749		16 85-2216	7	68-1718
84	77-1750		17 85-2217	8	68-1721
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86	77-1766		19 85-2219	10	68-1723
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94	77-3908		27 85-2227	5	75-396
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97	77-5008		30 13-518	8	75-399
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99	77-6006		32 85-9,177	10	60-3,205
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	2 77-4210	33	21-2933	97	21-2997		
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	4 77-4212	35	21-2935	99	21-2999		
	5 77-908	36	21-2936	100	21-29,100		
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	12 77-2701.10	43	21-2943	107	21-29,107		
	13 77-2701.16	44	21-2944	108	21-29,108		
	14 77-2701.34	45	21-2945	109	21-29,109		
	15 77-2703	46	21-2946	110	21-29,110		
	16 77-2703.01	47	21-2947	111	21-29,111		
	17 77-2704.33	48	21-2948	112	21-29,112		
	18 77-2704.55	49	21-2949	113	21-29,113		
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	20 77-2715.07	51	21-2951	115	21-29,115		
	21 77-2716.01	52	21-2952	116	21-29,116		
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	5 21-2905	69	21-2969	133	21-29,133		
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	7 21-2907	71	21-2971	135	77-2716		
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	10 21-2910	74	21-2974	138	77-5509		
	11 21-2911	75	21-2975	139	77-5719		
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	5	81-12,133		28	38-128	92	38-192
	6	81-12,134		29	38-129	93	38-193
	7	81-12,135		30	38-130	94	38-194
LB 425A		Omitted		31	38-131	95	38-195
LB 434	§ 1	49-1458		32	38-132	96	38-196
	2	49-1478.01		33	38-133	97	38-197
	3	49-1479.02		34	38-134	98	38-198
	4	49-1483.03		35	38-135	99	38-199
	5	Omitted		36	38-136	100	38-1,100
LB 435	§ 1	2-108		37	38-137	101	38-1,101
	2	2-111		38	38-138	102	38-1,102
	3	2-131		39	38-139	103	38-1,103
	4	Omitted		40	38-140	104	38-1,104
	5	Omitted		41	38-141	105	38-1,105
LB 441	§ 1	53-123.15		42	38-142	106	38-1,106
	2	2-5601		43	38-143	107	38-1,107
	3	2-5602		44	38-144	108	38-1,108
	4	2-5603		45	38-145	109	38-1,109
	5	2-5604		46	38-146	110	38-1,110
	6	2-5605		47	38-147	111	38-1,111
	7	53-304		48	38-148	112	38-1,112
	8	Omitted		49	38-149	113	38-1,113
LB 441A		Omitted		50	38-150	114	38-1,114
LB 445	§ 1	71-8601		51	38-151	115	38-1,115
	2	71-8603		52	38-152	116	38-1,116
	3	71-8610.01		53	38-153	117	38-1,117
	4	71-8610.02		54	38-154	118	38-1,118
	5	Omitted		55	38-155	119	38-1,119
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	122	38-1,	122	186	38-414	250	38-809
	123	38-1,	123	187	38-501	251	38-810
	124	38-1,	124	188	38-502	252	38-811
	125	38-1,	125	189	38-503	253	38-901
	126	38-1,	126	190	38-504	254	38-902
	127	38-1,	127	191	38-505	255	38-903
	128	38-1,	128	192	38-507	256	38-904
	129	38-1,	129	193	38-508	257	38-905
	130	38-1,	130	194	38-509	258	38-906
	131	38-1,	131	195	38-510	259	38-907
	132	38-1,	132	196	38-511	260	38-908
	133	38-1,	133	197	38-512	261	38-909
	134	38-1,	134	198	38-513	262	38-910
	135	38-1,	135	199	38-514	263	38-1001
	136	38-1,	136	200	38-515	264	38-1002
	137	38-1,	137	201	38-516	265	38-1003
	138	38-1,	138	202	38-517	266	38-1004
	139	38-1,	139	203	38-518	267	38-1005
	140	38-201		204	38-519	268	38-1006
	141	38-202		205	38-520	269	38-1007
	142	38-203		206	38-521	270	38-1008
	143	38-204		207	38-522	271	38-1009
	144	38-205		208	38-523	272	38-1010
	145	38-206		209	38-524	273	38-1011
	146	38-207		210	38-525	274	38-1012
	147	38-208		211	38-526	275	38-1013
	148	38-209		212	38-527	276	38-1014
	149	38-210		213	38-601	277	38-1015
	150	38-211		214	38-602	278	38-1016
	151	38-212		215	38-603	279	38-1017
	152	38-301		216	38-604	280	38-1018
	153	38-302		217	38-605	281	38-1019
	154	38-303		218	38-606	282	38-1020
	155	38-304		219	38-607	283	38-1021
	156	38-305		220	38-608	284	38-1022
	157	38-306		221	38-609	285	38-1023
	158	38-307		222	38-610	286	38-1024
	159	38-308		223	38-611	287	38-1025
	160	38-309		224	38-612	288	38-1026
	161	38-310		225	38-613	289	38-1027
	162	38-311		226	38-614	290	38-1028
	163	38-312		227	38-615	291	38-1029
	164	38-313		228	38-616	292	38-1030
	165	38-314		229	38-617	293	38-1031
	166	38-315		230	38-618	294	38-1032
	167	38-316		231	38-701	295	38-1033
	168	38-317		232	38-702	296	38-1034
	169	38-318		233	38-703	297	38-1035
	170	38-319		234	38-704	298	38-1036
	171	38-320		235	38-705	299	38-1037
	172	38-321		236	38-706	300	38-1038
	173	38-401		237	38-707	301	38-1039
	174	38-402		238	38-708	302	38-1040
	175	38-403		239	38-709	303	38-1041
	176	38-404		240	38-710	304	38-1042
	177	38-405		241	38-711	305	38-1043
	178	38-406		242	38-801	306	38-1044
	179	38-407		243	38-802	307	38-1045
	180	38-408		244	38-803	308	38-1046
	181	38-409		245	38-804	309	38-1047
	182	38-410		246	38-805	310	38-1048
	183	38-411		247	38-806	311	38-1049
	184	38-412		248	38-807	312	38-1050

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313	38-1051	377	38-10,115	441	38-1108		
314	38-1052	378	38-10,116	442	38-1109		
315	38-1053	379	38-10,117	443	38-1110		
316	38-1054	380	38-10,118	444	38-1111		
317	38-1055	381	38-10,119	445	38-1112		
318	38-1056	382	38-10,120	446	38-1113		
319	38-1057	383	38-10,121	447	38-1114		
320	38-1058	384	38-10,122	448	38-1115		
321	38-1059	385	38-10,123	449	38-1116		
322	38-1060	386	38-10,124	450	38-1117		
323	38-1061	387	38-10,125	451	38-1118		
324	38-1062	388	38-10,126	452	38-1119		
325	38-1063	389	38-10,127	453	38-1120		
326	38-1064	390	38-10,128	454	38-1121		
327	38-1065	391	38-10,129	455	38-1122		
328	38-1066	392	38-10,130	456	38-1123		
329	38-1067	393	38-10,131	457	38-1124		
330	38-1068	394	38-10,132	458	38-1125		
331	38-1069	395	38-10,133	459	38-1126		
332	38-1070	396	38-10,134	460	38-1127		
333	38-1071	397	38-10,135	461	38-1128		
334	38-1072	398	38-10,136	462	38-1129		
335	38-1073	399	38-10,137	463	38-1130		
336	38-1074	400	38-10,138	464	38-1131		
337	38-1075	401	38-10,139	465	38-1132		
338	38-1076	402	38-10,140	466	38-1133		
339	38-1077	403	38-10,141	467	38-1134		
340	38-1078	404	38-10,142	468	38-1135		
341	38-1079	405	38-10,143	469	38-1136		
342	38-1080	406	38-10,144	470	38-1137		
343	38-1081	407	38-10,145	471	38-1138		
344	38-1082	408	38-10,146	472	38-1139		
345	38-1083	409	38-10,147	473	38-1140		
346	38-1084	410	38-10,148	474	38-1141		
347	38-1085	411	38-10,149	475	38-1142		
348	38-1086	412	38-10,150	476	38-1143		
349	38-1087	413	38-10,151	477	38-1144		
350	38-1088	414	38-10,152	478	38-1145		
351	38-1089	415	38-10,153	479	38-1146		
352	38-1090	416	38-10,154	480	38-1147		
353	38-1091	417	38-10,155	481	38-1148		
354	38-1092	418	38-10,156	482	38-1149		
355	38-1093	419	38-10,157	483	38-1150		
356	38-1094	420	38-10,158	484	38-1151		
357	38-1095	421	38-10,159	485	38-1201		
358	38-1096	422	38-10,160	486	38-1202		
359	38-1097	423	38-10,161	487	38-1203		
360	38-1098	424	38-10,162	488	38-1204		
361	38-1099	425	38-10,163	489	38-1205		
362	38-10,100	426	38-10,164	490	38-1206		
363	38-10,101	427	38-10,165	491	38-1207		
364	38-10,102	428	38-10,166	492	38-1208		
365	38-10,103	429	38-10,167	493	38-1209		
366	38-10,104	430	38-10,168	494	38-1210		
367	38-10,105	431	38-10,169	495	38-1211		
368	38-10,106	432	38-10,170	496	38-1212		
369	38-10,107	433	38-10,171	497	38-1213		
370	38-10,108	434	38-1101	498	38-1214		
371	38-10,109	435	38-1102	499	38-1215		
372	38-10,110	436	38-1103	500	38-1216		
373	38-10,111	437	38-1104	501	38-1217		
374	38-10,112	438	38-1105	502	38-1218		
375	38-10,113	439	38-1106	503	38-1219		
376	38-10,114	440	38-1107	504	38-1220		

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506	38-1222	570	38-1506	634	38-1812		
507	38-1223	571	38-1507	635	38-1813		
508	38-1224	572	38-1508	636	38-1814		
509	38-1225	573	38-1509	637	38-1815		
510	38-1226	574	38-1510	638	38-1816		
511	38-1227	575	38-1511	639	38-1901		
512	38-1228	576	38-1512	640	38-1902		
513	38-1229	577	38-1513	641	38-1903		
514	38-1230	578	38-1514	642	38-1904		
515	38-1231	579	38-1515	643	38-1905		
516	38-1232	580	38-1516	644	38-1906		
517	38-1233	581	38-1517	645	38-1907		
518	38-1234	582	38-1518	646	38-1908		
519	38-1235	583	38-1601	647	38-1909		
520	38-1236	584	38-1602	648	38-1910		
521	38-1237	585	38-1603	649	38-1911		
522	38-1301	586	38-1604	650	38-1912		
523	38-1302	587	38-1605	651	38-1913		
524	38-1303	588	38-1606	652	38-1914		
525	38-1304	589	38-1607	653	38-1915		
526	38-1305	590	38-1608	654	38-1916		
527	38-1306	591	38-1609	655	38-1917		
528	38-1307	592	38-1610	656	38-1918		
529	38-1308	593	38-1611	657	38-1919		
530	38-1309	594	38-1612	658	38-1920		
531	38-1310	595	38-1613	659	38-2001		
532	38-1311	596	38-1614	660	38-2002		
533	38-1312	597	38-1615	661	38-2003		
534	38-1313	598	38-1616	662	38-2004		
535	38-1314	599	38-1617	663	38-2005		
536	38-1315	600	38-1618	664	38-2006		
537	38-1401	601	38-1619	665	38-2007		
538	38-1402	602	38-1620	666	38-2008		
539	38-1403	603	38-1621	667	38-2009		
540	38-1404	604	38-1622	668	38-2010		
541	38-1405	605	38-1623	669	38-2011		
542	38-1406	606	38-1624	670	38-2012		
543	38-1407	607	38-1625	671	38-2013		
544	38-1408	608	38-1701	672	38-2014		
545	38-1409	609	38-1702	673	38-2015		
546	38-1410	610	38-1703	674	38-2016		
547	38-1411	611	38-1704	675	38-2017		
548	38-1412	612	38-1705	676	38-2018		
549	38-1413	613	38-1706	677	38-2019		
550	38-1414	614	38-1707	678	38-2020		
551	38-1415	615	38-1708	679	38-2021		
552	38-1416	616	38-1709	680	38-2022		
553	38-1417	617	38-1710	681	38-2023		
554	38-1418	618	38-1711	682	38-2024		
555	38-1419	619	38-1712	683	38-2025		
556	38-1420	620	38-1713	684	38-2026		
557	38-1421	621	38-1714	685	38-2027		
558	38-1422	622	38-1715	686	38-2028		
559	38-1423	623	38-1801	687	38-2029		
560	38-1424	624	38-1802	688	38-2030		
561	38-1425	625	38-1803	689	38-2031		
562	38-1426	626	38-1804	690	38-2032		
563	38-1427	627	38-1805	691	38-2033		
564	38-1428	628	38-1806	692	38-2034		
565	38-1501	629	38-1807	693	38-2035		
566	38-1502	630	38-1808	694	38-2036		
567	38-1503	631	38-1809	695	38-2037		
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	698	38-2040		762	38-2206		826	38-2411
	699	38-2041		763	38-2207		827	38-2412
	700	38-2042		764	38-2208		828	38-2413
	701	38-2043		765	38-2209		829	38-2414
	702	38-2044		766	38-2210		830	38-2415
	703	38-2045		767	38-2211		831	38-2416
	704	38-2046		768	38-2212		832	38-2417
	705	38-2047		769	38-2213		833	38-2418
	706	38-2048		770	38-2214		834	38-2419
	707	38-2049		771	38-2215		835	38-2420
	708	38-2050		772	38-2216		836	38-2421
	709	38-2051		773	38-2217		837	38-2422
	710	38-2052		774	38-2218		838	38-2423
	711	38-2053		775	38-2219		839	38-2424
	712	38-2054		776	38-2220		840	38-2425
	713	38-2055		777	38-2221		841	38-2501
	714	38-2056		778	38-2222		842	38-2502
	715	38-2057		779	38-2223		843	38-2503
	716	38-2058		780	38-2224		844	38-2504
	717	38-2059		781	38-2225		845	38-2505
	718	38-2060		782	38-2226		846	38-2506
	719	38-2061		783	38-2227		847	38-2507
	720	38-2101		784	38-2228		848	38-2508
	721	38-2102		785	38-2229		849	38-2509
	722	38-2103		786	38-2230		850	38-2510
	723	38-2104		787	38-2231		851	38-2511
	724	38-2105		788	38-2232		852	38-2512
	725	38-2106		789	38-2233		853	38-2513
	726	38-2107		790	38-2234		854	38-2514
	727	38-2108		791	38-2235		855	38-2515
	728	38-2109		792	38-2236		856	38-2516
	729	38-2110		793	38-2301		857	38-2517
	730	38-2111		794	38-2302		858	38-2518
	731	38-2112		795	38-2303		859	38-2519
	732	38-2114		796	38-2304		860	38-2520
	733	38-2115		797	38-2305		861	38-2521
	734	38-2116		798	38-2306		862	38-2522
	735	38-2117		799	38-2307		863	38-2523
	736	38-2118		800	38-2308		864	38-2524
	737	38-2119		801	38-2309		865	38-2525
	738	38-2120		802	38-2310		866	38-2526
	739	38-2121		803	38-2311		867	38-2527
	740	38-2122		804	38-2312		868	38-2528
	741	38-2123		805	38-2313		869	38-2529
	742	38-2125		806	38-2314		870	38-2530
	743	38-2126		807	38-2315		871	38-2531
	744	38-2127		808	38-2316		872	38-2601
	745	38-2128		809	38-2317		873	Omitted
	746	38-2129		810	38-2318		874	38-2602
	747	38-2130		811	38-2319		875	38-2603
	748	38-2131		812	38-2320		876	38-2604
	749	38-2132		813	38-2321		877	38-2605
	750	38-2133		814	38-2322		878	38-2606
	751	38-2134		815	38-2323		879	38-2607
	752	38-2135		816	38-2401		880	38-2608
	753	38-2136		817	38-2402		881	38-2609
	754	38-2137		818	38-2403		882	38-2610
	755	38-2138		819	38-2404		883	38-2611
	756	38-2139		820	38-2405		884	38-2612
	757	38-2201		821	38-2406		885	38-2613
	758	38-2202		822	38-2407		886	38-2614
	759	38-2203		823	38-2408		887	38-2615
	760	38-2204		824	38-2409		888	Omitted

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890	38-2617	954	38-2858	1018	38-2925		
891	38-2618	955	38-2859	1019	38-2926		
892	38-2619	956	38-2860	1020	38-2927		
893	38-2620	957	38-2861	1021	38-2928		
894	38-2621	958	38-2862	1022	38-2929		
895	38-2622	959	38-2863	1023	38-3001		
896	38-2623	960	38-2864	1024	38-3002		
897	38-2801	961	38-2865	1025	38-3003		
898	38-2802	962	38-2866	1026	38-3004		
899	38-2803	963	38-2867	1027	38-3005		
900	38-2804	964	38-2868	1028	38-3006		
901	38-2805	965	38-2869	1029	38-3007		
902	38-2806	966	38-2870	1030	38-3008		
903	38-2807	967	38-2871	1031	38-3009		
904	38-2808	968	38-2872	1032	38-3010		
905	38-2809	969	38-2873	1033	38-3011		
906	38-2810	970	38-2874	1034	38-3012		
907	38-2811	971	38-2875	1035	38-3101		
908	38-2812	972	38-2876	1036	38-3102		
909	38-2813	973	38-2877	1037	38-3103		
910	38-2814	974	38-2878	1038	38-3104		
911	38-2815	975	38-2879	1039	38-3105		
912	38-2816	976	38-2880	1040	38-3106		
913	38-2817	977	38-2881	1041	38-3107		
914	38-2818	978	38-2882	1042	38-3108		
915	38-2819	979	38-2883	1043	38-3109		
916	38-2820	980	38-2884	1044	38-3110		
917	38-2821	981	38-2885	1045	38-3111		
918	38-2822	982	38-2886	1046	38-3112		
919	38-2823	983	38-2887	1047	38-3113		
920	38-2824	984	38-2888	1048	38-3114		
921	38-2825	985	38-2889	1049	38-3115		
922	38-2826	986	Omitted	1050	38-3116		
923	38-2827	987	Omitted	1051	38-3117		
924	38-2828	988	38-2898	1052	38-3118		
925	38-2829	989	38-2899	1053	38-3119		
926	38-2830	990	38-28,100	1054	38-3120		
927	38-2831	991	38-28,101	1055	38-3121		
928	38-2832	992	38-28,102	1056	38-3122		
929	38-2833	993	38-28,103	1057	38-3123		
930	38-2834	994	38-2901	1058	38-3124		
931	38-2835	995	38-2902	1059	38-3125		
932	38-2836	996	38-2903	1060	38-3126		
933	38-2837	997	38-2904	1061	38-3127		
934	38-2838	998	38-2905	1062	38-3128		
935	38-2839	999	38-2906	1063	38-3129		
936	38-2840	1000	38-2907	1064	38-3130		
937	38-2841	1001	38-2908	1065	38-3131		
938	38-2842	1002	38-2909	1066	38-3132		
939	38-2843	1003	38-2910	1067	38-3201		
940	38-2844	1004	38-2911	1068	38-3202		
941	38-2845	1005	38-2912	1069	38-3203		
942	38-2846	1006	38-2913	1070	38-3204		
943	38-2847	1007	38-2914	1071	38-3205		
944	38-2848	1008	38-2915	1072	38-3206		
945	38-2849	1009	38-2916	1073	38-3207		
946	38-2850	1010	38-2917	1074	38-3208		
947	38-2851	1011	38-2918	1075	38-3209		
948	38-2852	1012	38-2919	1076	38-3210		
949	38-2853	1013	38-2920	1077	38-3211		
950	38-2854	1014	38-2921	1078	38-3212		
951	38-2855	1015	38-2922	1079	38-3213		
952	38-2856	1016	38-2923	1080	38-3214		

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2007		2007		2007		2007	
Session	Laws Supplement	Session	Laws Supplement	Session	Laws Supplement	Session	Laws Supplement
1081	38-3215	1145	46-1203	1209	71-3503		
1082	38-3216	1146	46-1204.01	1210	71-3505		
1083	38-3301	1147	46-1205	1211	71-3507		
1084	38-3302	1148	46-1205.01	1212	71-3508.03		
1085	38-3303	1149	46-1207.01	1213	71-3515		
1086	38-3304	1150	46-1209	1214	71-3517		
1087	38-3305	1151	46-1210	1215	71-3518.01		
1088	38-3306	1152	46-1213	1216	71-3519		
1089	38-3307	1153	46-1214	1217	71-4305		
1090	38-3308	1154	46-1214.01	1218	71-4807		
1091	38-3309	1155	46-1217	1219	71-4810		
1092	38-3310	1156	46-1218	1220	71-4813		
1093	38-3311	1157	46-1219	1221	71-51,102		
1094	38-3312	1158	46-1227.01	1222	71-51,103		
1095	38-3313	1159	46-1223	1223	71-5301		
1096	38-3314	1160	46-1223.01	1224	71-5303		
1097	38-3315	1161	46-1224	1225	71-5305.02		
1098	38-3316	1162	46-1225	1226	71-5307		
1099	38-3317	1163	46-1227	1227	71-5308		
1100	38-3318	1164	46-1229	1228	71-5309		
1101	38-3319	1165	46-1230	1229	71-5311		
1102	38-3320	1166	46-1231	1230	71-5312.01		
1103	38-3321	1167	46-1233	1231	71-5313		
1104	38-3322	1168	46-1235	1232	71-5402		
1105	38-3323	1169	46-1238	1233	71-5654		
1106	38-3324	1170	46-1239	1234	71-5662		
1107	38-3325	1171	46-1240	1235	71-6038		
1108	38-3326	1172	46-1241	1236	71-6039		
1109	38-3327	1173	54-311	1237	71-6040		
1110	38-3328	1174	60-4,118.02	1238	71-6041		
1111	38-3329	1175	60-6,261	1239	71-6042		
1112	38-3330	1176	69-302	1240	71-6039.06		
1113	12-1208	1177	69-2429	1241	71-6211		
1114	25-12,123	1178	71-1,190	1242	71-6218		
1115	25-21,188.02	1179	71-414	1243	71-6301		
1116	25-21,247	1180	71-425	1244	71-6303		
1117	27-504	1181	71-448	1245	71-6304		
1118	28-328	1182	71-507	1246	71-6305		
1119	28-401	1183	71-551	1247	71-6306		
1120	28-401.01	1184	71-605	1248	71-6307		
1121	28-409	1185	71-906	1249	71-6309		
1122	28-414	1186	71-1356	1250	71-6310		
1123	28-435	1187	71-1357	1251	71-6310.01		
1124	28-435.01	1188	71-1361	1252	71-6310.02		
1125	28-435.02	1189	71-1363	1253	71-6310.03		
1126	28-435.03	1190	71-1373	1254	71-6310.04		
1127	28-1013	1191	71-17,102	1255	71-6312		
1128	28-1301	1192	71-17,113	1256	71-6313		
1129	29-2261	1193	71-2407	1257	71-6314		
1130	29-4013	1194	71-2411	1258	71-6315		
1131	43-129	1195	71-2412	1259	71-6317		
1132	43-146.03	1196	71-2418	1260	71-6318		
1133	43-1302	1197	71-2419	1261	71-6318.01		
1134	44-526	1198	71-2420	1262	71-6319.01		
1135	44-792	1199	71-2421	1263	71-6319.02		
1136	44-2804	1200	71-2423	1264	71-6319.04		
1137	44-2902	1201	71-2431	1265	71-6319.05		
1138	44-32,170	1202	71-2437	1266	71-6319.06		
1139	44-4110	1203	71-2505	1267	71-6319.07		
1140	46-602	1204	71-2509	1268	71-6319.08		
1141	46-602.01	1205	71-2510	1269	71-6319.09		
1142	46-604	1206	71-2610.01	1270	71-6319.10		
1143	46-1201	1207	71-3501	1271	71-6319.29		
1144	46-1202	1208	71-3502	1272	71-6319.40		

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2007		2007		2007		2007	
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	1273		8		6		
	1274		9	LB 530	§ 1		
	1275		10		2		
	1276		11	LB 537	§ 1		
	1277		12		2		
	1278		13	LB 540	§ 1		
	1279	LB 472	§ 1		2		
	1280		2		3		
	1281		3		4		
	1282		4		5		
	1283		5		6		
	1284		6	LB 540A			
	1285		7	LB 542	§ 1		
	1286		8		2		
	1287		9		3		
	1288	LB 481	§ 1		4		
	1289		2		5		
	1290		3		6		
	1291		4	LB 549	§ 1		
	1292		5		2		
	1293		6		3		
	1294	LB 482	§ 1		4		
	1295		2		5		
	1296		3		6		
	1297		4		7		
	1298		5		8		
	1299		6		9		
	1300		7		10		
	1301		8		11		
	1302		9		12		
	1303	LB 482A			13		
	1304	LB 497	§ 1		14		
	1305		2		15		
	1306		3		16		
	1307		4		17		
	1308		5		18		
	1309		6		19		
	1310		7		20		
	1311		8		21		
	1312	LB 502	§ 1	LB 549A			
	1313		2	LB 551	§ 1		
	1314		3		2		
	1315		4		3		
	1316		5		4		
	1317		6		5		
	1318	LB 504	§ 1		6		
	1319		2		7		
LB 464	§ 1		3		8		
	2		4		9		
	3		5		10		
	4	LB 508	§ 1		11		
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	6		3	LB 551A			
	7		4	LB 554	§ 1		
LB 470	§ 1	LB 516	§ 1		2		
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LB 470A			3		4		
LB 471	§ 1		4		5		
	2	LB 516A			6		
	3	LB 527	§ 1		7		
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	5		3		9		
	6		4		10		
	7		5		11		
					12		

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2007		2007		2007		2007	
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	13	43-2932		4	Omitted		17
	14	43-2933		5	Omitted		18
	15	43-2934	LB 570	§ 1	60-301		19
	16	43-2935		2	60-3,122.01		20
	17	43-2936		3	60-3,122.02		21
	18	43-2937		4	60-393		22
	19	43-2938		5	60-395		23
	20	43-2939		6	60-396		24
	21	43-2940		7	60-3,104		25
	22	43-2941		8	Omitted		26
	23	43-2942		9	Omitted		27
	24	43-2943	LB 573	§ 1	53-401		28
	25	25-2911		2	53-402		29
	26	33-106.03		3	53-403		30
	27	33-107.02		4	53-404		31
	28	42-347		5	53-405		32
	29	42-351		6	53-406		33
	30	42-353		7	53-407		34
	31	42-359		8	53-408		35
	32	42-364		9	53-409		36
	33	42-364.14		10	53-167.03		37
	34	42-364.15		11	53-180.02		38
	35	42-369		12	Omitted		39
	36	42-371		13	Omitted		40
	37	42-934	LB 578	§ 1	53-101	LB 603A	Omitted
	38	43-104.13		2	53-163	LB 610	§ 1
	39	43-158		3	53-169.01	LB 629	§ 1
	40	43-2,113		4	60-6,197.03		2
	41	43-512.08		5	Omitted		3
	42	43-512.15	LB 580	§ 1	69-2706		4
	43	43-1407		2	69-2707		5
	44	43-3342.01		3	69-2708		6
	45	84-205		4	69-2709		7
	46	Omitted		5	Omitted		8
	47	Omitted	LB 588	§ 1	48-120		9
	48	Omitted		2	48-120.04		10
	49	Omitted		3	48-125.02		11
LB 554A		Omitted		4	48-121	LB 629A	Omitted
LB 561	§ 1	60-696		5	48-1,110	LB 636	§ 1
	2	60-6,164		6	Omitted		2
	3	Omitted		7	Omitted		3
LB 562	§ 1	18-2101		8	Omitted		4
	2	18-2103	LB 588A		Omitted		5
	3	18-2107	LB 596	§ 1	79-947.01		6
	4	18-2111		2	79-958		7
	5	18-2116		3	79-9,113	LB 638	§ 1
	6	18-2119		4	Omitted		2
	7	18-2130		5	Omitted		3
	8	18-2142.02	LB 603	§ 1	13-503		4
	9	18-2142.03		2	32-515		5
	10	18-2142.04		3	32-607		6
	11	Omitted		4	79-1012		7
	12	Omitted		5	79-1018.01		8
LB 564	§ 1	13-901		6	79-1028		9
	2	13-910		7	79-1103		10
	3	13-927		8	79-1201		11
	4	81-8,219		9	79-1201.01		12
	5	81-8,234		10	79-1205		13
	6	81-8,235		11	79-1208		14
	7	Omitted		12	79-1211		15
	8	Omitted		13	79-1212		16
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	2	81-1553.01		15	79-1217.01		18
	3	81-15,160		16	79-1245		19
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2007		2007		2007		2007	
Session	Laws	Supplement	Session	Laws	Supplement	Session	Laws
		20	Omitted	3	32-235	2	8-2602
		21	Omitted	4	32-612	3	8-2603
LB 641	§ 1	32-567		5	32-808	4	8-2604
		2	32-604	6	32-904	5	8-2605
		3	32-606	7	32-906	6	8-2606
		4	77-3442	8	32-909	7	8-2607
		5	79-4,117	9	32-1001	8	8-2608
		6	79-4,125	10	32-1002	9	8-2609
		7	79-4,126	11	32-1004	10	8-2610
		8	79-4,128	12	32-1010	11	8-2611
		9	79-528	13	32-1027	12	8-2612
		10	79-611	14	32-1041	13	8-2613
		11	79-769	15	32-1049	14	8-2614
		12	79-1001	16	Omitted	15	8-2615
		13	79-1003	17	Omitted	16	48-237
		14	79-1003.01	LB 653 § 1	79-757	17	Omitted
		15	79-1007.02	2	79-758	LB 677 § 1	54-2423
		16	79-1007.03	3	79-760	2	Omitted
		17	79-1007.04	4	79-760.03	3	Omitted
		18	79-1007.05	5	79-760.01	LB 681 § 1	60-1411.01
		19	79-1007.06	6	79-760.02	2	60-1419
		20	79-1007.07	7	79-760.04	3	Omitted
		21	79-1007.08	8	79-760.05	LB 701 § 1	2-967
		22	79-1007.09	9	Omitted	2	2-968
		23	79-1013	LB 653A	Omitted	3	2-945.01
		24	79-1014	LB 661 § 1	86-125	4	2-958.02
		25	79-1015	2	86-140	5	2-3202
		26	79-1008.02	3	86-313	6	2-3226.01
		27	79-1015.01	4	86-316	7	2-3226.02
		28	79-1022	5	86-318	8	2-3226.03
		29	79-1073	6	86-320.01	9	2-3226.04
		30	79-1073.01	7	86-322	10	2-3226.05
		31	79-10,120	8	86-323	11	2-3225
		32	79-10,126.01	9	86-420	12	2-3231
		33	79-11,150	10	86-422	13	13-808
		34	79-1204	11	86-429.01	14	13-2530
		35	79-2101	12	86-433	15	46-229.04
		36	79-2102	13	86-434	16	2-32,115
		37	32-555.01	14	86-435	17	46-601.01
		38	79-2102.01	15	86-436	18	46-602
		39	79-2103	16	86-442	19	46-609
		40	79-2104	17	86-443	20	46-644
		41	79-2107	18	86-449.01	21	46-702
		42	79-2110	19	86-450.02	22	46-707
		43	79-2111	20	86-450.03	23	46-715
		44	79-2112	21	86-456	24	46-1212
		45	79-2113	22	86-456.01	25	61-218
		46	79-2114	23	86-457	26	61-210
		47	79-2115	24	86-459	27	66-1345
		48	79-2116	25	86-461	28	66-1345.01
		49	32-546.01	26	Omitted	29	66-1345.02
		50	79-2117	27	Omitted	30	Omitted
		51	79-2118	28	Omitted	31	Omitted
		52	Omitted	29	Omitted	32	61-219
		53	Omitted	30	Omitted	33	77-3442
		54	Omitted	31	Omitted	34	Omitted
LB 641A		Omitted	LB 664	§ 1	81-3541	35	Omitted
LB 646	§ 1	32-230		2	Omitted	36	Omitted
		2	32-232	LB 674	§ 1	8-2601	LB 701A
							Omitted

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Legislative Bills, 100th Legislature
First Session, 2007

Showing the date each act went into effect.
The One Hundredth Session of the Legislature adjourned
May 31, 2007.

LB No.	Effective Date	LB No.	Effective Date
1	September 1, 2007		September 1, 2007. The
2	September 1, 2007		other sections of this act
5	September 1, 2007		become operative on March
8	September 1, 2007		20, 2007.
11	September 1, 2007	132	September 1, 2007
12	September 1, 2007	136	September 1, 2007
12A	September 1, 2007	142	September 1, 2007
21	February 1, 2007	143	September 1, 2007
24	February 1, 2007	144	May 17, 2007
25	September 1, 2007	145	September 1, 2007
26	September 1, 2007	147	September 1, 2007
28	September 1, 2007	148	September 1, 2007
34	September 1, 2007	150	September 1, 2007
35	February 15, 2007	152	September 1, 2007
43	September 1, 2007	160	September 1, 2007
44	September 1, 2007	161	September 1, 2007
63	September 1, 2007	166	March 8, 2007
64	September 1, 2007	167	February 10, 2007
67	September 1, 2007	185	Sections 1, 50, 51, and 55 of
69	September 1, 2007		this act become operative on
73	July 1, 2007		March 15, 2007. Sections 5,
	(operative date)		6, 7, 8, 9, 10, 11, 12, 13, 14,
73A	May 31, 2007		15, 16, 17, 18, 19, 20, 21, 22,
74	July 1, 2007		23, 24, 25, 26, 27, 28, 29, 30,
	(operative date)		31, 32, 33, 34, 35, 36, 37, 38,
79	September 1, 2007		39, 40, 41, 53, and 54 of this
80	September 1, 2007		act become operative on July
80A	September 1, 2007		1, 2007. The other sections of
83	March 20, 2007		this act become operative on
88	May 22, 2007		September 1, 2007.
94	September 1, 2007	186	September 1, 2007
97	September 1, 2007	188	May 17, 2007
99	March 8, 2007	191	March 8, 2007
108	March 8, 2007	192	September 1, 2007
110	February 15, 2007	199	September 1, 2007
111	September 1, 2007	203	September 1, 2007
115	September 1, 2007	206	September 1, 2007
117	September 1, 2007	207	September 1, 2007
124	Sections 1, 2, 8, 9, 10, 11,	208	September 1, 2007
	12, 13, 14, 15, 16, 17, 18, 19,	211	May 31, 2007
	20, 22, 23, 24, 25, 26, 28, 29,	211A	May 31, 2007
	30, 31, 32, 33, 34, 35, 36, 37,	213	September 1, 2007
	38, 39, 40, 41, 42, 43, 44, 45,	214	September 1, 2007
	46, 47, 48, 49, 50, 51, 52, 53,	218	September 1, 2007
	54, 55, 56, 57, 58, 59, 60, 61,	219	May 17, 2007
	62, 63, 64, 65, 66, 67, 68, 69,	221	September 1, 2007
	70, 71, 72, 73, 75, and 78 of	223	Sections 1, 3, 4, 5, 6, 7, 8,
	this act become operative on		12, 13, 14, 15, 22, 23, 24,

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LB No.	Effective Date	LB No.	Effective Date
	and 35 of this act become operative on January 1, 2008. The other sections of this act become operative on September 1, 2007.	313	September 1, 2007
226	May 17, 2007	315	February 15, 2007
227	September 1, 2007	316	May 31, 2007
231	September 1, 2007	316A	May 31, 2007
232	September 1, 2007	317	May 22, 2007
233	September 1, 2007	318	July 1, 2007 (operative date)
236	September 1, 2007	319	July 1, 2007 (operative date)
236A	September 1, 2007	320	July 1, 2007 (operative date)
237	September 1, 2007	321	July 1, 2007
239	September 1, 2007	322	Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 32, 33, 34, 35, 36, 37, 38, and 41 of this act become operative on July 1, 2007. Section 43 of this act becomes operative on August 1, 2007. The other sections of this act become operative on May 22, 2007.
247	Sections 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 90, and 91 of this act become operative on December 1, 2008. The other sections of this act become operative on June 1, 2007.	323	Sections 1, 2, 4, and 6 of this act become operative on July 1, 2007. The other sections of this act become operative on May 22, 2007.
247A	September 1, 2007	324	May 31, 2007
248	January 1, 2008 (operative date)	324A	May 31, 2007
252	September 1, 2007	328	Sections 12, 13, 14, 15, 16, 17, and 19 of this act become operative on May 31, 2007. The other sections of this act become operative on September 1, 2007.
255	April 3, 2007	328A	May 31, 2007
256	September 1, 2007	333	March 8, 2007
263	September 1, 2007	334	July 1, 2007 (operative date)
265	Sections 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 35, and 39 of this act become operative on July 1, 2007. Sections 24, 25, 26, 27, 28, 29, 30, 31, 32, 34, and 38 of this act become operative on January 1, 2008. Sections 1, 2, 13, 14, 15, 16, 17, 18, 19, 20, 21, 36, and 40 of this act become operative on September 1, 2007. Sections 22, 23, 33, 37, and 41 of this act become operative on June 1, 2007.	338	January 1, 2007 (operative date)
274	July 1, 2008 (operative date)	339	September 1, 2007
277	September 1, 2007	341	February 2, 2007
283	September 1, 2007	342	July 1, 2007 (operative date)
283A	September 1, 2007	342A	July 1, 2007 (operative date)
286	September 1, 2007	343	January 1, 2007 (operative date)
289	September 1, 2007	343A	September 1, 2007
290	September 1, 2007	347	September 1, 2007
292	September 1, 2007	349	September 1, 2007
292A	September 1, 2007	351	September 1, 2007
296	July 1, 2007 (operative date)	351A	September 1, 2007
298	September 1, 2007	358	September 1, 2007
299	September 1, 2007	364	September 1, 2007
304	September 1, 2007	367	Sections 5, 19, 20, 21, 22, 23, 25, 27, and 30 of this act become operative for taxable years beginning or deemed to begin on or after January 1, 2007, under the Internal Revenue Code of 1986, as
305	October 1, 2007 (operative date)		
305A	September 1, 2007		
307	September 1, 2007		
311	September 1, 2007		

CROSS REFERENCE TABLE

LB No.	Effective Date	LB No.	Effective Date
	amended. Sections 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 24, 29, and 31 of this act become operative on October 1, 2007.		187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570,
367A	September 1, 2007		
368	January 1, 2008 (operative date)		
368A	September 1, 2007		
373	September 1, 2007		
374	July 1, 2007 (operative date)		
377	July 1, 2007		
377A	May 31, 2007		
382	September 1, 2007		
388	September 1, 2007		
389	April 3, 2007		
390	September 1, 2007		
396	May 17, 2007		
415	January 1, 2008 (operative date)		
415A	September 1, 2007		
422	March 8, 2007		
424	September 1, 2007		
425	September 1, 2007		
425A	September 1, 2007		
434	September 1, 2007		
435	May 17, 2007		
441	September 1, 2007		
441A	September 1, 2007		
445	September 1, 2007		
449	September 1, 2007		
456	September 1, 2007		
457	September 1, 2007		
463	Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186,		

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LB No.	Effective Date	LB No.	Effective Date
571, 572, 573, 574, 575, 576,		955, 956, 957, 958, 959, 960,	
577, 578, 579, 580, 581, 582,		961, 962, 963, 964, 965, 966,	
583, 584, 585, 586, 587, 588,		967, 968, 969, 970, 971, 972,	
589, 590, 591, 592, 593, 594,		973, 974, 975, 976, 977, 978,	
595, 596, 597, 598, 599, 600,		979, 980, 981, 982, 983, 984,	
601, 602, 603, 604, 605, 606,		985, 986, 987, 988, 989, 990,	
607, 608, 609, 610, 611, 612,		991, 992, 993, 994, 995, 996,	
613, 614, 615, 616, 617, 618,		997, 998, 999, 1000, 1001,	
619, 620, 621, 622, 623, 624,		1002, 1003, 1004, 1005,	
625, 626, 627, 628, 629, 630,		1006, 1007, 1008, 1009,	
631, 632, 633, 634, 635, 636,		1010, 1011, 1012, 1013,	
637, 638, 639, 640, 641, 642,		1014, 1015, 1016, 1017,	
643, 644, 645, 646, 647, 648,		1018, 1019, 1020, 1021,	
649, 650, 651, 652, 653, 654,		1022, 1023, 1024, 1025,	
655, 656, 657, 658, 659, 660,		1026, 1027, 1028, 1029,	
661, 662, 663, 664, 665, 666,		1030, 1031, 1032, 1033,	
667, 668, 669, 670, 671, 672,		1034, 1035, 1036, 1037,	
673, 674, 675, 676, 677, 678,		1038, 1039, 1040, 1041,	
679, 680, 681, 682, 683, 684,		1042, 1043, 1044, 1045,	
685, 686, 687, 688, 689, 690,		1046, 1047, 1048, 1049,	
691, 692, 693, 694, 695, 696,		1050, 1051, 1052, 1053,	
697, 698, 699, 700, 701, 702,		1054, 1055, 1056, 1057,	
703, 704, 705, 706, 707, 708,		1058, 1059, 1060, 1061,	
709, 710, 711, 712, 713, 714,		1062, 1063, 1064, 1065,	
715, 716, 717, 718, 719, 720,		1066, 1067, 1068, 1069,	
721, 722, 723, 724, 725, 726,		1070, 1071, 1072, 1073,	
727, 728, 729, 730, 731, 732,		1074, 1075, 1076, 1077,	
733, 734, 735, 736, 737, 738,		1078, 1079, 1080, 1081,	
739, 740, 741, 742, 743, 744,		1082, 1083, 1084, 1085,	
745, 746, 747, 748, 749, 750,		1086, 1087, 1088, 1089,	
751, 752, 753, 754, 755, 756,		1090, 1091, 1092, 1093,	
757, 758, 759, 760, 761, 762,		1094, 1095, 1096, 1097,	
763, 764, 765, 766, 767, 768,		1098, 1099, 1100, 1101,	
769, 770, 771, 772, 773, 774,		1102, 1103, 1104, 1105,	
775, 776, 777, 778, 779, 780,		1106, 1107, 1108, 1109,	
781, 782, 783, 784, 785, 786,		1110, 1111, 1112, 1113,	
787, 788, 789, 790, 791, 792,		1114, 1115, 1116, 1117,	
793, 794, 795, 796, 797, 798,		1118, 1119, 1120, 1121,	
799, 800, 801, 802, 803, 804,		1122, 1123, 1124, 1125,	
805, 806, 807, 808, 809, 810,		1126, 1127, 1128, 1129,	
811, 812, 813, 814, 815, 816,		1130, 1131, 1132, 1133,	
817, 818, 819, 820, 821, 822,		1134, 1135, 1136, 1137,	
823, 824, 825, 826, 827, 828,		1138, 1139, 1140, 1141,	
829, 830, 831, 832, 833, 834,		1142, 1143, 1144, 1145,	
835, 836, 837, 838, 839, 840,		1146, 1147, 1148, 1149,	
841, 842, 843, 844, 845, 846,		1150, 1151, 1152, 1153,	
847, 848, 849, 850, 851, 852,		1154, 1155, 1156, 1157,	
853, 854, 855, 856, 857, 858,		1158, 1159, 1160, 1161,	
859, 860, 861, 862, 863, 864,		1162, 1163, 1164, 1165,	
865, 866, 867, 868, 869, 870,		1166, 1167, 1168, 1169,	
871, 872, 873, 874, 875, 876,		1170, 1171, 1172, 1173,	
877, 878, 879, 880, 881, 882,		1174, 1175, 1176, 1177,	
883, 884, 885, 886, 887, 888,		1179, 1180, 1181, 1182,	
889, 890, 891, 892, 893, 894,		1183, 1184, 1185, 1186,	
895, 896, 897, 898, 899, 900,		1187, 1188, 1189, 1190,	
901, 902, 903, 904, 905, 906,		1191, 1192, 1193, 1194,	
907, 908, 909, 910, 911, 912,		1195, 1196, 1197, 1198,	
913, 914, 915, 916, 917, 918,		1199, 1200, 1201, 1202,	
919, 920, 921, 922, 923, 924,		1203, 1204, 1205, 1206,	
925, 926, 927, 928, 929, 930,		1207, 1208, 1209, 1210,	
931, 932, 933, 934, 935, 936,		1211, 1212, 1213, 1214,	
937, 938, 939, 940, 941, 942,		1215, 1216, 1217, 1218,	
943, 944, 945, 946, 947, 948,		1219, 1220, 1221, 1222,	
949, 950, 951, 952, 953, 954,		1223, 1224, 1225, 1226,	

CROSS REFERENCE TABLE

LB No.	Effective Date	LB No.	Effective Date
	1227, 1228, 1229, 1230,	568	April 5, 2007
	1231, 1232, 1233, 1234,	570	January 1, 2010 (operative date)
	1235, 1236, 1237, 1238,	573	Sections 1, 2, 3, 4, 5, 6, 7, 8, and 9 of this act become operative on January 1, 2008. The other sections of this act become operative on September 1, 2007.
	1239, 1240, 1241, 1242,		
	1243, 1244, 1245, 1246,	578	September 1, 2007
	1247, 1248, 1249, 1250,	580	September 1, 2007
	1251, 1252, 1253, 1254,	588	Sections 1, 2, 5, 6, and 7 of this act become operative on September 1, 2007. Sections 3, 4, and 8 of this act become operative on January 1, 2008.
	1255, 1256, 1257, 1258,		
	1259, 1260, 1261, 1262,	588A	September 1, 2007
	1263, 1264, 1265, 1266,	596	May 17, 2007
	1267, 1268, 1269, 1270,	603	Sections 1, 16, 17, 18, 19, 20, 21, 22, 28, 31, 32, 33, 36, and 39 of this act become operative on July 1, 2008. Sections 4, 7, 8, 10, 12, 34, 35, 38, and 40 of this act become operative on May 31, 2007. The other sections of this act become operative on September 1, 2007.
	1271, 1272, 1273, 1274,		
	1275, 1276, 1277, 1278,		
	1279, 1280, 1281, 1282,		
	1283, 1284, 1285, 1286,		
	1287, 1288, 1289, 1290,		
	1291, 1292, 1293, 1294,		
	1295, 1296, 1297, 1298,		
	1299, 1300, 1301, 1302,		
	1303, 1304, 1305, 1306,		
	1307, 1308, 1309, 1310,		
	1311, 1312, 1313, 1314,		
	1315, 1318, and 1319 of this act become operative on December 1, 2008. The other sections of this act become operative on September 1, 2007.		
464	September 1, 2007	603A	September 1, 2007
470	September 1, 2007	610	September 1, 2007
470A	September 1, 2007	629	May 22, 2007
471	May 17, 2007	629A	May 22, 2007
472	September 1, 2007	636	September 1, 2007
481	May 17, 2007	638	September 1, 2007
482	July 1, 2007 (operative date)	641	September 1, 2007
482A	May 25, 2007	641A	September 1, 2007
497	April 5, 2007	646	September 1, 2007
502	September 1, 2007	653	September 1, 2007
504	September 1, 2007	653A	September 1, 2007
508	May 17, 2007	661	Sections 16, 17, 18, 19, 20, 21, 22, 23, and 29 of this act become operative on July 1, 2007. Sections 1, 2, and 28 of this act become operative on August 1, 2007. The other sections of this act become operative on April 5, 2007.
516	May 25, 2007		
516A	May 25, 2007	664	September 1, 2007
527	September 1, 2007	674	Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 17 of this act become operative on September 1, 2007. Section 16 of this act becomes operative on September 1, 2008.
530	September 1, 2007		
537	September 1, 2007	677	April 12, 2007
540	May 31, 2007	681	September 1, 2007
540A	May 31, 2007	701	May 2, 2007
542	May 25, 2007	701A	May 2, 2007
549	September 1, 2007		
549A	September 1, 2007		
551	June 1, 2007		
551A	September 1, 2007		
554	Sections 42 and 48 of this act become operative on July 1, 2008. The other sections of this act become operative on January 1, 2008.		
554A	September 1, 2007		
561	September 1, 2007		
562	September 1, 2007		
564	May 17, 2007		

APPENDIX
APPENDIX

CROSS REFERENCE TABLE

2008 Session Laws of Nebraska, Second Session
Showing LB section number to statute section number

2008 Session Laws	2008 Cumulative Supplement	2008 Session Laws	2008 Cumulative Supplement	2008 Session Laws	2008 Cumulative Supplement
LB 39	§ 1 32-628		3 Omitted		7 23-1831
	2 32-629		4 Omitted		8 23-1832
	3 32-630		5 Omitted		9 Omitted
	4 32-1303	LB 157	§ 1 29-121	LB 268	§ 1 23-151
	5 32-1404	LB 171	§ 1 68-1017.02		2 32-528
	6 49-1455		2 Omitted		3 Omitted
	7 49-1478	LB 171A		LB 269	§ 1 23-148
	8 Omitted	LB 177	§ 1 77-5903		2 23-149
LB 92	§ 1 43-3801		2 Omitted		3 23-151
	2 43-3802	LB 179	§ 1 29-4501		4 23-202
	3 43-3803		2 29-4502		5 23-292
	4 43-3804		3 29-4503		6 23-293
	5 43-3805		4 29-4504		7 23-294
	6 43-3806		5 29-4505		8 23-295
	7 43-3807		6 29-4506		9 23-296
	8 43-3808		7 29-4507		10 23-297
	9 43-3809		8 29-4508		11 23-299
	10 43-3810	LB 179A			12 51-201.03
	11 Omitted	LB 195			13 Omitted
LB 123	§ 1 76-2701	LB 196	§ 1 55-133		14 Omitted
	2 76-2702		2 60-610	LB 279	§ 1 60-4,173
	3 76-2703		3 60-6,230		2 60-4,174
	4 76-2704		4 60-6,231		3 60-4,175
	5 76-2705		5 Omitted		4 Omitted
	6 76-2706	LB 202	§ 1 13-2001	LB 280	§ 1 24-517
	7 76-2707		2 13-2020.01		2 25-2740
	8 76-2708		3 Omitted		3 43-247
	9 76-2709	LB 204	§ 1 48-2102		4 Omitted
	10 76-2710		2 48-2103	LB 308	§ 1 71-2444
	11 76-2711		3 48-2104		2 71-2445
	12 76-2712		4 48-2107		3 71-2446
	13 76-2713		5 48-2114		4 71-2447
	14 76-2714		6 48-2115		5 71-2448
	15 76-2715		7 Omitted		6 71-2449
	16 76-2716	LB 204A			7 71-2450
	17 76-2717	LB 205	§ 1 79-2,137		8 71-2452
	18 76-2718		2 79-267		9 71-2451
	19 76-2719		3 Omitted		10 38-178
	20 76-2720		4 Omitted		11 38-2866
	21 76-2721	LB 210	§ 1 48-1623		12 71-448
	22 76-2722		2 Omitted		13 71-7454
	23 76-2723	LB 245	§ 1 71-3305		14 Omitted
	24 76-2724		2 Omitted		15 Omitted
	25 76-2725		3 Omitted		16 Omitted
	26 76-2726	LB 245A			17 Omitted
	27 76-2727	LB 246	§ 1 23-1825		18 Omitted
	28 76-2728		2 23-1826		19 Omitted
	29 87-302		3 23-1827	LB 308A	§ 1 9-506 UCC
	30 Omitted		4 23-1828		2 Omitted
LB 151	§ 1 25-227		5 23-1829	LB 312	§ 1 32-562
	2 3-118 UCC		6 23-1830		2 32-571

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2008 Session Laws	2008 Cumulative Supplement	2008 Session Laws	2008 Cumulative Supplement	2008 Session Laws	2008 Cumulative Supplement
	3 32-1205		13 71-5728	LB 668	§ 1 69-1305.03
	4 32-1306		14 71-5729		2 Omitted
	5 Omitted		15 71-5730	LB 690	§ 1 37-413
LB 379	§ 1 21-301		16 71-5731		2 37-414
	2 21-302		17 71-5732		3 37-452
	3 21-304		18 71-5733		4 Omitted
	4 21-305		19 71-5734	LB 706	§ 1 21-2970
	5 21-1302		20 Omitted		2 Omitted
	6 21-1403		21 Omitted		3 Omitted
	7 21-1921		22 Omitted	LB 707	§ 1 67-294
	8 21-1934	LB 395A	Omitted		2 67-464
	9 21-1935	LB 465	§ 1 29-1928		3 67-465
	10 21-19,148		2 29-1929		4 Omitted
	11 21-19,152		3 Omitted		5 Omitted
	12 21-19,153	LB 467	§ 1 81-8,240	LB 710	§ 1 77-3206.01
	13 21-19,161		2 81-8,244		2 77-3206
	14 21-19,172		3 Omitted		3 77-3207
	15 21-2018	LB 467A	Omitted		4 77-3210
	16 21-2032	LB 469	§ 1 71-7606		5 77-3212
	17 21-20,170		2 Omitted		6 77-3213
	18 21-20,175	LB 480	§ 1 71-7605		7 Omitted
	19 21-20,181.01		2 71-7611	LB 715	§ 1 81-885.17
	20 21-2216		3 Omitted		2 Omitted
	21 21-2304		4 Omitted	LB 720	§ 1 49-1474.02
	22 21-2601.01		5 Omitted		2 86-242
	23 21-2606		6 Omitted		3 86-247
	24 21-2610	LB 500	§ 1 48-652		4 86-250
	25 21-2632.01		2 Omitted		5 86-256
	26 21-2638	LB 575	§ 1 77-2704.12		6 Omitted
	27 Omitted		2 Omitted		7 Omitted
LB 380	§ 1 45-705		3 Omitted	LB 724	§ 1 81-15,184
	2 45-706	LB 586	§ 1 52-401		2 Omitted
	3 Omitted		2 Omitted	LB 726	§ 1 81-15,151
LB 383	§ 1 67-236		3 Omitted		2 81-15,153
	2 67-240	LB 606	§ 1 71-8801		3 Omitted
	3 67-241		2 71-8802	LB 726A	Omitted
	4 67-281		3 71-8803	LB 727	§ 1 61-206
	5 67-283		4 71-8804		2 Omitted
	6 67-415		5 71-8805	LB 728	§ 1 90-111
	7 67-454		6 71-8806		2 Omitted
	8 67-456		7 71-7608	LB 734	§ 1 13-1622
	9 67-458		8 Omitted		2 Omitted
	10 Omitted		9 Omitted	LB 736	§ 1 60-480
LB 386	§ 1 76-2801	LB 606A	Omitted		2 60-497.01
	2 76-2802	LB 609	§ 1 81-12,126		3 60-498.02
	3 76-2803		2 Omitted		4 60-4,115
	4 76-2804	LB 609A	Omitted		5 60-4,118.06
	5 76-2805	LB 619	§ 1 84-617		6 60-601
	6 76-2806		2 84-617.01		7 60-6,197.01
	7 76-2807		3 Omitted		8 60-6,197.03
LB 395	§ 1 71-5716	LB 620	§ 1 43-3342.03		9 60-6,209
	2 71-5717		2 84-620		10 60-6,211.05
	3 71-5718		3 Omitted		11 60-6,211.10
	4 71-5719	LB 621	§ 1 60-4,182		12 83-1,127.02
	5 71-5720		2 60-682.01		13 Omitted
	6 71-5721		3 Omitted		14 Omitted
	7 71-5722	LB 623	§ 1 29-1207	LB 736A	Omitted
	8 71-5723		2 Omitted	LB 744	§ 1 81-1108.17
	9 71-5724	LB 624	§ 1 28-905		2 Omitted
	10 71-5725		2 Omitted	LB 745	§ 1 81-1316
	11 71-5726	LB 632	§ 1 54-702		2 Omitted
	12 71-5727		2 Omitted	LB 746	§ 1 85-505

CROSS REFERENCE TABLE

2008 Session Laws	2008 Cumulative Supplement	2008 Session Laws	2008 Cumulative Supplement	2008 Session Laws	2008 Cumulative Supplement
	2 85-505.01	LB 764	§ 1 28-101	4	68-906
	3 Omitted		2 28-1008	5	71-409
LB 747	§ 1 66-1065		3 28-1009.02	6	71-1557
	2 79-10,105		4 28-1009.03	7	71-1558
	3 Omitted		5 28-1013	8	71-1559
LB 750	§ 1 32-302		6 28-1013.01	9	71-1563
	2 32-311.01		7 28-1013.02	10	71-1564
	3 32-321		8 28-1014	11	71-1567
	4 Omitted		9 28-1015	12	71-1901
	5 Omitted		10 28-1016	13	71-4603
LB 752	§ 1 81-1108.32		11 Omitted	14	71-4604
	2 Omitted	LB 765	§ 1 71-5829.03	15	71-4604.01
LB 754	§ 1 13-2610		2 71-5829.06	16	71-4608
	2 Omitted		3 Omitted	17	71-4623
	3 Omitted	LB 766	§ 1 69-401	18	71-4631
LB 755	§ 1 75-111		2 69-402	19	71-5662
	2 75-126		3 69-403	20	71-5663
	3 75-156		4 69-404	21	71-5665
	4 75-1011		5 69-405	22	71-5668
	5 75-1012		6 69-406	23	71-7003.01
	6 86-127		7 69-407	24	71-7010
	7 86-209		8 69-408	25	71-7012
	8 86-437		9 69-409	26	71-7013
	9 86-459		10 Omitted	27	71-8249
	10 86-465	LB 768	§ 1 31-727	28	81-671
	11 Omitted		2 31-740	29	86-570
	12 Omitted		3 Omitted	30	68-720
LB 756	§ 1 37-1282	LB 775	§ 1 24-401	31	Omitted
	2 60-141		2 Omitted	32	Omitted
	3 60-164	LB 777	§ 1 77-1359	33	Omitted
	4 60-168.02		2 Omitted	34	Omitted
	5 60-301		3 Omitted	35	Omitted
	6 60-302	LB 781	§ 1 87-302	36	Omitted
	7 60-311		2 87-303.01	LB 798	§ 1 46-283
	8 60-334.01		3 87-303.02	2	46-286
	9 60-342		4 87-303.03	3	46-287
	10 60-3,193.01		5 87-303.04	4	46-291
	11 60-365		6 87-303.05	5	46-299
	12 60-376		7 87-303.06	6	Omitted
	13 60-3,161		8 87-303.07	LB 805	§ 1 66-1618
	14 60-3,196		9 87-304	2	Omitted
	15 60-3,198		10 87-305	LB 806	§ 1 14-102
	16 60-462.01		11 Omitted	2	15-220
	17 60-4,147.02	LB 782	§ 1 81-3126	3	16-206
	18 60-601		2 28-725	4	17-526
	19 60-605		3 28-726	5	20-126.01
	20 60-624.01		4 Omitted	6	20-127
	21 60-6,265		5 Omitted	7	20-128
	22 60-6,267		6 Omitted	8	20-129
	23 60-6,288	LB 789	§ 1 2-5420	9	20-131.02
	24 60-6,289		2 Omitted	10	20-131.04
	25 60-6,290		3 Omitted	11	28-1009.01
	26 60-6,294	LB 790	§ 1 2-5109	12	49-801
	27 60-6,310		2 Omitted	13	54-603
	28 75-363	LB 791	§ 1 2-1072	14	54-614
	29 75-364		2 2-1074	15	Omitted
	30 Omitted		3 2-1075.02	LB 821	§ 1 81-8,210
	31 Omitted		4 2-10,116	2	81-8,211
	32 Omitted		5 Omitted	3	81-8,212
	33 Omitted	LB 797	§ 1 60-107	4	81-8,213
	34 Omitted		2 60-1301	5	81-8,220
	35 Omitted		3 60-1401.02	6	81-8,224

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	9 81-8,300		5 66-489		3 8-120
	10 81-8,305		6 66-489.01		4 8-122
	11 Omitted		7 66-495.01		5 8-143.01
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	3 50-1206		10 66-4,105		8 8-223
	4 84-304		11 66-489.02		9 8-224
	5 Omitted		12 66-4,114		10 8-234
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	2 86-506		14 66-4,146		12 8-374
	3 86-516		15 66-697		13 8-910
	4 86-520		16 66-6,107		14 8-1510
	5 86-521		17 66-6,109.02		15 8-2102
	6 86-524.01		18 66-6,109		16 8-2106
	7 86-526		19 66-6,111		17 21-17,115
	8 86-527		20 66-726		18 25-202
	9 86-528		21 84-612		19 45-702
	10 86-529		22 Omitted		20 45-703
	11 86-530		23 Omitted		21 45-704
	12 86-552		24 Omitted		22 45-722
	13 86-562	LB 848	§ 1 21-2901		23 45-907
	14 86-563		2 21-2903		24 45-922
	15 86-564		3 21-2910		25 45-1006
	16 86-565		4 21-2922		26 64-214
	17 86-569		5 21-2929		27 9-324 UCC
	18 86-570		6 21-2930		28 9-506 UCC
	19 86-571		7 21-2935		29 Omitted
	20 86-572		8 21-2939		30 Omitted
	21 86-573		9 21-2945		31 Omitted
	22 Omitted		10 21-2949		32 Omitted
	23 Omitted		11 21-2950		33 Omitted
LB 830	§ 1 68-901		12 21-2951	LB 853	§ 1 44-1101
	2 68-950		13 21-2952		2 44-1102
	3 68-951		14 21-2953		3 44-1103
	4 68-952		15 21-2955		4 44-1104
	5 68-953		16 21-2956		5 44-1105
	6 68-954		17 21-2959		6 44-1106
	7 68-955		18 21-2960		7 44-1107
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	10 Omitted		21 21-2981.01		10 44-1109
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	3 32-953		27 21-29,117		16 44-1114
	4 32-954		28 21-29,122		17 44-1115
	5 32-957		29 21-29,123		18 Omitted
	6 Omitted		30 21-29,124	LB 855	§ 1 13-206
	7 Omitted		31 21-29,125		2 28-631
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	2 66-482		5 Omitted		11 44-1604

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	15	44-1606.03		14	13-2914	
	16	44-1607		15	Omitted	
	17	44-1607.01		16	Omitted	
	18	44-1613	LB 893	§ 1	77-1834	
	19	44-1614		2	77-1914	
	20	44-32,106		3	77-1917	
	21	44-3901		4	Omitted	
	22	44-3902	LB 895	§ 1	18-2720	
	23	44-3904		2	77-27,187.01	
	24	44-3909		3	77-27,187.02	
	25	44-3910		4	77-27,188	
	26	44-3911		5	77-27,196.01	
	27	44-4064		6	77-5701	
	28	44-4521		7	77-5703	
	29	44-6009		8	77-5707.01	
	30	44-6016		9	77-5708	
	31	44-6603		10	77-5712	
	32	44-6604		11	77-5714	
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	34	44-8302		13	77-5719.01	
	35	44-8303		14	77-5719.02	
	36	44-8304		15	77-5723	
	37	44-8305		16	77-5725	
	38	44-8306		17	77-5726	
	39	44-8307		18	77-5727	
	40	44-8308		19	77-5731	
	41	44-8309		20	77-5735	
	42	44-8310		21	Omitted	
	43	44-8311		22	Omitted	
	44	44-8312	LB 896	§ 1	49-801.01	
	45	44-8313		2	Omitted	
	46	44-8314		3	Omitted	
	47	44-8315	LB 898	§ 1	59-1502	
	48	44-8316		2	59-1505	
	49	44-7508.02		3	Omitted	
	50	44-165	LB 902	§ 1	28-405	
	51	44-7613		2	28-410	
	52	Omitted		3	Omitted	
	53	Omitted		4	Omitted	
	54	Omitted		5	Omitted	
LB 856	§ 1	32-564	LB 904	§ 1	80-403	
	2	Omitted		2	Omitted	
LB 857	§ 1	32-712	LB 907	§ 1	21-1905	
	2	Omitted		2	21-2005	
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	2	Omitted		4	21-2611	
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	2	Omitted	LB 911	§ 1	60-462	
	3	Omitted		2	60-462.02	
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	5	13-2905		7	60-479	
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	8	13-2908		10	60-4,112	
	9	13-2909		11	60-4,113	
	10	13-2910		12	60-4,115	
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				15	60-4,120.01	
				16	60-4,122	
				17	60-4,123	
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				23	60-4,149	
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				25	60-4,151	
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					2	Omitted
				LB 914	§ 1	21-2612
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					6	77-1783.01
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					13	77-2792
					14	77-2793
					15	77-2796
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					18	77-4104
					19	77-4928
					20	77-5405
					21	77-5534
					22	77-5723
					23	77-5726
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					28	Omitted
					29	Omitted
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					9	Omitted
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	8	77-2701.32	40	81-662	34	Omitted	
	9	77-2701.49	41	81-664	35	Omitted	
	10	77-2701.50	42	Omitted	36	Omitted	
	11	77-2701.51	43	Omitted	37	Omitted	
	12	77-2701.52	44	Omitted	38	Omitted	
	13	77-2701.53	45	Omitted	39	Omitted	
	14	77-2701.34	46	Omitted	40	Omitted	
	15	77-2703	47	Omitted	41	Omitted	
	16	77-2703.01	48	Omitted	42	Omitted	
	17	77-2704.09	LB 928A	Omitted	43	Omitted	
	18	77-2704.26	LB 939	§ 1	13-824.01	44	Omitted
	19	77-2704.45		2	18-2442	45	Omitted
	20	77-2704.46		3	70-637	46	Omitted
	21	77-2704.57		4	Omitted	47	Omitted
	22	77-2704.58	LB 947	§ 1	16-321	48	Omitted
	23	77-2704.59		2	17-568.01	49	Omitted
	24	77-2705		3	Omitted	50	Omitted
	25	77-2708	LB 952	§ 1	81-119	51	Omitted
	26	Omitted		2	86-2,112	52	Omitted
	27	Omitted		3	Omitted	53	Omitted
	28	Omitted	LB 953	§ 1	76-2901	54	Omitted
LB 925	§ 1	54-401		2	60-137	55	Omitted
	2	Omitted		3	60-164	56	Omitted
LB 928	§ 1	30-2483		4	Omitted	57	Omitted
	2	38-101	LB 956	§ 1	81-1201.21	58	Omitted
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	4	38-711		3	81-1204.01	60	Omitted
	5	38-1901		4	81-1205	61	Omitted
	6	38-1902		5	Omitted	62	Omitted
	7	38-1907	LB 959	§ 1	Omitted	63	Omitted
	8	38-1905.01		2	Omitted	64	Omitted
	9	38-1908.01		3	Omitted	65	Omitted
	10	38-1915		4	Omitted	66	Omitted
	11	38-1917.01		5	Omitted	67	Omitted
	12	38-1917.02		6	Omitted	68	Omitted
	13	38-3321		7	Omitted	69	Omitted
	14	43-4001		8	Omitted	70	Omitted
	15	68-909		9	Omitted	71	Omitted
	16	68-949		10	Omitted	72	Omitted
	17	71-810		11	Omitted	73	Omitted
	18	71-818		12	Omitted	74	Omitted
	19	71-1910		13	Omitted	75	Omitted
	20	71-2619		14	Omitted	76	Omitted
	21	71-2620		15	Omitted	77	Omitted
	22	71-2621		16	Omitted	78	Omitted
	23	71-3503		17	Omitted	79	Omitted
	24	71-3505		18	Omitted	80	Omitted
	25	71-3513.01		19	Omitted	81	Omitted
	26	71-3507		20	Omitted	82	Omitted
	27	71-3508.03		21	Omitted	83	Omitted
	28	71-3517		22	Omitted	84	Omitted
	29	71-3519		23	Omitted	85	90-531
	30	71-5306		24	Omitted	86	90-532
	31	71-5830.01		25	Omitted	87	90-533
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	33	81-653		27	Omitted	89	Omitted
	34	81-654		28	Omitted	90	Omitted
	35	81-655		29	Omitted	91	Omitted
	36	81-656		30	Omitted	92	Omitted
	37	81-657		31	Omitted	93	Omitted

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	3	Omitted	65	Omitted	127	Omitted
	4	Omitted	66	Omitted	128	Omitted
	5	Omitted	67	Omitted	129	Omitted
	6	Omitted	68	Omitted	130	Omitted
	7	Omitted	69	Omitted	131	Omitted
	8	Omitted	70	Omitted	132	Omitted
	9	Omitted	71	Omitted	133	Omitted
	10	Omitted	72	Omitted	134	Omitted
	11	Omitted	73	Omitted	135	Omitted
	12	Omitted	74	Omitted	136	Omitted
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	14	Omitted	76	Omitted	138	Omitted
	15	Omitted	77	Omitted	139	Omitted
	16	Omitted	78	Omitted	140	Omitted
	17	Omitted	79	Omitted	141	Omitted
	18	Omitted	80	Omitted	142	Omitted
	19	Omitted	81	Omitted	143	Omitted
	20	Omitted	82	Omitted	144	Omitted
	21	Omitted	83	Omitted	145	Omitted
	22	Omitted	84	Omitted	146	Omitted
	23	Omitted	85	Omitted	147	Omitted
	24	Omitted	86	Omitted	148	Omitted
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	28	Omitted	90	Omitted	152	Omitted
	29	Omitted	91	Omitted	153	Omitted
	30	Omitted	92	Omitted	154	Omitted
	31	Omitted	93	Omitted	155	Omitted
	32	Omitted	94	Omitted	156	Omitted
	33	Omitted	95	Omitted	157	Omitted
	34	Omitted	96	Omitted	158	Omitted
	35	Omitted	97	Omitted	159	Omitted
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	37	Omitted	99	Omitted	161	Omitted
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	39	Omitted	101	Omitted	163	Omitted
	40	Omitted	102	Omitted	164	Omitted
	41	Omitted	103	Omitted	165	Omitted
	42	Omitted	104	Omitted	166	Omitted
	43	Omitted	105	Omitted	167	Omitted
	44	Omitted	106	Omitted	168	Omitted
	45	Omitted	107	Omitted	169	Omitted
	46	Omitted	108	Omitted	170	Omitted
	47	Omitted	109	Omitted	171	Omitted
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	50	Omitted	112	Omitted	174	Omitted
	51	Omitted	113	Omitted	175	Omitted
	52	Omitted	114	Omitted	176	Omitted
	53	Omitted	115	Omitted	177	Omitted
	54	Omitted	116	Omitted	178	Omitted
	55	Omitted	117	Omitted	179	Omitted
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	59	Omitted	121	Omitted	183	Omitted
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	190 Omitted		10 Omitted		2 12-402
	191 Omitted	LB 988 § 1	44-4317		3 12-805
	192 Omitted		2 77-3442		4 12-806
	193 Omitted		3 79-233		5 12-807
	194 Omitted		4 79-458		6 12-808
	195 Omitted		5 79-4,108		7 12-810
	196 Omitted		6 79-4,111		8 12-1202
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	4 71-7608		10 79-1003.01		12 Omitted
	5 71-7611		11 79-1005.01	LB 1001 § 1	66-1012
	6 81-3119		12 79-1007.02		2 66-1013
	7 84-510		13 79-1007.11		3 66-1014
	8 Omitted		14 79-1007.12		4 66-1015
	9 77-2602.04		15 79-1007.13		5 66-1016
	10 Omitted		16 79-1007.14		6 66-1017
	11 Omitted		17 79-1007.15		7 66-1018
	12 Omitted		18 79-1007.16		8 66-1019
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	4 77-1202.01		24 79-1007.22		14 Omitted
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	7 77-1219		27 79-1007.04	LB 1004 § 1	77-2753
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	16 77-1504.01		36 79-1013		6 76-2223
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14	25-2740	76	Omitted		3 28-1019
15	29-2326	77	Omitted		4 28-1013
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17	29-2291	79	Omitted		6 28-1015
18	29-2246	80	Omitted		7 28-1016
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20	7-202	82	Omitted		9 54-608
21	7-203	83	Omitted		10 54-610
22	7-204	LB 1014A	Omitted		11 54-611
23	7-205	LB 1019	Omitted		12 54-613
24	7-206	LB 1022	§ 1 71-8901		13 54-614
25	7-207		2 71-8902		14 54-615
26	7-208		3 71-8903		15 54-616
27	7-209		4 71-8904		16 54-617
28	29-3927		5 71-8905		17 54-618
29	42-353		6 71-8906		18 54-619
30	42-357		7 71-8907		19 54-620
31	42-359		8 71-8908		20 54-623
32	42-364		9 71-8909		21 54-624
33	42-364.17		10 71-8910		22 54-623.01
34	42-364.13		11 71-8911		23 Omitted
35	42-371		12 71-8912		24 Omitted
36	42-925		13 71-8913		25 Omitted
37	43-247		14 71-8914	LB 1056	§ 1 16-1101
38	43-247.01		15 71-8915		2 16-1102
39	43-272.01		16 71-8916		3 16-1103
40	43-276		17 71-8917		4 16-1104
41	43-2,106.03		18 71-8918		5 16-1105
42	43-2,129		19 71-8919		6 16-1106
43	43-512.15		20 71-8920		7 16-1107
44	43-1311		21 71-8921		8 16-1108
45	43-1312		22 71-8922		9 16-1109
46	43-1411.01		23 71-8923		10 16-1110
47	43-1412.01		24 71-8924		11 16-1111
48	43-1608		25 71-8925		12 16-1112
49	43-1609		26 71-8926		13 16-1113
50	43-1610		27 71-8927		14 16-1114
51	43-1611		28 71-8928		15 16-1115
52	43-1612		29 71-8929	LB 1058	§ 1 71-816
53	43-1613		30 Omitted		2 71-817
54	43-2404.02	LB 1027	§ 1 77-202		3 Omitted
55	43-2922		2 77-5201		4 Omitted
56	43-2923		3 77-5203	LB 1067	§ 1 32-1203
57	43-2924		4 77-5209.02		2 70-610
58	43-2927		5 77-5204		3 Omitted
59	43-2928		6 77-5208	LB 1068	§ 1 13-1210
60	43-2929		7 77-5209		2 39-1817
61	43-2930		8 77-5211		3 39-1818
62	43-2932		9 77-5215		4 39-2103
63	43-2934		10 Omitted		5 39-2105
64	43-2936	LB 1027A	Omitted		6 39-2109
65	43-2937	LB 1045	§ 1 44-531		7 39-2110
66	43-2943		2 Omitted		8 39-2112
67	43-3001	LB 1048	§ 1 71-606		9 39-2113
68	79-215		2 Omitted		10 Omitted
69	84-917		3 Omitted	LB 1072	§ 1 66-1838
70	86-2,107	LB 1048A	Omitted		2 66-1852
71	25-1107.01	LB 1049	§ 1 37-101		3 75-130.01
72	29-2011		2 Omitted		4 Omitted
73	Omitted		3 Omitted		5 Omitted

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2008		2008		2008		2008	
Session	Laws	Cumulative	Session	Cumulative	Session	Cumulative	Session
		Supplement	Laws	Supplement	Laws	Supplement	Laws
LB 1094	§ 1	2-3225		4 66-1529.02		17 79-2102.01	
	2	2-3226.01		5 Omitted		18 79-2104	
	3	2-3226.05	LB 1147	§ 1 23-2306		19 79-2104.01	
	4	2-3226.06		2 23-2309.01		20 79-2107	
	5	2-3226.07		3 23-2310.05		21 79-2110	
	6	2-3226.08		4 23-2320		22 79-2111	
	7	2-3226.09		5 24-708		23 79-2113	
	8	84-612		6 24-710.07		24 79-2115	
	9	Omitted		7 24-710.10		25 79-2117	
	10	Omitted		8 79-933		26 79-2118	
	11	Omitted		9 79-947.01		27 81-1203	
LB 1094A		Omitted		10 79-947.04		28 81-1204	
LB 1096	§ 1	16-222.01		11 81-2027.03		29 Omitted	
	2	16-222.02		12 81-2027.06	LB 1157	§ 1 79-758	
	3	16-222.03		13 84-1307		2 79-760.01	
	4	35-901		14 84-1310.01		3 79-760.02	
	5	35-1401		15 84-1311.03		4 79-760.03	
	6	35-1403		16 84-1322		5 79-760.05	
	7	35-1404		17 72-1277		6 Omitted	
	8	35-1405		18 72-1278	LB 1157A		Omitted
	9	35-1406		19 Omitted	LB 1162	§ 1	37-415
	10	35-1407		20 Omitted		2	37-426
	11	35-1408		21 Omitted		3	37-438
	12	35-1402		22 Omitted		4	37-448
	13	Omitted	LB 1147A			5	37-451
LB 1103	§ 1	53-103	LB 1153	§ 1	79-770	6	37-458
	2	53-123.11		2	79-1102.01	7	37-462
	3	53-123.13		3	79-1103	8	37-463
	4	Omitted		4	79-1104.01	9	37-465
LB 1108	§ 1	38-2112		5	79-1104.02	10	37-478
	2	38-2115		6	79-1104.04	11	37-479
	3	38-2116		7	79-1007.11	12	37-483
	4	38-2124		8	Omitted	13	37-484
	5	Omitted		9	Omitted	14	37-497
	6	Omitted		10	Omitted	15	37-4,104
LB 1116	§ 1	2-101		11	Omitted	16	37-4,105
	2	2-101.01		12	Omitted	17	37-4,106
	3	2-103	LB 1154	§ 1	13-508	18	37-4,108
	4	2-108		2	13-519	19	Omitted
	5	2-112		3	32-546.01	LB 1165	§ 1 82-331
	6	2-113		4	32-604		2 84-612
	7	2-258		5	77-3442		3 Omitted
	8	81-1108.33		6	79-201	LB 1172	§ 1 54-501
	9	84-612		7	79-234		2 54-502
	10	Omitted		8	79-611		3 54-503
	11	Omitted		9	79-769		4 54-504
	12	Omitted		10	79-1028.01		5 54-505
	13	Omitted		11	79-1073		6 54-506
	14	Omitted		12	79-1202		7 54-507
LB 1116A		Omitted		13	79-1210		8 54-508
LB 1145	§ 1	66-1519		14	79-1225	LB 1172A	
	2	66-1523		15	79-1241.03		Omitted
	3	66-1525		16	79-2102		

APPENDIX
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CROSS REFERENCE TABLE

Legislative Bills, 100th Legislature
Second Session, 2008

Showing the date each act went into effect.
Convened January 9, 2008, and adjourned April 17, 2008.

LB No.	Effective Date	LB No.	Effective Date
39	July 18, 2008	606	March 26, 2008
92	July 18, 2008	606A	March 26, 2008
123	July 18, 2008	609	July 18, 2008
151	July 1, 2008 (operative date)	609A	April 22, 2008
157	July 18, 2008	619	July 18, 2008
171	July 18, 2008	620	July 18, 2008
171A	July 18, 2008	621	July 18, 2008
177	July 18, 2008	623	July 18, 2008
179	July 18, 2008	624	July 18, 2008
179A	July 18, 2008	632	July 18, 2008
195	July 18, 2008	668	July 18, 2008
196	July 18, 2008	690	July 18, 2008
202	July 18, 2008	706	February 8, 2008
204	July 18, 2008	707	July 18, 2008
204A	July 18, 2008	710	July 18, 2008
205	February 8, 2008	715	July 18, 2008
210	July 18, 2008	720	January 1, 2009 (operative date)
245	April 18, 2008	724	July 18, 2008
245A	April 18, 2008	726	July 18, 2008
246	February 8, 2008	726A	July 18, 2008
268	July 18, 2008	727	July 18, 2008
269	July 18, 2008	728	July 18, 2008
279	July 18, 2008	734	July 18, 2008
280	July 18, 2008	736	January 1, 2009 (operative date)
308	Sections 10, 11, 15, and 17 of this act become operative on December 1, 2008. The other sections of this act become operative on April 22, 2008.	736A	July 18, 2008
308A	July 18, 2008	744	July 18, 2008
312	July 18, 2008	745	July 18, 2008
379	July 18, 2008	746	July 18, 2008
380	July 18, 2008	747	July 18, 2008
383	July 18, 2008	750	March 11, 2008
386	July 18, 2008	752	July 18, 2008
395	June 1, 2009 (operative date)	754	April 17, 2008
395A	July 18, 2008	755	March 20, 2008
465	July 18, 2008	756	Sections 1, 3, 11, 12, 13, 15, 18, 19, 20, 23, 24, 25, 26, 31, and 34 of this act become operative on July 18, 2008. Sections 5, 6, 7, 8, 9, 10, 14, 16, 17, 21, 22, and 32 of this act become operative on July 1, 2008. The other sections of this act become operative on March 20, 2008.
467	July 18, 2008	764	July 18, 2008
467A	July 18, 2008	765	July 18, 2008
469	July 18, 2008	766	September 1, 2008 (operative date)
480	July 15, 2008 (operative date)		
500	July 18, 2008		
575	October 1, 2008 (operative date)		
586	March 11, 2008		

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LB No.	Effective Date	LB No.	Effective Date
768	July 18, 2008		operative on July 18, 2008.
775	July 18, 2008	904	July 18, 2008
777	January 1, 2009 (operative date)	907	July 18, 2008
781	July 18, 2008	911	July 18, 2008
782	March 11, 2008	911A	July 18, 2008
789	April 17, 2008	912	July 18, 2008
790	July 18, 2008	914	Sections 1, 8, 13, 17, 18, 19, 20, 21, 22, 24, 25, 26, 27, and 29 of this act become operative on July 18, 2008. Sections 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 14, 15, 16, 23, and 28 of this act become operative on January 1, 2009.
791	July 18, 2008		
797	Sections 12, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 33, and 35 of this act become operative on July 18, 2008. The other sections of this act become operative on April 1, 2008.	915	Sections 1, 2, 3, 4, 7, and 9 of this act become operative for all taxable years beginning or deemed to begin on or after January 1, 2008, under the Internal Revenue Code of 1986, as amended. Sections 5, 6, 8, and 10 of this act become operative on July 18, 2008.
798	July 18, 2008		
805	July 18, 2008		
806	July 18, 2008		
821	July 18, 2008		
822	July 18, 2008		
823	July 18, 2008		
830	July 18, 2008		
830A	July 18, 2008		
837	July 18, 2008		
838	January 1, 2009 (operative date)	916	Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, and 27 of this act become operative on October 1, 2008. Sections 17 and 28 of this act become operative on December 1, 2008. The other section of this act becomes operative on July 18, 2008.
844	July 18, 2008		
845	July 18, 2008		
846	Sections 5, 8, 10, 13, 14, 16, 18, and 23 of this act become operative on July 1, 2009. The other sections of this act become operative on July 18, 2008.		
848	July 18, 2008		
850	July 18, 2008	925	July 18, 2008
851	Sections 2, 3, 4, 8, 9, 19, 20, 21, 23, 24, 25, 28, and 30 of this act become operative on July 18, 2008. The other sections of this act become operative on March 20, 2008.	928	Sections 1, 15, 16, 19, 20, 21, 22, 30, 33, 34, 35, 36, 37, 38, 39, 40, 41, 45, and 47 of this act become operative on July 18, 2008. Sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 23, 24, 26, 27, 28, and 43 of this act become operative on December 1, 2008. Sections 14 and 46 of this act become operative on July 1, 2008. The other sections of this act become operative on April 22, 2008.
853	July 18, 2008		
855	Sections 5 and 53 of this act become operative on January 1, 2009. The other sections of this act become operative on July 18, 2008.		
856	July 18, 2008		
857	July 18, 2008		
865	July 18, 2008	928A	July 18, 2008
888	January 1, 2008 (operative date)	939	July 18, 2008
889	July 18, 2008	947	July 18, 2008
893	July 18, 2008	952	July 18, 2008
895	April 18, 2008	953	July 18, 2008
896	March 11, 2008	956	July 18, 2008
898	July 18, 2008	959	Provisions line-item vetoed by the Governor and overridden by the Legislature became effective April 8, 2008. All other provisions became effective April 3,
902	Sections 2 and 4 of this act become operative on January 1, 2009. The other sections of this act become		

CROSS REFERENCE TABLE

LB No.	Effective Date	LB No.	Effective Date
	2008.		(operative date)
960	April 3, 2008	1116	Sections 3 and 12 of this act become operative on January 1, 2009. Sections 8, 13, and 14 of this act become operative on December 31, 2009. The other sections of this act become operative on July 18, 2008.
961	Section 9 of this act becomes operative on July 1, 2008. The other sections of this act become operative on April 3, 2008.		
962	July 18, 2008		
965	Sections 1 and 25 of this act become operative on January 1, 2009. The other sections of this act become operative on April 15, 2008.	1116A	July 18, 2008
		1145	July 18, 2008
972	December 1, 2008 (operative date)	1147	Sections 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, and 20 of this act become operative on July 18, 2008. The other sections of this act become operative on April 22, 2008.
973	July 18, 2008		
988	April 3, 2008		
988A	April 3, 2008		
993	July 18, 2008		
995	July 18, 2008	1147A	July 18, 2008
1001	January 1, 2009 (operative date)	1153	Sections 7, 9, 11, and 12 of this act become operative on April 18, 2008. The other sections of this act become operative on July 18, 2008.
1001A	July 18, 2008		
1004	April 17, 2008		
1011	July 18, 2008		
1014	Sections 1, 2, 4, 5, 10, 11, 12, 13, 14, 15, 48, 49, 50, 51, 52, 53, 76, and 80 of this act become operative on January 1, 2009. Sections 3, 6, 7, 8, 9, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 36, 37, 38, 39, 40, 41, 42, 44, 45, 54, 67, 68, 69, 70, 79, and 82 of this act become operative on July 18, 2008. Sections 43 and 77 of this act become operative on July 1, 2008. The other sections of this act become operative on April 17, 2008.	1154	July 18, 2008
		1157	July 18, 2008
		1157A	July 18, 2008
		1162	July 18, 2008
		1165	July 18, 2008
		1172	July 18, 2008
		1172A	July 18, 2008
1014A	April 17, 2008		
1019	April 3, 2008		
1022	December 1, 2008 (operative date)		
1027	July 18, 2008		
1027A	July 18, 2008		
1045	July 18, 2008		
1048	April 17, 2008		
1048A	July 18, 2008		
1049	January 1, 2009 (operative date)		
1055	April 22, 2008		
1056	July 18, 2008		
1058	April 15, 2008		
1067	July 18, 2008		
1068	July 18, 2008		
1072	April 18, 2008		
1094	April 2, 2008		
1094A	April 2, 2008		
1096	July 18, 2008		
1103	July 18, 2008		
1108	December 1, 2008		

APPENDIX
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CROSS REFERENCE TABLE

2008 Session Laws of Nebraska, First Special Session
Showing LB section number to statute section number

2008 Session Laws		2008 Cumulative Supplement
LB 1	§ 1	29-121
	2	Omitted
	3	Omitted
LB 2		Omitted

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CROSS REFERENCE TABLE

Legislative Bills, 100th Legislature
First Special Session, 2008

Showing the date each act went into effect.
Convened November 14, 2008, and adjourned November 21, 2008.

LB No.	Effective Date
1	November 22, 2008
2	November 22, 2008